

(1983) 03 AP CK 0020

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 5 of 1981

The Insecticides Inspector, Ananthapur

APPELLANT

Vs

S. Srinivasan and Another

RESPONDENT

Date of Decision : 03-03-1983

Acts Referred:

Insecticides Act, 1968 — Section 29(1), 3, 31, 33

Citation : (1983) 2 ALT 309

Hon'ble Judges : K. Jayachandra Reddy, J

Bench : Single Bench

Advocate : Addl. Public Prosecutor, for the Appellant; M.S.R. Subrahmanyam, for the Respondent

Judgement

1. This is an appeal by the State against the judgment of the learned Additional Sessions Judge, Anantapur in Criminal Appeal 124 of 1979 acquitting the two respondents herein who were convicted by the trial court under S. 29(1)(a) read with S. 33 read with S. 3(k)(i) of the Insecticides Act, and sentenced to pay a fine of Rs. 500/- each; in default of payment of fine to suffer simple imprisonment for three months.

2. The facts of the case are as follows : Before the trial court the two respondents herein (A-3 and A-4) and other two persons (A-1 and A-2) were tried for the aforesaid offences. A-1 was the Sales Agent of Insecticides and A-2 was the Distributor of pesticides manufactured by M/s. Travancore Chemical and Manufacturing Company Limited, Alwaye-4, Kerala State, of which the respondents herein (A-3 and A-4) are the Managing Directors. The Insecticides Inspector visited the shop of A-1 and found that A-1 had no licence for selling pesticides. At that time A-1 was present in the shop transacting business. The Inspector P.W. 1, took samples as per Form No. 12, weighing 450 grams of Fytolan on paying its price of Rs. 73-40, and obtained receipt from A-1. He opened the sample in the presence of the accused as well as other respectable persons. He divided it into different parts, packed, sealed and labelled them. One

of such sealed samples was given to A-1 under acknowledgment. A Mehzar of this proceeding also was prepared i.e., Ex. P-2. One of the samples was sent to the Insecticides Analyst, Hyderabad who gave his report Ex. P-12 stating that the sample was misbranded. The report of the Analyst was served on A-1, and the remaining stock of Fytolan was seized from his shop. Directions were given to the accused to stop sale and also to the Manufacturers. A-2 who was admittedly, a distributor was also directed to surrender his stocks and they were seized. Since the company was manufacturing misbranded insecticide Fytolan, they were also rendered liable for prosecution. After obtaining necessary sanction under S. 31, P.W. 1 filed the complaint in the Court of the Judicial Magistrate of the First Class, Tadepatri. The prosecution examined P.W. 1 and also got marked Exs.P-1 to P-26. On behalf of defence, any one witness was examined. The learned Magistrate, after considering the evidence of P.W. 1 as well as other documents particularly the report of the Analyst, came to the conclusion that the pesticides that were being sold were misbranded. Therefore, the accused are liable for the offences with which they are charged. He accordingly convicted them. The learned Magistrate sentenced A-1 to pay a fine of Rs. 500/- in default to undergo simple imprisonment for 15 days A-2 was sentenced to pay a fine of Rs. 500/- and in default to suffer simple imprisonment for three months. A-1 and A-4 were found guilty of the offences punishable under S. 29(1)(a) read with S. 33 read with S. (3)(k)(1) of the Insecticides Act, and each of them were sentenced to pay a fine of Rs. 500/- and in default to suffer three months simple imprisonment. A-1 and A-2 did not prefer any appeal A-3 and A-4 have filed the criminal appeal and the learned Additional Sessions Judge acquitted them on the ground that the sanction under S. 31 was only given to prosecute M/s. Travancore Chemical and Manufacturing Company Limited. Always-4, Kerala State, and not to its employees and Managing Directors as such. Therefore, A-3 and A-4 cannot be prosecuted in their individual capacity. In arriving at such a conclusion the learned Additional Sessions Judge mainly referred to S. 33(2) which provides for prosecution of persons who are connected with or connived in offence being committed by a Company. The order of the learned Additional Sessions Judge acquitting these two accused is questioned in this appeal by the State.

3. Sri. Y. Bhaskar Rao, learned Additional Public Prosecutor, submits that the lower appellate court has failed to see that it is the Company represented by A-3 and A-4 that is prosecuted. Even assuming the conviction of A-3 and A-4 individually is erroneous it could have corrected the same by making the Company liable; and acquittal of A-3 and A-4 completely by referring to S. 33(2) is erroneous.

