
(2008) 11 P&H CK 0105

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 50548-M of 2006

Sanjeev Sales Corporation & Anr.

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 19-11-2008

Acts Referred:

Citation : (2008) 11 P&H CK 0105

Hon'ble Judges : Arvind Kumar, J

Advocate : Mr. Arun Chandra, Advocate. Mr. B.S. Sra, DAG Punjab., Advocates for appearing Parties

Judgement

Arvind Kumar, J.

1. The petitioners are seeking quashing of criminal complaint titled as State v. M/s Sanjeev Sales Corporation etc., pending before Chief Judicial Magistrate, Mansa, under Sections 3(k)(i), 17, 18, 21, 29, 30 and 33 of the Insecticides Act, 1968 (hereinafter referred to as the Act, in short) and Insecticides Rules, 1971 and consequent proceedings thereto.

2. The aforesaid complaint was filed against the petitioners and others with the allegations that on 4.7.2003 samples of Glyphosate 41%, Batch No. 33030012, manufactured by M/s Monsanto India Ltd. with manufacturing date 10th March, 2003 and expiry date 9th March 2005 from the container were drawn from the premises of the petitioners. However, on analysis the sample was found misbranded as it was found containing active ingredients contents of 43.52% against 41% prescribed active contents. After completing the usual formalities, the complaint was filed, wherein the petitioners were arrayed as accused therein being distributor/dealer of the aforesaid misbranded insecticide.

3. The quashing of the impugned complaint has been sought by the petitioners on the ground that the the sample was never taken in accordance with the procedure prescribed and the mandatory provisions in drawing, preparing, storing and handling the sample has to be followed; the protection under Section

30(3) of the Act is available to the petitioners, who being the dealers, were selling the said insecticide in the original form as obtained from the registered manufacturer, as such no prosecution can be launched against them; the sample was analysed after a period of 177 days, which is in gross violation of provisions contained in Section 24 of the Act and that the complaint had been filed after the expiry of shelf life of the sample and thus, the petitioners are deprived of their valuable right to get the sample reexamined from the Laboratory.

4. In the reply filed on behalf of the respondent, it has been contended that the sample was drawn as per procedure laid down in the Act, which on firstly analysis by Central Insecticides Laboratory, Faridabad was found to be misbranded. Thereafter, on the request made by the the petitioner firm, the second sample was sent to Central Insecticide Laboratory, Faridabad for re analysis and this time also it was found misbranded. The conclusive report of CIL, Faridabad was received before filing the complaint. It has further been averred that the dealer as well as company are equally liable for selling misbranded sample, as such the petitioners are rightly sued for contravening the aforesaid provisions of Act.

5. I have heard learned counsel for the parties and have also gone through the paperbook carefully.

6. The present petitioners are not the manufacturer of the relevant insecticide. There is clearcut plea in the petition that they were selling the insecticide in the sealed container in the original form as obtained from the manufacturer and the sample was also taken from the original packing. This plea has not been denied by the State in its reply. Thus, there remains no controversy that the impugned sample was obtained from the sealed container lying in the premises of the firm and there is no material to indicate that the insecticide was not properly stored. Thus, the petitioner being the dealer, involved in the sale of insecticides, cannot be held liable for misbranding of the insecticides and only the manufacturer would be liable. In this context reliance can be placed on the cases of M/s Kisan Beej Bhandar, Abohar v. Chief Agricultural Officers, Ferozepur 1990 Supreme Court Cases (Cri.) 623 and M/s Vimal And Co. Grain Market, Mullanpur v. State of Punjab 2002(2) RCR(Criminal) 56 (P&H), followed in the case of Deepak Sharma & Ors. v. State of Punjab, 2008(2) RCR(Criminal) 24 and reliance can be safely placed on the case of M/s Punjab Beej Bhandar Bela & Anr. v. State of Punjab through Insecticide Inspector Ropar, 2008(1) RCR(Criminal) 998, wherein also this Court quashed the criminal proceedings against the licensed dealer.

7. The case can be looked at from another angle. A bare perusal of Section 24 of the Act makes it abundantly clear that it was obligatory upon the Laboratory to deliver the test report duly signed in duplicate on the prescribed form to the Insecticide Inspector within 30 days from the date of receipt of the sample part, whereas in the case in hand, the same was signed after about 6 months since the sample was sent on 10.7.2003 and the report is dated 21.1.2004. Thus, evidently, the test report was not delivered within the stipulated period as laid

down in Section 24(1) *ibid* and in a way speaks volume of blatant contravention of the provision of the Act *ibid*.

8. In view of discussion above, the petition is accordingly accepted and the impugned complaint and subsequent proceedings thereto, qua the petitioners, are quashed.

JUDGMENT accordingly.