

(1988) 12 P&H CK 0047

In the Punjab And Haryana At Chandigarh

Case No : Criminal Application No. 2549-M of 1988

S.K.Ahooja

APPELLANT

Vs

State of Haryana and ors.

RESPONDENT

Date of Decision : 16-12-1988

Acts Referred:

Citation : (1989) 1 RCR(Criminal) 596

Hon'ble Judges : Harbans Singh Rai, J

Advocate : N.S. Pawar, Arun Nehra, V.P. Vahsi, Advocates for appearing Parties

Judgement

Harbans Singh Rai, J

1. Petitioner has filed this petition under Section 482 of the Code Criminal Procedure for quashing the prosecution pending against the petitioner in the Court of Judicial Magistrate Ist Class, Kurukshetra, under Section 29(1)(a) read with Section 3(k)(i) of the Insecticides Act, 1968 (hereinafter called as 'the Act').
2. The facts leading to the prosecution of the petitioner are that on 17/9/1985, Insecticide Inspector Om Singh had drawn sample of Methyl Parathion 50%, EC (Batch No. MEL 5/117) from the premises of M/s Sharma Agriculture Store, Partap Mandi, Shahabad Markanda. The sample was sent to the Central Insecticide Laboratory at Faridabad for analysis. According to the report of the Analyst, the sample showed lower active ingredient. On the basis of the said report, a complaint was filed and in that complaint, the trial Court had issued summons to the petitioner for appearance in its Court. The petitioner has sought for quashing the prosecution against him on a number of grounds.
3. I have learned counsel for the parties and have gone through the relevant record.
4. Petitioner is a Regional Sales and Technical Manager of M/s Bayer India Limited, which is a public limited company registered under the Companies Act, and having its registered office at Express Towers, Nariman Point,

Bombay400021. The company manufactures among other things pesticides including the pesticide known as Methyl Parathion 50% EC. Respondent No. 2 is agent of the petitioner's firm. As the report of the Analyst reveals that sample showed lower active ingredient and thus it was found to be substandard and the sale of the substandard pesticide is prohibited, the complaint was lodged. The petitioner being the Regional Sales and Technical Manager of Bayer India Limited, which is the manufacturer of pesticides, had sold this pesticide to respondent No. 2, so the petitioner was summoned to face the prosecution.

5. Learned counsel for the petitioner has argued that the date of manufacture of the sample was July, 1985, and the date of expiry was December, 1986. The analysis was completed on 12101985. The complaint was filed on 2341986. His grievance is that as the petitioner was summoned after the date of expiry of the product, the petitioner is deprived of the important and valuable right, to get the sample reanalysed by the Central Insecticides Laboratory under subsection (4) of Section 24 of the Act and his right under subsection (4) of Section 24 of the Act has become illusory and meaningless. He has cited *Mr. Lange v. The State of Punjab and others*, Criminal Revision No. 3M of 1986 reported in 1986(1) P. L.R. 262 : 1986(1) Recent Criminal Reports 176. S.S. Dewan, J., while deciding the case held as under :

"The learned counsel for the petitioner has strenuously urged that a copy of, the report of the Analyst was not furnished to the petitioner and due to inordinate delay, he was deprived of a right to get the sample analysed under subsection (4) of Section 24 of the Act. The learned counsel has contended that the petitioner having not been given an opportunity to controvert the report and the prosecution having been launched more than 21/2 years after the sample was purchased by the Insecticide Inspector, the prosecution must fail. To buttress his argument he has drawn support from a view taken in a Supreme Court decision in *Municipal Corporation of Delhi v. Ghisa Ram* wherein it was observed in the following terms

"That section 13(2) of the Prevention of Food Adulteration Act confers a right on the accused vendor to have a sample given to him examined by the Director of the Central Food Laboratory and to obtain a certificate from him. It is only when the accused exercises this right that the certificate given by the Director supersedes the report given by the Public Analyst. If in any case. he does not choose to exercise this right, the case against him can be decided on the basis of the report of the Public Analyst. But when the accused is denied this right on account of the deliberate conduct of the Prosecution for example, delay in institution of the prosecution and the sample becoming unfit for test, the accused is so seriously prejudiced that it would not be proper to uphold his conviction on the basis of the report of the Public Analyst. This principle is applied to the cases where the conduct of the prosecution has resulted in the denial to the accused of opportunity to exercise this right."

"The learned counsel for the State has, however, submitted that there was no

obligation upon the Insecticide Inspector to supply or deliver a copy of the report to the manufacturer of the insecticide as sample of which was taken. It is correct that under subsection (2) of Section 24, there is no obligation on the Insecticide Inspector to supply a copy of the report of the Analyst to the manufacturer of the insecticide but if the manufacturer of insecticide is sought to be prosecuted. There is no reason why a copy of the report should not be supplied to him. The object of making the provision for delivery of the copy of the report is to give an opportunity to the person concerned to controvert the report in case he is prosecuted. Therefore, irrespective of the provision contained in subsection (2) the ends of justice demands that the person who is sought to be prosecuted must be supplied with a copy of the report; In the present case, the insecticide Inspector supplied a copy of the report only to the dealer from whom the sample was taken but not to the petitioner's company. Applying the test laid down by the Supreme Court in the case of *Municipal Corporation of Delhi v. Ghisa Ram*'s case (*supra*) there cannot be any doubt that the petitioner has been denied the right to controvert the report of the Analyst. As observed by the Supreme Court, it is to be expected that the prosecution will proceed in such a manner that right will not be denied to the person or persons who are prosecuted. The report of Analyst is made conclusive evidence of its contents. Therefore, it cannot be gainsaid that unless the petitioner was given an opportunity to controvert the correctness of the report of the Analyst, the prosecution based on the report cannot succeed.

It is significant to note that the Insecticide Inspector filed the complaint in the Court more than 21/2 years after the sample was taken from the dealer. The sample of pesticide was taken on 1931981 while the complaint was lodged in the year 1984. It is not disputed that the pesticide known as Matasystox remains effective for a maximum period of one year from the date of its manufacture. The petitioner learnt about his prosecution only after the process was served on him. Thus by the time the petitioner came to know about the complaint, the sample which was taken by the Inspector was more than 21/2 years old. Therefore, no useful purpose could have been served even if the petitioner would have been permitted to get the sample sent to the Director. Thus the petitioner has been denied the opportunity to controvert the correctness of the report of the Analyst on which the prosecution is based."

6. In view of the law laid down in the above mentioned judgment, as the petitioner was summoned after the date of expiry of the sample and he having been deprived of the right to get the sample reanalysed. I have no option but to quash the proceedings. It is ordered that the proceedings launched against the petitioner under Section 29(1)(a) read with Section 3(k)(i) of the Act in the Court of judicial Magistrate Ist Class, Kurukshetra, are hereby quashed.

JUDGMENT accordingly.