
(2003) 05 P&H CK 0057

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 39701-M of 1999

Sudarshan Chemical Industries Ltd.

APPELLANT

Vs

The State of Punjab

RESPONDENT

Date of Decision : 14-05-2003

Acts Referred:

Insecticides Act, 1968 — Section 24(4)

Citation : (2003) 135 PLR 89 : (2003) 3 RCR(Criminal) 622

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

Bench : Single Bench

Advocate : S.C. Nagpal, for the Appellant; Rajdeep Singh Cheema, A.A.G., for the Respondent

Final Decision : Dismissed

Judgement

S.S. Nijjar, J.—This petition has been filed u/s 482 Cr.P.C. with a prayer for quashing the complaint dated 21.2.1997, Annexure P-1, the order dated 15.9.1999, Annexure P-14, passed by the learned Chief Judicial Magistrate, Mansa, dismissing the application of the petitioner u/s 245 Cr.P.C. and the proceedings consequential thereto.

2. The petitioner is a company registered under the Companies Act, 1956. It is engaged in the manufacture of pesticides and insecticides.

3. On 24.08.1996, the shop of M/s. Laxmi Beej Bhandar, Mansa, was inspected by the Insecticides Inspector, Mansa. He drew a sample of an insecticides Quinalphos 25% EC Batch No. 016 dated of Mfg. March 1995 and date of expiry February, 1997. The sample was put in cloth bags along with Form No. XXI. Signatures of the proprietor of the shop were taken on Form No. XX and that out of three samples taken, two samples were deposited with the Chief Agriculture Officer. One part of the sample was sent for analysis to the Deputy Director (LG & PP), Chandigarh, under cover of a letter dated 2.9.1996 by the Chief Agriculture Officer, Mansa. The Deputy Director, (LC &PP), Chandigarh, instead of

analysing the sample, sent the same to the Plant Protection Adviser, Central Insecticides Laboratory, Faridabad, for analysis under cover of its letter dated 3.9.1996. By report dated 1.11.1996, the Central Insecticides Laboratory, Faridabad, declared the sample as misbranded. Sanction for prosecution was obtained and a complaint was filed under Sections 3K(i), 17, 18, 29 and 33 of the Insecticides Act, 1968 and Insecticides Rule 10 of the Rules, 1971 (hereinafter referred to as "the Act and the Rules").

4. It is stated in the complaint that Amarjit Lal, Agricultural Development Officer, Mansa, District Mansa, has been declared as Insecticides Inspector (hereinafter referred to as the complainant). According to the complainant, necessary sanction under the Act and the Rules had also been obtained for launching the prosecution of the petitioner alongwith Laxmi Beej Bhandar, Mansa, and Vijay Kumar and Brothers, Mansa. It was pleaded that the copy of the analysis report was delivered to the dealer, distributor and the manufacturer as required u/s 24(2) of the Act alongwith Show Cause Notice No. 144 dated 7.1.1997; 142 dated 7.1.1997 and 166 dated 8.1.1997. The two dealers replied to the Show Cause Notices on 31.1.1997. The petitioners gave a reply on 21.1.1997. It was stated in the complaint that the sample has been declared misbranded as under:-

"THE SAMPLE DOES NOT CONFORM TO THE RELEVANT I.S. SPECIFICATION IN THE A.I. CONTENT REQUIREMENT AND IS HENCE MISBRANDED".

5. The complaint stated that no person has fundamental right to practice, deception or make misleading and false statements for carrying on his business. Moreover in a country where large number of citizens who are illiterate agriculturists and form bulk of users of the insecticides are likely to be misled by such statements into buying the mis-branded insecticides and use them in agriculture. It is no defence that an accused was ignorant of the nature of quality of insecticides. The Insecticides Act, 1968, is primarily intended to regulate import, manufacturing for sale, transportation, of Insecticides with a view to preventing risk to human being and animals. The dealer is under a legal obligation to supply the insecticides products as per the provisions of the Insecticides Act, 1968. The provisions of the Insecticides Act are designed to protect the entire population as the ill effect of pesticides pass on to the ultimate consumer. After considering the preliminary evidence, the accused persons were directed to be summoned to appear in Court by the Chief Judicial Magistrate, Mansa. The summoning order was challenged by the petitioner by filing Criminal Misc. No.9322-M of 1997. The aforesaid Criminal Misc. Petition was dismissed by this Court on 12.5.1997 with the observations that the petitioner may make an application before the learned Magistrate u/s 245 of the Code of Criminal Procedure and seek discharge. The petitioner filed application u/s 245 of the Cr.P.C. before the learned Magistrate and the following grounds were taken before the learned trial Court:-

