
(1994) 01 P&H CK 0065

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 3436-M of 1993

Raj Hans Chemicals

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 12-01-1994

Acts Referred:

Citation : (1994) 2 AICLR 530 : (1994) 2 RCR(Criminal) 139

Hon'ble Judges : R.S.Mongia, J

Advocate : Arihant Jain, P. K. Goklaney, Advocates for appearing Parties

Judgement

R. S. Mongia, J.

1. This petition has been filed by M/s. Raj Hans Chemicals, Sohna Road, Faridabad, for quashing the complaint, dated 1st April, 1991 filed by Insecticide Inspector, Bhatinda, in the Court of Sub Divisional Magistrate, Mansa, alleging the commission of an offence by the petitioner under Sections 17 and 33 of the Insecticide Act, 1968 (hereinafter called the Act). Brief facts giving rise to the present petition may be noticed :

2. Insecticide Inspector, Bhatinda, inspected the premises of M/s. Bharat Beej Bhandar, Sardulgarh, District Bhatinda, on 24th August, 1990 and he took sample of Dimethoate 30% EC of Batch No. RC02, which was manufactured by the petitioner. The sample was sent for analysis to the State Insecticide testing Laboratory, Ludhiana on 27th August, 1990. The report was received from the Laboratory on 24th October, 1990 to the effect that the sample of Insecticide was not found as per the specification of I.S.I. mark and the same was found misbranded and the same was 18.22% instead of 30%. After getting the sanction from the Joint Director, Agriculture, as required under the Act, on 6th March, 1991, a complaint was filed by the Inspector on 1st April, 1991 in the Court of Sub Divisional Magistrate, Mansa, against the proprietor of M/s. Bharat Beej Bhandar, Sardulgarh and the petitioner who was the manufacturer of the insecticide, for the alleged commission of offence by the dealer under Sections 3K and 18 and against the manufacturer (petitioner) under Sections 17 and 33 of

the Act. The Court summoned the petitioner as well as the dealer for 18th May, 1991.

3. It may be observed here that prior to the filing of the complaint, a show cause notice was issued to the petitioner on 26th October, 1990, by the Chief Agriculture Officer, Bhatinda to show cause as to why action against him be not taken under Clauses 3K, 17, 18, 29 and 33 of the Act. The petitioner wrote back on 12th November, 1990, that the case against it was totally false and challenged the test report and requested to send the second sample for retesting from Central Insecticide Laboratory under Section 24(3) of the Act. Another fact which needs highlighting is that the shelflife of the insecticide mentioned on the container was upto April, 1991.

4. The petitioner's counsel argued that on the date when the petitioner was required to appear before the Sub Divisional Magistrate on 18th May, 1991, the shelflife of the insecticide had already expired and the petitioner was deprived of the right of getting the sample retested from the Central Insecticide Laboratory, which right is envisaged by Section 24(4) of the Act. Further, he submitted that the petitioner had also exercised his right under Section 24(3) of the Act and had asked the Chief Agricultural Officer within 28 days of the receipt of the show cause notice to get the sample retested from the Central Insecticide Laboratory, but the same was not retested. According to the learned counsel, once such a right is denied, as envisaged by Sections 24(3) and 24(4) of the Act, the proceedings against the petitioner are liable to be quashed. In support of his contention, the learned counsel relied on (1) National Organic Chemicals Industries Ltd. v. State of Haryana ; (2) Bhai Manjit Singh v. the State of Punjab, and (3) Bhai Manjit Singh v. State of Punjab and others, 1992(1) Recent C.R. 137, 244 and 552 respectively, which are judgments of different Hon'ble Judges of this Court. The petitioner's counsel also argued that the sanction for prosecution granted by the Joint Director, Agriculture, was wholly mechanical and without any application of mind and was no sanction in the eye of law and any prosecution based thereon was liable to be quashed.

5. On the other hand, learned counsel for the respondent, submitted that the petitioner could have asked for retesting the sample when show cause notice along with the report was served upon him. He also submitted that in fact the right to get the sample retested is of the person from whom the sample is taken (in the present case, "the dealer" and not the manufacturer).

6. To appreciate the respective contentions of the counsel for the parties, Sections 24(3) and 24(4) of the Act, may be noticed :

"24. Report of Insecticide Analyst :

(3) Any document purporting to be a report signed by an Insecticide Analyst shall be evidence of the facts stated therein, and such evidence shall be conclusion unless the person from whom the sample was taken has within twentyeight days of the receipt of a copy of the report notified in writing the

Insecticide Inspector or the Court before which any proceedings in respect of the sample are pending that he intends to adduce evidence in controversion of the report.

(4) Unless the sample has already been tested or analysed in the Central Insecticides Laboratory, where a person has under subsection (3) notified his intention of adducing evidence in controversion of the Insecticide Analyst's report, the Court may, of its own motion or in its discretion at the request either of the complainant or of the accused, cause the sample of the insecticide produced before the Magistrate under Subsection (6) of Section 22 to be sent for test or analysis to the said laboratory, which shall make the test or analysis and report in writing signed by, or under the authority of, the Director of the Central Insecticides Laboratory the result thereof, and such report shall be conclusive evidence of the facts stated therein."

7. It will be seen that two independent rights are given to the accused to get a sample retested under Sections 24(3) and 24(4) of the Act. In the present case, the petitioner did exercise his right under Section 24(3) of the Act. Vide his explanation/application dated 12th November, 1990, a request was made to the Insecticide Inspector for retesting the sample by the Central Insecticide Laboratory. The second right which was available under Section 24(4) of the Act, could not be exercised by the petitioner, as the date on which the petitioner was to appear before the Sub Divisional Magistrate was after the expiry of shelflife of the insecticide of which sample had been taken. In all the above referred cases, it was held that if the petitioner when required to appear before the Court, is deprived of his right to get the sample retested under Section 24(4) of the Act, as on that date the shelf life of the insecticide had expired, then the proceedings are liable to be quashed.

8. On both counts, i.e. under Section 24(3) and Section 24(4), the petitioner was denied his valuable right. From the reading of the above quoted sub sections, it is clear that the right to get the sample retested is of the accused and not necessarily of the person from whom the sample is taken. If the interpretation as contended by the respondent's counsel is put, the manufacturer can never get a sample retested.

9. For the view I have taken on the above point raised by the learned counsel for the petitioner, it is not necessary to go into the point whether the sanction in the present case was in accordance with law or not.

10. For the foregoing reasons, this petition is allowed and the complaint dated 1st April, 1991 (Annexure P2) and the proceedings arising therefrom against the petitioner are quashed.