
(1994) 02 MAD CK 0044

In the Madras High Court

Case No : Criminal M.P. No's. 14446, 15923 and 17715 of 1990

S. Rajasekar and others

APPELLANT

Vs

S. Thirugnana Sambandam and another

RESPONDENT

Date of Decision : 11-02-1994

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Insecticides Act, 1968 — Section 22, 24, 29, 3, 33

Citation : (1995) 1 ALT(Cri) 433 : (1994) CriLJ 3583 : (1994) 1 LW(Cri) 268 :
(1995) 1 RCR(Criminal) 364

Hon'ble Judges : Pratap Singh, J

Bench : Single Bench

Advocate : V. Gopinath and B. Giridhara Rao, for the Appellant; E. Raja, Govt. Advocate, for the Respondent

Judgement

Pratap Singh, J.—The accused 2 to 4 is S.T.C. 1148/90 on the file of Judicial Magistrate No. II, Wallajahpet, accused 1 to 3 in C.C.

883/90 on the file of Judicial Magistrate, Melur and accused 1 and 2 in C.C. 1100/90 on the file of Judicial Magistrate No. IV, Erode, have filed

these petitions respectively u/s 482 Cr.P.C. praying to call for the records in the above cases and quash the same.

2. Short facts are : In S.T.C. 1148/90, the first respondent has filed the complaint against four accused for offences punishable under sections

29(1) read with 3(k)(i) and 33(1) of the Insecticides Act. The relevant allegations in it are briefly as follows :- A. 1 is the retail dealer of pesticides.

A. 2 is the State Distributor for M/s. Bayer India Limited and A. 3 and A. 4 are incharge of the business as Regional Sales Technical Manager and

Manager formulation for production in a Registered Manufacturer of insecticides under the Act. They are doing business under the name and style

of M/s. Bayer India Limited. The sample of the said insecticide in 100 ml. packing was taken from A. 1 shop in his presence, in accordance with

the provisions of Section 22 of the Act. On analysis, it was found to be misbranded. A. 1 was intimated of the report of the analyst by letter dated

5-5-1988. A. 2 to A. 4 were intimated by letter dated 16-5-1988 and 16-12-1988 respectively. A. 2 had supplied the said insecticide to A. 1

shop. A. 3 and A. 4 have manufactured that product. Hence all of them are liable to be punished.

3. In C.C. No. 883 of 1990, the respondent has filed a complaint against four Petitioners are A. 1 to A. 3. They are being proceeded with for

violation of S. 3(k)(1) of the Insecticides Act, 1968 on the allegation that A. 1 is the firm which manufactured and distributed the misbranded

insecticide and A. 2 and A. 3 are the Chairman and Chief Lab Chemist of A. 1 and A. 4 is the Dealer who possessed and sold the insecticides.

4. In C.C. 1100/90, the respondent has filed a complaint for violation of S. 3(k)(1) of the said Act which is punishable under S. 29(1)(a) of the

said Act on the allegation that A. 1 is the firm which manufactured and distributed the misbranded insecticide; that A. 2 is the Chairman of the firm

who is responsible for the day to day activities of A. 1 and A. 3 is the authorised person to retail dealer of A. 1 selling the product of A. 1.

5. Mr. V. Gopinath, learned counsel for the petitioners in Crl.M.P. No. 14446 of 1990 would submit that "misbranded" alleged is only

underweighment of the insecticides and it would not come within the ambit of S. 3(k)(1) of the Act. He would further submit that a copy of the

analyst report was served to A. 2 and A. 3 on 16-12-1988 whereas the expiry date of the said insecticide was in October 1988. Hence these

accused were deprived of the valuable right given under Clause 4 of S. 24 of the Act and thus are grossly prejudiced and on this ground, the

proceedings against them are liable to be quashed.

6. Mr. B. Giridhar Rao, learned counsel appearing for the petitioners in Crl.M.P. Nos. 15923 and 17715 of 1990 would submit that the allegation

of sale of "misbranded" pesticide was on the basis that there was underweighment and contents were less than the quantity mentioned in the label

and that it will not come under S. 3(k)(1) of the Act. He would further submit that the necessary allegations to make the Chairman liable are not

found in the complaint and on this ground also, the proceedings are liable to be quashed as against the Chairman.

7. I have heard Mr. Raja, learned Government Advocate on the above aspects.

8. I have carefully considered the submissions made by the rival counsels. I shall first take up the submission No. 1 which is common in all the

cases. For considering this submission, certain facts need be stated :-

In S.T.C. No. 1148/90, the analyst report states that the quantity mentioned in the package was 100 ml. whereas the actual quantity found in the

package was 69 ml. and hence it is misbranded under S. 3(k)(1) of the Act. In C.C. 883/90, as per the analyst report, net content of the sample

was only 200 ml. against 250 ml. as declared in the container label. In C.C. 1100/90, as per the analyst report, the net content was 92 ml. as

against 100 ml. and hence it was misbranded.

9. The question that falls for consideration is whether because the actual contents of the sample was less than the net content noted in the container,

it can be considered as a "misbranded" insecticide coming within the definition under S. 3(k)(1).

10. To consider the above submission, S. 3(k)(1) of the Act need be extracted and it reads as follows :

"misbranded" - "an insecticide shall be deemed to be misbranded - if its label contains any statement, design or graphic representation relating

thereto which is false or misleading in any material particular or if its package is otherwise deceptive in respect of its contents ...

11. This court had occasion to consider a similar question in *Bharat Pulverising Mills Limited v. The Joint Director of Agriculture*, 1992 2 Mad LW

101 wherein Bakthavatsalam, J. had held as follows :

A reading of the provisions of the Act and the rules framed thereunder clearly shows that the Insecticide Analyst has no jurisdiction to go into the

question whether the net volume as noted on the label is contained in the container. In my view the argument of Mr. S. K. L. Ratan, learned senior

counsel appearing for the petitioner, that the Insecticide Analyst is not empowered to test the volume is well founded. I do not think the Insecticide

Analyst can go into the question whether the contents in the container contains 250 ml. as noted in the label. Just because the container in this case

is found to have contained only the contents of 238 ml., it cannot be said that

the material was sub-standard due to the volume. I am not able to see anywhere in the Act that the material can be said to be sub-standard due to the volume"".

12. With respect, I agree with the view expressed by Bakthavatsalam, J. On this ground, the petitioners are bound to succeed in all these cases.

Inasmuch as I am clear that on submission No. 1, the petitioners succeed, it is unnecessary for me to go into the other submissions made by learned counsel for the petitioners.

13. In the result, the petitioners are allowed and further proceedings against these petitioners in the above cases shall stand quashed.

14. Petitions allowed.