4. Sri. M. S. R. Subrahmanyam, learned counsel for the accused-respondents, on the other hand, submits that the respondents viz. A-3 and A-4 were prosecuted in their individual capacity and since there is no sanction to prosecute them individually, the lower appellate court was right in acquitting them. It is also his submission that the margin of variation is negligible. It may be due to the fact

that the entire quantity has not been properly mixed up and, therefore, benefit of doubt can also be given to the accused. To appreciate these rival contentions, it becomes necessary to refer to some of the relevant provisions of the Insecticides Act. S. 3(k)(i) defines the expression "misbranded" thus :

"misbranded" an insecticide shall be deemed to be misbranded -

(i) if its label contains any statement, design or graphic representation relating thereto which is false or misleading in any material particular or if its package is otherwise deceptive in respect of its contents."

S. 29 enumerates offences and lays down that, whoever imports, manufacturers, sells, stocks or exhibits for sale or distributes any insecticide deemed to be misbranded, shall be punishable for the first offence with imprisonment for a term which may extend to two years or with fine which may extend to Rs. 2000/- or with both and for the second and subsequent offence with imprisonment for a term which may extend to three years or with fine or with both. In the instant case, the prosecution can be said to be only for the alleged first offence. Since the maximum sentence prescribed is only two years the case was tried only as a summons case, as such, framing of a charge was not necessary. Much stress has been laid about the way in which the parties are arrayed and described, and also about the operative portion containing the convictions and sentence awarded. The learned counsel for the respondents submits that the way in which the accused viz. A-3 and A-4 are described shows that they were prosecuted in their individual capacity, and since there is no sanction for such individual prosecution the acquittal has to be confirmed. In this context, the learned counsel also relies on the fact that A-3 and A-4 are individually convicted by the trial court and that itself shows that they are tried in their individual capacity.

5. In the complaint, the names of four persons are mentioned in an order. So far as A-1 and A-2 are concerned, their fathers names as well as other descriptive particulars about them are mentioned. A-3 and A-4 are simply mentioned by their names. Below that, it is mentioned "A-3 and A-4 are Managing Directors of Travancore Chemical and Manufacturing Company Limited, Kerala State." In the cause title of the judgment, the parties are arrayed in the same order with the same description. The relevant portion of the sanction order reads thus :

"Sanction is hereby accorded to the Dy. Director of Agriculture, Anantapur for launching prosecution against Sri. Surapuraju Venkataramana Rao of M/s. Sri Balaji Fertilisers 12/43 H. New Bus stand, Tadepatri dealer Sri. S. Abdul Ghaffar Kahdervalli Managing Partner, Distributor for I.C.I. Tadepatri and M/s. Travancore Chemical and Manufacturing Co. Ltd., Alwaye-4 represented by its Managing Director for contravention and violation of the provisions of the Act and for selling"

The first two persons mentioned in the sanction order are no doubt A1 and A2. The sanction order also permits prosecution of the Company represented by its Managing Director. It is, therefore, clear that there was a valid sanction for the

prosecution of the Company as such Admittedly, there are two Managing Directors for this Company and they are A-3 and A-4. To this extent, there is nothing wrong with the prosecution proceedings. But, somehow in the cause title of the judgment and in the complaint A-3 and A-4 are individually mentioned describing them to be the Managing Directors of the Company which is sought to be prosecuted as per the said sanction order. The learned Magistrate found that the prosecution has proved that the insecticides sold by A-1 and A-2 and manufactured by the Company were misbranded. Having given such a finding while awarding the convictions and sentences, he held.

"I find A-3 and A-4 guilty of the offence u/s 29(1)(a) r/w S. 33 r/w S. 3(k)(i) of Insecticides Act, convict and sentence them to pay a fine of Rs. 500/- (Rupees five hundred) each and in default to suffer simple imprisonment for three months each."

Relying upon this part of the order of the learned Magistrate, viz., awarding separate sentences, it is contended that A-3 and A-4 were prosecuted in their individual capacity and, therefore the convictions cannot be maintained as there was no valid sanction. The learned Additional Session Judge accepted such an argument; he however, referred to S. 33(2) and ultimately acquitted them on the ground that A-3 and A-4 were tried individually and as there was no sanction, such prosecution cannot be maintained.

