
(1990) 02 AP CK 0015

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 425 of 1989

Tropical Agro System (P) Ltd. and Others

APPELLANT

Vs

State of Andhra Pradesh and Another

RESPONDENT

Date of Decision : 01-02-1990

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Insecticides Act, 1968 — Section 29, 33, 33(1), 33(2)

Citation : (1990) 1 APLJ 313 : (1990) CriLJ 2739

Hon'ble Judges : N.D. Patnaik, J

Bench : Single Bench

Advocate : K.G. Kannabhiran, for the Appellant; Public Prosecutor, for the Respondent

Judgement

1. This petition is filed u/s S. 482 of the Code of Criminal Procedure to quash the proceedings against the petitioners who are accused in C.C. No. 19 of 1989 on the file of the V Additional Munsif Magistrate, Guntur. The case was filed against them under the Insecticides Act 46 of 1968 (hereinafter referred to as the Act) alleging that they have misbranded some pesticides. A-1 and A-2 are the dealer and distributor respectively. A-3 and A-4 are Directors of the Manufacturing Company. A-5 is the Chemist of the Manufacturing Company.

2. The learned counsel for the petitioners did not press the petition as regards A-1 and A-2.

3. The learned counsel for the petitioners contended that A-3 to A-5 cannot be held responsible as there is no specific allegation against them. That contention is based on Section 33 of the Act. Sub-section (1) of Section 33 of the Act provides that 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 the punished accordingly. A-3 and A-4

are Directors of the Company. It is not alleged that they are responsible for the conduct of the business of the company. Therefore I agree with the contention of the learned counsel for the petitioners that A-3 and A-4 cannot be held responsible for the offence.

4. As far as A-5 is concerned, A-5 is the Chemist of the Manufacturing Company. Sub-section (2) of Section 33 of the Act reads that 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 attributable to neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or any other officer of the company shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. The allegation in this case is that a sample of Methyl Parathion 2% dust was found to be misbranded as it contains only 1.63% as against 2% W/W. The Chemist of the Manufacturing Company is arrayed as an accused. Section 29 of the Act says that whoever imports, manufactures, sells, stocks, or exhibits for sale or distributes, any insecticide is punishable. Therefore the manufacture of the insecticide does not conform to the necessary standard is also an offence. The Chemist is also made an accused because under his supervision the manufacturing process goes on. The contention of the learned counsel for the petitioners is that there is no allegation in the complaint regarding the part played by the Chemist. But sub-section (2) of Section 33 of the Act says that if it is proved that the offence has been committed with the consent or connivance of or attributable to neglect on the part of any officer of the company, he is responsible for the offence. So the question whether this product which does not conform to the standard has been manufactured either with the consent or connivance of or attributable to neglect on the part of the Chemist is a matter which has to be proved during the course of trial by necessary evidence. If it is not proved, then the Chemist will be acquitted. But at this stage it is not possible to say whether there is any evidence to show that the offence has been committed with the consent or connivance of or attributable to neglect on the part of the Chemist. The learned counsel for the petitioners has referred to a decision of my learned Brother Lakshmana Rao, J. in CrI. Misc. Petitions Nos. 1805 of 1983 and batch dated 28-8-1984 (reported in 1985 Cri LJ 810). In para 11 of that judgment the learned Judge observed as follows :

"So far as the chemist accused No. 8 is concerned it is stated that he has formulated the misbranded sulphur under his supervision and supplied to Accused No. 1 shop direct. So far as the chemist is concerned it is stated that he has merely formulated the misbranded sulphur. He cannot be said to be in charge of the business of the company. It is no doubt true that the Managing Director is stated to be responsible for all the affairs of the firm. When a chemist is not concerned with the business of the company, he cannot be impleaded as an accused having regard to the provisions u/s 33 of the Act."

The learned Judge further observed :

"If in the course of trial it is found by the Court below that any other person is liable to be proceeded against, the Court can at any stage try any person along with the accused and proceed against such person for the offence which he appears to have committed."

Obviously the learned Judge was considering the question whether the Chemist can be said to be a person in-charge of the business of the company under sub-section (1) of Section 33 of the Act. But the further question whether he can be made liable under sub-section (2) of Section 33 of the Act on the ground that the offence was committed with the consent or connivance of or attributable to neglect on his part was not considered in that case. Therefore with great respect I am unable to follow the decision of my learned Brother Lakshmana Rao, J. referred to above that the Chemist cannot be found responsible for the offence because as stated above that decision considered the question only from the angle whether he is responsible for the conduct of the business of the company. In view of the fact that sub-section (2) of Section 33 of the Act says that if it is proved that the offence has been committed with the consent or connivance of or attributable to neglect of the part of any officer of the company he is punishable and if it is proved during trial that the Chemist is responsible for the manufacture and misbranding of the product the Chemist can be held guilty. I am therefore unable to agree with the contention of the learned counsel for the petitioners that the proceedings against A-5 Chemist is also liable to be quashed.

5. In the result the proceedings against A-3 and A-4 are quashed and the petition is allowed in so far as they are concerned. The petition is dismissed so far as A-1, A-2 and A-5 are concerned.

6. Order accordingly.