
(1985) 02 AP CK 0019

In the Andhra Pradesh High Court

Case No : Criminal Rev. Case No. 515 of 1983 and Cr.R.P. No. 510 of 1983

Tropical Agro System (P.) Ltd.

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 18-02-1985

Acts Referred:

Insecticides Act, 1968 — Section 22, 22(6), 24(2), 29(1), 3(1)

Citation : (1985) 2 APLJ 21

Hon'ble Judges : Ramanujulu Naidu, J;Anjaneyulu, J

Bench : Division Bench

Advocate : S. Dasaratharama Reddy, for the Appellant; Public Prosecutor, for the Respondent

Judgement

Ramanujulu Naidu, J.—In C.C. No. 194 of 1981 on the file of the 1st Additional Munsif Magistrate, Narasaraopet, 8 accused were prosecuted by the Deputy Director of Agriculture Guntur for contravention of the provisions of S. 3(k)(i) with S. (1)(a) of the Insecticides Act, 1968 punishable under S. 29(1)(i) of the Act.

2. A-1 is a firm dealing in retails sales of insecticides of Chilakaluripat. A-2 and A-3 are partners of the firm. A-4 is another firm situate at Guntur distributing insecticides to retail dealers. A-5 is a firm manufacturing insecticides and distributing the same to various dealers for sale. A-6 and A-7 are the parents of A-5. A-8 is the Chief Executive of the said firm. On 24-9-1979, the Quality Control Inspector-II, Guntur, inspected the shop of A-1 and obtained a sample of Methyal Parathian. On analysis of the sample by the Insecticides Analyst at Rajendranagar, it was found to be misbranded, in that it contained only 1.34% of Methyal Parathian against 2%. The learned Magistrate acquitted A-1 to A-4, A-7 and A-8 of the Charge. Only A-5 and A-6 were convicted of the charge. A-5 was sentenced to pay a fine of Rs. 2000/- while A6 besides being sentenced to pay a fine of Rs. 2000/- was also sentenced to suffer rigorous imprisonment for four months. On appeal preferred by A-5 and A-6 before the learned Sessions Judge,

Gunter A-6 was acquitted of the charge. The conviction of A5 and the sentence of fine imposed on A-5 were confirmed. Aggrieved by the judgment of the learned Sessions Judge, A-5 preferred the above criminal revision case.

3. A copy of the report of the Insecticide Analyst was served only on A-2 from whom the sample was seized and no copies of the report were served on the other accused including the petitioner. The report was sought to be used against all the accused.

4. Section 24(1) of the Act lays down that the Insecticide Analyst to whom a sample of any insecticide has been submitted for test or analysis under sub-section (6) of S. 22, of the Act, shall, within a period of sixty days, deliver to the Insecticide Inspector submitting it a signed report in duplicate in the prescribed form. Sub-section (2) of S. 24 of the Act enjoins an obligation on the Insecticide Inspector to deliver one copy of the report to the person from whom the sample was taken on receipt thereof and to retain the other copy for use in any prosecution in respect of the sample. S. 24(4) the Act provides an opportunity to a person accused of contravention of any of the provisions of the Act to have the sample tested or analysed in the Central Insecticides Laboratory, in order to challenge the report of the Insecticide Analyst. Such opportunity shall be availed of within twenty-eight days of the receipt of a copy of the report. It is thus not specifically provided in S. 24 of the Act that a copy of the report of the Insecticide Analyst shall be delivered to all the accused against whom it is sought to be used. Adverting to the scope of S. 24 (2) and (3) of the Act one of us (i.e. Justice Ramanujulu Naidu) held in *Dy. Director, Agriculture, Kurnool v. M/s. Bayer (India) Ltd.* (1980) 2 ALT 475 :

"It is implicit in Section 24(2) of the Act, having regard to the intendement of the Parliament expressed in sub-section (3) that a copy of the report of the Insecticide Analyst should be served upon all the accused so long as the report of the Insecticide Analyst is sought to be used against all of them."

Gangadhara Rao, J. however took a contrary view in *V. Sivrama Sastry v. State of A.P.* (1981) 2 An WR 390 . He held :

"In view of S. 24 of the Act a copy of the report of the Insecticide Analyst should be delivered to a person from whom the sample was taken. It need not be delivered to a person from whom the sample was not taken. Under sub-section (4) of S. 24 the accused can request the Magistrate to send the sample produced before the court under sub-section (6) of S. 22 for analysis to the Central Insecticides Laboratory. Therefore, it is not as if, that an accused who is not served with a copy of the report under sub-section (2) of S. 24 is precluded from having the sample tested or analysed with the Central Insecticides Laboratory."

The decision rendered by me was however not brought to the notice of Gangadhara Rao, J. There being a conflict of judicial opinion, I made a reference to a Division Bench to resolve the conflict.

5. It is a fundamental principle of natural justice that a report sought to be used against every accused person shall be delivered to or served upon him, to enable him to challenge its correctness or authenticity. It is therefore, implicit in S. 24(2) of the Act that a copy of the report of Insecticide Analyst shall be supplied to all the accused against whom it is sought to be used. It should be borne in mind that the report of Insecticide Analyst is treated as conclusive evidence of the facts stated therein. We, therefore hold overruling the decision of Gangadhara Rao, J. that it is obligatory on the part of the Insecticide Inspector to deliver to or serve upon all the accused persons a copy of the report of the Insecticides Analyst sought to be used against all of them. We must however observe that failure to furnish a copy of the report to all the accused persons does not by itself vitiate the prosecution unless prejudice is occasioned to the accused persons not supplied with a copy of the report.

6. In the instant case, the sample was seized from A-2 on 24-9-1979. A copy of the report the Insecticide Analyst was supplied to him on 9-11-1979. No copies of the report were supplied to the other accused, including the petitioner. The product, the sample of which was taken was manufactured in May, 1979. Prosecution was launched against all the accused in April, 1981. The life of the product was only for two years. In other words, by May, 1981 there was no life in the product to be tested or analysed in the Central Insecticide Laboratory, if so desired by the petitioner. In the circumstances it has to be necessarily held that any amount of prejudice was occasioned to the petitioner by reason of failure of supply to him a copy of the report of the Insecticide Analyst. We therefore, set aside the conviction of the petitioner and the sentence inflicted upon him. The criminal revision case is accordingly allowed.

7. Petition allowed.