a) That the summons were issued from the Court of the learned Chief Judicial Magistrate, Mansa, on 5.3.1997, much after the expiry of the shelf life of the

insecticides i.e. Quinalphos 25% EC, which expired in February, 1997. The petitioner has, therefore, been deprived of his valuable statutory right u/s 24(4) of the Act to have the second sample of the insecticides re-analysed for conclusive results.

b) That the sample of the insecticides was not sent to the Insecticides Analyst as required u/s 22(6)(i) of the Act, which renders the entire sampling and analysis null and void.

c) The Deputy Director (LC & PP) had no jurisdiction to send the sample directly to the Central Insecticides Laboratory, Faridabad. It had to be first sent to the Insecticide Analyst notified by the Government of Punjab u/s 19 of the Act.

d) The prosecution is vitiated due to unexplained delay of 9 days in sending the sample for analysis.

e) The complaint which is based on the analysis report dated 1.11.1996, is vitiated as it was delivered to the respondent beyond the statutory period of 60 days provided in Section 24(i) of the Act.

f) The prosecution is vitiated as the second portion of the insecticides was not produced before the learned trial Court as required u/s 22(6)(ii) of the Act.

g) The complainant has stated to have given intimation of the drawing of the sample in Form-XX and is alleged to have sealed the sample in Form-XXI. According to the petitioner, these Forms do not exist in Insecticides Rules. The procedure adopted by the complainant was ultra vires of the Act.

h) The allegations contained in the complainant ex-facie do not disclose any offence against the petitioner.

6. Reply to the application was filed by the respondent-State of Punjab.

7. After considering the entire matter, the learned Chief Judicial Magistrate, Mansa, has dismissed the application by order dated 15.9.1999. This order has been challenged in the present petition.

8. The learned Magistrate has noted the facts as well as the arguments narrated above. It has been held that u/s 24(2) of the Act, it is not necessary to have the second sample tested from the Central Insecticides Laboratory, if once, the sample has been analysed from Central Insecticides Laboratory. It has also been held that the sample was directly sent to the Central Insecticides Laboratory, Faridabad. The test report of the Central Insecticides Laboratory, Faridabad, is available on the record. It shows that the sample was found misbranded as the active ingredients were found to be deficient. The learned Magistrate has also considered the law laid down by this Court in *Kheti Sewa Centre v. State of Punjab*, through Insecticide Inspector 1998(1) R C R 271; *Rajindra Prasad v. State of Haryana*, (1997)24 Cr.L.T. 644; *Bahadur Singh v. State of Punjab* 1998(1) R C R 562; and *Wadhawa Beej Bhandar v. State of Haryana* (1997)24 C.L.T. 692. The learned Magistrate has also found that the dealers cannot be

given the benefit of Section 30(3) of the Act at the preliminary stage. The learned Magistrate has rightly relied on the judgment in the case of Ashok Kumar v. State of Punjab, 1997(2) Recent Criminal Reports 679, and held that benefit u/s 30(3) of the Act, has to be proved by evidence at the trial. The accused has also to prove that the insecticide was rightly stored. Therefore, the complaint cannot be thrown out at the initial stage. The learned Magistrate has also rightly understood the law laid down by the Supreme Court in the case of Kishan Beej Bhandar v. Chief Agricultural Officer and Anr. 1992(1) C.C.R. 768.

9. Mr. S.C. Nagpal, learned counsel for the petitioner has reiterated the arguments which were raised before the learned Magistrate. The star argument of Mr. S.C. Nagpal is that the petitioner has been deprived of the opportunity to have the second sample tested as required u/s 24(4) of the Act. This argument is entirely devoid of merit as the learned Magistrate has understood the legal position correctly.

10. Sub-sections (2) and (3) of Section 24 of the Act are as under:-

"(2) The Insecticides Inspector on receipt thereof shall deliver one copy of the report to the person from whom the sample was taken and shall retain the other copy for use in any prosecution in respect of the sample.