6. It may be that the learned Magistrate has committed a mistake in awarding the convictions and sentences individually against A-3 and A-4. But, one cannot lose sight of the fact that they are only Managing Directors of the Company and it was the Company that was prosecuted. The way they are described in the cause title by itself is not the criterion to decide whether they are prosecuted individually. As already mentioned, the sanction was accorded for prosecuting the Company; A-3 and A-4 are described as Managing Directors of the Company. Therefore, the learned Magistrate could have convicted the Company represented by A-3 and A-4 instead of awarding separate convictions against A-3 and A-4. The lower appellate court should have corrected the same instead of setting aside the convictions completely. S. 33 is in the following terms :

"33(1) Whenever an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of or was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment under this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the

offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager secretary or other officer of the company. Such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation :- For the purpose of this Section :-

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm means a partner in the firm."

It can be seen from S. 33(1), that whenever an offence is committed by a company, every person who, at the time when the offence was committed, was in charge of, as well as the Company shall be deemed to be guilty and shall be liable to be proceeded against and punished accordingly. The sanction is no doubt for the prosecution of the company. When once it is established by the prosecution that the offence has been committed by the Company, then as laid down under S. 33(1), the Company as such is liable. The Section further lays down that every person in charge of the Company at the relevant time will also be liable. Therefore, S. 33(1) does not present any difficulty. The argument which is rather highly technical is based on the contents of the sanction order. As a matter of fact, in the sanction order, it is clearly mentioned that the Company represented by its Managing Director shall be prosecuted. Now, if we examine S. 33(1) carefully, it becomes clear that, when once it is proved that the company has committed the offence, then every person who was in charge of the company as well as the company shall be deemed to be guilty of the offence committed by the company. Therefore, the conviction of A-3 and A-4 cannot be said to be, in any manner, incorrect. The learned Sessions Judge however, relied much on S. 33(2) which deals with a different situation S. 33(2) lays down that, where an offence under the Act has been committed by a company and it is proved further that the offence with the consent or connivance of or is attributable to any neglect on the part of any director or manager or secretary etc. then such a director, manager, secretary etc., shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. It can be seen that S. 33(2), which is a deeming provision, ropes in such other persons also when it is proved that they are connected with or connived, as mentioned in that Section. But for purposes of S. 33(1), what all the prosecution has to prove is that the Company has committed the offence. The prosecution need not prove further that the persons in charge of the company also in their individual capacities have committed any offence. S. 33(1) which is also a deeming provision, clearly lays down that when a company has committed an offence then the company as well as persons in charge of the company shall be deemed to be guilty. The object behind this Section is not difficult to be understood. Therefore, I am unable to agree with the learned counsel for the respondents that A-3 and A-4 cannot be found to be guilty just because the

sanction order mentions about the prosecution of the company represented by its Managing Director. We can also examine the position from a different angle. S. 31(1) simply lays down that no prosecution for an offence under this Act shall be instituted except by or with the written consent of the State Government or a person authorised in this behalf by the State Government. In the instant case, sanction is accorded to prosecute the company represented by its Managing Director. Now, the prosecution has established that the company has committed the offence. Inevitably, we have to apply S. 33(1) when once there is proof and, consequently, the persons in charge of the company as well as the company shall be deemed to be guilty. That being so, A-3 and A-4, who are the Managing Directors and who are in charge of the company along with the company, should be deemed to be guilty as laid down under S. 33(1). Therefore, the lower appellate court is wrong in referring to S. 33(2) and then concluding that A-3 and A-4 were tried individually.

7. Learned counsel for the respondents after referring to Ex. D-2, which is the report obtained by the accused from the Central Laboratory, submits that the permissible limits are ranging from 48-5 to 52-5, and that the sample contained 47.5 per cent copper. Therefore, the margin is negligible. This shortage also can be due to the fact that the entire quantity was not properly mixed. I cannot go into this question. The report of the Insecticide analyst shows that the result of the test shows copper contents were only 4.12 per cent. However, Ex. D-2 supersedes the report of the Analyst, but even that shows there was deficiency, hence the trial court has rightly held that the sample was misbranded.

8. The trial court convicted A-3 and A-4 but did not award separate conviction and sentences so far as the company is concerned though S. 33(1) lays down that the company as well as the persons in charge shall be deemed to be guilty. Now that the persons in charge viz. A-3 and A-4 are convicted. I do not think it is necessary again to award separate conviction and sentence so far as the company is concerned.

9. In the result, the judgment of the learned Additional Sessions judge is set aside, and the convictions and sentences awarded by the trial court against the respondent herein are upheld.

10. The Appeal is accordingly allowed.

11. Appeal allowed.