
(1990) 03 P&H CK 0078
In the Punjab And Haryana At Chandigarh
Case No : Criminal Revision No. 355 of 1989

S.C. Sharma and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 08-03-1990

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 401
Insecticides Act, 1968 — Section 17, 18, 33

Citation : (1990) 97 PLR 644 : (1990) 1 RCR(Criminal) 702

Hon'ble Judges : S.S. Grewal, J

Bench : Single Bench

Advocate : Iqbal Singh, for the Appellant; G.S. Cheema, for the Respondent

Final Decision : Allowed

Judgement

S.S. Grewal, J.—This revision petitions relates to quashment of complaint Annexure P-I, filed against the petitioners Under Sections 17, 18 and 33 of the Insecticide Act, 1968 consequent proceedings taken thereunder, including the summoning order.

2. In brief, the facts relevant for the disposal of this case which emerge from which: emerge from the impugned complaint, are, that the Insecticide Inspector took sample of Nuvar 16% (DDVP 76%) Pesticide Batch No. 7120 from M/s Modern Kheti Store, Amritsar an authorised dealer of M/s Hindustan Ciba Gergy Ltd., manufacturer; on 27th August, 1987, after compiling with the requisite provisions of the act. The sample so taken was divided into three parts each put in a polythene pack and properly, sealed One such sample was handed over to Dharampal. partner of the said firm, then present the shop premises.. One such sample was sent to the Central Insecticide Laboratory, Faridabad, on 1st September, 1987. According to the report of Insecticide Analyst, the sample was not, the sample was not according to The ISI specification being not satisfactory in the emulsion stability test requirement and as such the pesticide was misbranded.

3. Accused S.C. Sharma, is the Regional Sales Manager where as D. R. Taylor is the General Sales Manager of the manufacturing Company and they too are responsible for selling the misbranded pesticide/pesticide. After receipt of the report of the analyst complaint was filed in the Court (Chief Judicial Magistrate against the present petitioner and bit accused by the insecticide in the Insecticide Inspector". learned Chief judicial Magistrate subsequent) passed orders summoning the aforesaid, accused on the basis of the complaint.

4. I have heard the counsel for the parties and perused the record. On behalf of the petitioners it was submitted that the sample of insecticide effect in the instant case was fake on 27th August, 1987 whereas the complaint was filed by tie Insecticide inspector in the court on 15th January, 1988. It was further submitted that the sanction for launching prosecution u/s 31(1) of the Insecticides Act, 1968 was obtained on 3rd February, 1989, i.e. much after the prosecution had been launched in the Court of Chief Judicial Magistrate against the petitioner and their other co-accused On this basis it was submitted that in view of the specific provision of Section 31(1) of the Apt, no. prosecution for an offence under this Act can be instituted, except with the written consent of the State Government or a person authorised, in this behalf by the State Government, and as such the impugned complain- was vitiated and was liable to be quashed. Reliance in this respect h as rightly been placed on Single Bench decision of this Court reported as Raj Pal v. State of Punjab 1987 (2) C. L.R. 700, wherein the complaint was quashed by this Court in exercise of its inherent power is u/s 482, Code of Criminal Procedure, on the ground that the sanction for the prosecution of the accused u/s 31 of the Act was issued subsequent to the filling of the con plaint. It was farther observed in the said authority that subsequent ratification issued could not validate lack of jurisdiction to file the complaint.

5. Deference on this point may also be made to the judgment of The apex, court reported as Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others, , wherein on the strength of another judgment of that Court in Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others, , while discussing the scope of Section 202 and 204 of the Code of Criminal Procedure, following guidelines inter alia were laid for quashing the complaint:-

"(1) Where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence, or, on materials which are wholly irrelevant or inadmissible; and

(2) Where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like."

6. Since the Insecticide Inspector who filed the complaint in the instant case in the Court of Chief Judicial Magistrate was not duly authorized to launch prosecution at that time, no prosecution on the basis of such a complaint can be permitted to proved against the present petitioners. Subsequent notification

authorizing the Insecticide Inspector to file the complaint would not cure the legal defect.

7. For the foregoing reasons, the complaint Annexure P-I filed against the petitioners and consequent proceedings taken thereunder, including the summoning order, are hereby quashed. This petition stands allowed accordingly.