(3) Any document purporting to be a report signed by an Insecticides Analyst shall be evidence of the facts stated therein, and such evidence shall be conclusive unless the person from whom the sample was taken has within twenty eight days of the receipt of a copy of the report notified in writing the Insecticide Inspector or the Court before which any proceedings in respect of the sample are pending that he intends to adduce evidence in controversion of the report".

11. A perusal of the aforesaid sanctions clearly shows that a copy of the report of the Insecticide Analyst has to be supplied to the person from whom the sample was taken. Under Sub-section (3) of Section 24 of the Act, the report is conclusive evidence of the facts stated therein. However, this presumption is subject to the rights given to the person from whom the sample was taken to controvert the report. In such eventuality, the concerned person is to notify within twenty eight days of the receipt of a copy of the report either to the Insecticide Inspector or the Court, in writing, that he intends to adduce evidence to controvert the report. Obviously, this evidence could only be in the form of a report from the Central Insecticides Laboratory. He is therefore, given an opportunity to have the second sample tested by the Central Insecticides Laboratory u/s 24(4) of the Act.

12. The testing of the second sample by the Central Insecticides Laboratory, Faridabad, is permissible where the sample has been held to be misbranded by the Insecticide Analyst. The opening words of Section 24(4) of the Act make it clear that if the sample has already been tested or analysed by the Central Insecticides Laboratory, there is no right vested in the accused to have the second sample re-tested from the same laboratory. It would be an exercise in

futility. Testing by the Central Insecticides Laboratory is provided to detect the mistakes that may well have been committed by the Insecticide Analyst. There is however, no bar under Sub-section (4) of Section 24 of the Act for the sample being sent directly to the Central Insecticides Laboratory for testing.

13. Even otherwise, the arguments raised by Mr. S.C. Nagpal is no longer *res integra*. The matter is squarely covered against the petitioner by a Division Bench judgment of this Court in the case of *Mewa Singh v. Pirthipal Singh and Ors.* 1996(2) All C L R 730. In that case, the Single Bench had referred the matter to the Division Bench for decision on the following two questions of law:-

1. Whether getting a sample of insecticide at the outset tested from the Central Insecticides Laboratory without getting it tested from the State Insecticide Analyst in cases where no such facilities exist in the State Insecticide Laboratory had debarred the accused from his valuable right provided under Sub-section (4) Section 24 of the Act in getting the ample retested from the Central Insecticides Laboratory ?

2. Whether getting the sample tested from the Central Insecticides Laboratory without getting it first tested from the State Insecticide Analyst where the facilities of the testing of particular insecticide are available would result in debarring the accused of the valuable right of getting the sample retested provided under Sub-section (4) of Section 24 of the Act ?"

14. Considering the aforesaid two questions, the Division Bench of this Court in paragraphs 7, 8 and 9 has observed as follows :-

"7. Mr. M.S. Gill, learned counsel for the respondents has, however, cut short the matter by relying upon *Ram Shankar Misra Vs. State of U.P.*, , which to our mind, covers the case in hand so completely that it would be unnecessary and, in fact, wasteful to embark on a discussion on the matter independently. He has urged that Section 25(4) of the Drugs and Cosmetics Act, 1940 (hereinafter called "the Drugs Act"), was *pari materia* with Section 24(4) of the Act, and the Supreme Court had interpreted that provision and had held that the sample in question could be sent directly to the Central Drugs Laboratory or to the Analyst and no fault could be found in this procedure.

8. We have considered this argument of the learned counsel and find that the pleas raised by the respondents counsel do find support from the judgment of the *Ram Shanker's* case (*supra*). Nevertheless, to consider the arguments of the learned counsel, we reproduce here Sub-section (4) of Section 24, of the Act and Sub-section (4) of Section 25 of the Drugs Act. Sub-section (4) of Section 24 of the Insecticide Act:-

"Unless the same has already been tested or analysed in the Central Insecticides Laboratory, where a person has under Sub-section (3) notified his intention of adducing evidence in controversion of the Insecticide Analyst report, the Court may, of its own motion or in its discretion at the request either of the

complainant or of the accused, cause the sample of the insecticide produced before the Magistrate under Sub-section (6) of Section 22 to be sent for test or analysis to the laboratory, which shall make the test or analysis and report in writing signed by, or under the authority of, the Director of the Central Insecticides Laboratory the result thereof, and such report shall be conclusive evidence of the facts stated therein".

