
(2002) 08 P&H CK 0087

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 9660-M of 1998

Sahil Agrochemicals and Another

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 16-08-2002

Acts Referred:

Insecticides Act, 1968 — Section 30(3)

Citation : (2002) 4 RCR(Criminal) 464

Hon'ble Judges : Satish Kumar Mittal, J

Bench : Single Bench

Advocate : Vimal Kumar, for R.S. Ahluwalia, for the Appellant; Gagangeet Kaur, A.A.G., for the Respondent

Final Decision : Allowed

Judgement

Satish Kumar Mittal, J.—This petition u/s 482 of the Code of Criminal Procedure has been filed by the petitioners, who have been arrayed as accused No. 1 and 2 in the complaint (annexure P-1), filed by the Insecticides Inspector, Hoshiarpur u/s 29 read with Section 3(k)(i), 17 and 18 of the Insecticides Act, 1968 (hereinafter referred to as "the Act") read with Rule 27 (5) of the Insecticides Rules, 1977, with a prayer to quash the complaint and the subsequent proceedings arising thereof qua them.

2. The aforesaid complaint was filed against three persons i.e. sub-dealer, dealer and manufacturer of the misbranded product. Petitioners No. 1 and 2 herein are the sub dealer and dealer, respectively. The complaint was filed by Insecticides Inspector, Dasuya, District Hoshiarpur, alleging that on 5.1.1994, he visited the shop of M/s Sahil Agrochemicals, petitioner No. 1 herein, and drew sample of 24-D Ethul Ester 34% DC bearing batch No.210 AP 31, manufacturing date December, 1993 and expiry date November, 1995, manufactured by M/s ANU Products Limited (accused No.3 in the complaint) in three original packed containers. As per the complaint, the packed insecticides was purchased by petitioner No. 1 from petitioner No.2, namely M/s Master Di Hatti, Dasuya, who

is the dealer/distributor. After taking the sample in three original packed containers, one container was sent to the Insecticides Testing Laboratory, Amritsar, which was found to be misbranded as it did not conform to the IS1 specification with regard to its percentage of active ingredients i.e. 24-D Ethyl Ester 30.33%, whereas the percentage printed on the sealed container was 34% EL. Thus, sample was found mis-branded as per Section 3(k)(i) of the Act. In view of this report, the Insecticides Inspector filed the aforesaid complaint in the Court of Chief Judicial Magistrate, Hoshiarpur against the petitioners as well as against the manufacturer of the product, after obtaining necessary sanction from the competent authority. All the accused, named in the complaint, were summoned to face trial.

3. The petitioners have filed the present petition for quashing the aforesaid complaint (Annexure P-I) on the ground that they are licensed dealers and have been granted licenses by the Chief Agriculture Officer, Hoshiarpur, authorising them to sell and stock all the insecticides and pesticides, manufactured by a registered firm, including M/s ANU Products Limited, Ansari Road, Darya Ganj, New Delhi. They purchase the insecticides from the licensed manufacturer against the valid bill and sell the same in its original packing and condition, as obtained by them from the manufacturer. When the sample was taken from petitioner No. 1, seal of the containers containing the insecticides was intact. It has been clearly mentioned in the complaint itself that the sample was taken in three original packed containers. It is averred that the stock of the insecticides was properly stored by the petitioners and the same was always kept in the same condition in which the petitioners acquired it from the manufacturer. There is no allegation or averment in the complaint that the petitioners were selling the insecticides in loose condition or the same were not stored in a proper manner. Under these circumstances, the petitioners submitted that they are entitled to protection of Section 30(3) of the Act as they have not committed any offence and the continuation of criminal proceedings against them are nothing but an abuse of the process of the Court.

4. On issuing notice of the present petition, the respondent-State filed reply through Insecticides Inspector, Dasuya stating that as the sample of the insecticides was found misbranded, therefore, all the accused, who are the sub dealer, dealer and manufacturer, are liable to be prosecuted under the Act. It is alleged that petitioner No. 1 has violated the provisions of the Act by storing and selling misbranded insecticides. Petitioner No.2 was also arrayed as an accused in the complaint, because he sold misbranded insecticides to petitioner No. 1. The manufacturer of the misbranded insecticide, namely M/s ANU Products Limited was also rightly arrayed as an accused. Regarding the protection, as claimed by the petitioners u/s 30(3) of the Act, it is stated that they are entitled to this protection only if they prove by leading evidence during the trial that they fulfil all the ingredients of the aforesaid section. Therefore, no ground to quash the complaint against the petitioners is made out.

5. Counsel for the petitioners contended that it is apparent from the bare reading of the complaint that the sample in question was taken in original sealed containers of insecticides. There is no averment in the complaint that any of the petitioners did not properly store the aforesaid insecticides or that any of them was selling the insecticides in loose condition or that they were having any knowledge that the containers of insecticides, which they were selling, were misbranded. There is also no averment in the complaint that the petitioners could have ascertained, by exercising their due diligence, that the insecticides which they were selling was misbranded. Counsel for the petitioners, then, contended that the absence of these material averments in the complaint goes to the root of the matter and in such circumstances no prosecution can be launched against the petitioners and the complaint filed against them is liable to be quashed, because they are entitled for the protection provided u/s 30(3) of the Act, and the continuation of criminal proceedings against them is nothing but an abuse of process of law.