Sub-section (4) of Section 25 of the Drugs and Cosmetics Act, 1940:-

"Unless the sample has already been tested or analysed in the Central Drugs Laboratory, where a person has under Sub-section (3) notified his intention of adducing evidence in controversion of a Government Analyst's report, the Court may, of its own motion or in its discretion at the request either of the complainant or the accused cause the sample of the drug (or cosmetic) produced before the Magistrate under Sub-section (4) of Section 23 to be sent for test or analysis to the said Laboratory, which shall make the test or analysis and report in writing signed by, or under the authority or, the Director of the Central Drugs Laboratory the result thereof, and such report shall be conclusive of the facts stated therein."

A comparative reading of Sub-section (4) of Section 24 of the Act and Sub-section (4) of Section 25 of the Drugs Act, clearly indicates that there is absolutely no distinction between the two and the judgment rendered under the Drugs Act on the question would apply equally while interpreting Sub-section (4) of Section 24 of the Act. Dealing with the provisions of Sub-section (4) of Section 25 of the Drugs Act in Ram Shankar's case (supra), the Supreme Court held as under:-

"The mode prescribed u/s 25(4) is one method of sending it to the Director of the Central Drugs Laboratory. The other method is by the Drug Inspector sending it direct as contemplated under the first part of Section 25(1), it is significant that Sub-section (4) of Section 25 starts with the words "unless the sample has already been tested or analysed in the Central Drug Laboratory". These words clearly indicate that apart from the mode prescribed in S.25(4), the sample can be sent for analysis to the Central Drugs Laboratory and again xxxxx. The Director of Central Drugs Laboratory has also again described himself as Government Analyst and the certificate is purported to have been issued u/s 25(1) of the Drugs Act which we have already referred to. We are satisfied that there is no prohibition under the Act or the Rules barring the Inspector from sending the sample direct to the Director, Central Drugs Laboratory. Section 25(1) and (4) clearly contemplate sending of the sample direct to the Central Drugs Laboratory." It has not been disputed by (sic) us that the Director of the Central Laboratory under the Act has been conferred the powers of an Insecticide Inspector and, as a matter of fact, this aspect was not even opposed by the learned counsel for the petitioner".

9. We, therefore, answer the question posed in the light of the Supreme Court

judgment and hold as under:-

"The sample of the insecticides that has been seized can at the outset be got tested from the Central Insecticides Laboratory without getting it tested from the State Insecticide Analyst, whether the facility for testing such sample exists in the State or not as such as action is contemplated by Section 24(4) of the Act".

15. Mr. S.C. Nagpal has argued that the aforesaid judgment is not in consonance with the law laid down by the Supreme Court in the case of *State of Haryana Vs. Unique Farmaid P. Ltd. Ors.*, I am unable to agree with the aforesaid submission in the aforesaid case, the Supreme Court considering the effect of non-compliance of Sub section (6) of Section 22 of the Act. It was held that the non-compliance of Section 22(6) of the Act would prejudice the case of the accused as they would be denied the opportunity of having the second sample tested by the Central Insecticides Laboratory, within the period of the shelf life of the sample. Section 22(6) of the Act provides as under:-

"The Insecticide Inspector shall restore one portion of a sample so divided or one container, as the case may be to the person from whom he takes it and shall retain the remainder and dispose of the same as follows:-

(i) one portion or container, he shall forthwith send to the Insecticide Analyst for test or analysis; and

(ii) the second, he shall produce to the Court before which proceedings, if any, are instituted in respect of the insecticide".

16. A perusal of the aforesaid section shows that it is incumbent on the Insecticide Inspector to handover one sample to the person from whom the sample is taken. He shall forthwith send the second sample to the Insecticide Analyst for test or analysis. The third sample shall be produced in the Court before which proceedings are instituted. If the sample is sent to the Insecticide Analyst of the State, the accused would have a right to have the same tested from the Central Insecticide Laboratory to offer evidence contrary to the conclusion reached by the Public Analyst. In other words, the second sample is permitted to be tested by the Central Insecticides Laboratory to show that the same has been wrongly held to be misbranded in the report of the Insecticides Analyst. Therefore, it would be necessary to have the second sample tested within the shelf life of the insecticide. If such an opportunity is not given to the accused, his right u/s 24(4) of the Act, would be violative. It was this stipulation which was being considered by the Supreme Court. The situation in the present case is squarely covered by the judgment given by the Division Bench of this Court in *Mewa Singh's case* (supra). The aforesaid judgment clearly answers the legal proposition against Mr. Nagpal.

17. As a necessary concomitant, it has to be held that no prejudice has been caused to the petitioner even if the complaint has been filed after the shelf life of the insecticide had expired. The aforesaid argument would be available to the

petitioner if there had been no analysis of the sample by the Central Insecticides Laboratory. If the misbranding report had been given by the Public Analyst, the petitioner would have the right to adduce evidence that he had been deprived of his right to have the sample tested from the Central Insecticides Laboratory due to delay and laches. No such argument can be raised on the facts and circumstances of the present case as the sample has already been tested by the Central Insecticides Laboratory. Under Sub-section (4) of Section 24 of the Act, it is provided that the report of the Director of the Central Insecticides Laboratory shall be conclusive evidence of the facts stated therein. The sample having been tested by the Central Insecticides Laboratory well within the shelf life period of the insecticide, no prejudice can be said to have been caused to the petitioner.

18. It is settled proposition of law that a summoning order passed by the learned Magistrate is subject to judicial scrutiny u/s 482 of the Code of Criminal Procedure. It is also settled beyond cavil that in exercise of its inherent jurisdiction u/s 482 Cr.P.C., the High Court will quash a summoning order where the process has been issued capriciously or arbitrarily. The summoning order can be quashed where it is found that the allegations made in the complaint are patently absurd and inherently improbable, so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused. The complaint and the summoning order can also be quashed where the complaint suffers from fundamental legal defects or where there is a legal bar against the institution or continuance of the criminal proceedings.

19. The ambit and scope of the powers of the High Court u/s 482 Cr.P.c. has been considered by the Supreme Court on numerous occasions. In the case of Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, the Supreme Court observed as under:-

"It is settled that High Court can exercise its power of judicial review in criminal matters. In R.S. Raghunath Vs. State of Karnataka and another, , this Court examined the extra-ordinary power under Article 226 of the Constitution and also the inherent powers u/s 482 of the Code which it said could be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice. While laying down certain jurisdiction under these provision, it was also stated that these guidelines could not be inflexible or laying rigid formulae to the (sic) followed by the Court. Exercise of such power would depend upon the facts and circumstances of each case but with the sole purpose to prevent abuse of the process of any court or otherwise to secure the ends of justice. One of such guidelines is where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused. Under Article 227 the power of superintendence by the High Court is not only on administrative nature but is also of judicial nature. This Article confers vast powers of the High Court to prevent the abuse of the process of law by the inferior courts and to see that the stream of

administration of justice remains clear and pure. The power conferred on the High Court under Article 226 and 227 of the Constitution and u/s 482 of the Code have no limits but more the power more due care and caution is to be exercised invoking these powers."

20. Again in the case of *G. Sagar Suri v. State of U.P.* 2000(1) R.C.R. 707, the Supreme Court observed as follows:-

"The jurisdiction u/s 482 of the Code has to be exercised with a great care. In exercise of its jurisdiction High Court is not to examine the matter superficially... This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction u/s 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."

21. The observations made above leave on manner of doubt that the wholesome jurisdiction conferred upon the High Court by Section 482 of the Code of Criminal Procedure cannot be narrowed, confined or put in a strait-jacket. This inherent power can always be exercised by the High Court to prevent abuse of the process of Court or to otherwise secure the ends of justice. The only constraint on the High Court is that since the power under this Section is very wide, it should be exercised with great care and caution. On the other hand, the court should not shy away from exercising this power when the accused persons are being persecuted in the guise of prosecution. Proceedings initiated and continued for oblique motives or to wreak vengeance on the other party are liable to be quashed. Proceedings are also liable to be quashed if even on the allegations being accepted in toto, prima facie no offence could be made out.

22. The facts, as have been narrated above, in the present case, do not indicate that the learned Magistrate has committed an error apparent on the face of the record. No injustice whatsoever has been done to the petitioner. The case put forward by the petitioner does not fall within any of the categories mentioned above which would justify quashing either of the complaint or the proceedings pending before the learned Magistrate.

23. For the reasons stated above, I find no merit in the present petition. The same is hereby dismissed. No costs.