6. In support of his contentions, counsel for the petitioner has relied upon *Amar Khad Store v. State of Punjab* (1998) Cr.L.J. 442 *Bharat Pesticides v. State of Punjab* 1998(3) RCR 189, *Karma Chand and Sons v. State of Punjab* (1998)25 Cr.L.J. 357 *Shelja Pesticides Centre, Abohar v. State of Punjab* 1998(4) RCR 533 *Punjab Pesticides v. State of Punjab* 1998(4) RCR 648 *Hardit Singh v. Union of India* 1998(4) RCR 865 *Safex Chemicals India Limited v. State of Haryana* 2001 (1) RCR 654 *Satpal Rajpal v. State of Punjab* 2002(1) RCR 141 *Onkar Pesticides v. State of Punjab* 2002(2) RCR 101 *Nagra Khad Stores v. State of Punjab* 2002(2) RCR 221 *Mahalmmi Beej Bhandar v. State of Haryana* 2002(1) CLR 878 decisions of this Court in *CrI. Misc. No.3925-M of 1996*, decided on January 31, 1997 *Sachdeva Sales Corporation and Anr. v. State of Haryana*, and decision of this Court in *CrI. Misc. No. 1413-M of 1997*, decided on 12.7.2002, *Mahajan Pesticides etc. v. The State of Punjab*,.

7. On the other hand, counsel for the State argued that the contentions raised on behalf of the petitioners are actually their defence, which they can raise at the time of trial and only thereafter, it will be seen whether the petitioners are entitled for the protection of Section 30(3) of the Act or not. But in support of her contention, the learned counsel for the State did not cite any case law.

8. After hearing the arguments of the learned counsel of both the parties and examining the record of the case, this Court is of the opinion that the complaint, Annexure P-1, deserves to be quashed qua the petitioners. The protection provided u/s 30(3) of the act is available only to the seller and stockiest of the misbranded insecticides on their establishing certain conditions mentioned in sub clauses (a), (b) and (c) of Section 30(3) of the act. This protection is not, at all, available to the manufacturer or importer of an insecticide or his agent for the distribution thereof. Petitioners, herein, are the sub dealer and dealer/distributor of the insecticide in question. They are neither manufacturers nor importers or their agents. Both the petitioners are the licensed dealers for the sale and stock

of different types of insecticides, manufactured by different licensed manufactures. They have been authorised by the Chief Agriculture Officer, Hoshiarpur to sell and stock all the insecticides and pesticides manufactured by various firms and companies including ANU Products, Darya Ganj, New Delhi. Therefore, both the petitioners are entitled to the protection of the provisions contained in Section 30(3) of the Act, provided they fulfil conditions laid down in Clause (a), (b) and (c) thereof. Admittedly, the petitioners purchased the insecticide in question from the licensed manufacturer i.e. ANU Products Limited. They were selling the said insecticide in the same condition in which they were receiving it from the manufacturer. There is no allegation that they were selling the same in loose quantity and they were not properly storing the insecticide in the same condition in which they acquired it from the manufacturer. There is again no allegation in the complaint that the petitioners were having any knowledge that the insecticide which they were selling was misbranded or they could have the knowledge by exercising due diligence that the insecticide was in any way misbranded. When there is no averment to the aforesaid effect in the complaint, then such complaints are liable to be quashed. This Court has gone through the various judgments, cited by learned counsel for the petitioners in support of his contentions. All the aforesaid judgments squarely cover the case of the petitioners. In *Safex Chemicals India Limited v. State of Haryana*, (supra), this Court has quashed complaint against the main dealer, who sold the misbranded pesticide to the sub dealer, from whom the sample was taken, on the ground that there was no averment in the complaint that the misbranded pesticide was not properly stored. It was held by this Court that when the insecticide was acquired from the licensed manufacturer in a sealed container by the main dealer and the same was properly stored and kept in the same condition, in which it was acquired, it will not be open for the State to file a complaint against such persons. Filing of such complaint would be an abuse of the process of the Court. This Court has consistently taken the view that when the complaint is lacking in definite averments regarding improper storing of the insecticide, selling of the insecticide in loose condition and the knowledge regarding selling of the misbranded insecticide and further when from the complaint it is clear that the sample was taken in sealed packed containers, then certainly the seller of the insecticides is entitled for the protection provided u/s 30(3) of the Act and in such circumstances, the complaint is liable to be quashed and continuation of such complaint is nothing but an abuse of process of law.

9. In view, of the above, the petition is allowed. Consequently, the complaint (An- nexure P-1), pending in the Court of Chief Judicial Magistrate, Hoshiarpur and the pro ceedings taken thereon are quashed qua the petitioners. However, it is made clear that the quashing of the complaint against the present petitioners shall have no effect upon continuation of the proceedings against accused No.3.