
(1992) 07 P&H CK 0046

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 723-M of 1992

U.B.Bukana, Assistant Marketing Manager, Gujarat Narmada
Valley Fertilizer Co.Ltd.Amritsar

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 30-07-1992

Acts Referred:

Citation : (1993) 1 RCR(Criminal) 665

Hon'ble Judges : G.S.Chahal, J

Advocate : Sh. Parminder Singh, Sh. Arun Chandra, Ravinder Chopra, Advocates
for appearing Parties

Judgement

G.S. Chahal, J.

1. U.B. Bukana, Assisting Marketing Manager and V.S. Sirohi, Marketing Manager of M/s. Gujarat Narmada Valley Fertilizer Co. Ltd. ("the Company" in short) have moved this Cr. Misc. under Section 482, Cr.P.C., read with Article 227 of the Constitution of India for quashing of the complaint, Annexure P2, pending in the Court of the learned Chief Judicial Magistrate, Amritsar.

2. The facts leading to the prosecution, may briefly be drawn from the impugned complaint Annexure P2. On 17.6.1991, Insecticide Inspector, Baldev Singh inspected the godown of the Company at Amritsar. He drew a sample of Butachlor 50% E.C. brand Narmadachlor, manufactured by the Company and for that purpose, three tins of 5 litres each, bearing batch No. 47, manufactured on 23.12.1989 and carrying the expiry date 22.12.1991, were taken out of the stock and were duly sealed. The Insecticide Analyst, on analysis, confirmed that the sample was misbranded since active ingredients were 41% E.C., W/W of Butachlor, as against the guaranteed percentage of 50%, as indicated on the label of the container. The petitioners have thereby committed offences under Section 3(k)(i), 17, 18 of the Insecticides Act, and punishable under Section 29(1)(i) of the Act.

3. The complaint in the present case was filed on 2.12.1991 and the petitioners claim to have been summoned for the first time for 29.1.1992, Annexure R4 dated 2.8.1991 was delivered by hand to the Chief Agricultural Officer, Amritsar. In reply to the show cause notice, the petitioners had challenged the correctness of the report of the Insecticide Analyst and inter alia stated that there might be error in the Laboratory from where the sample had been got analysed. It was further requested that permission be granted for resampling. The petitioners had, thus, clearly challenged the report of the Insecticide Analyst, and along with the communication they had sent a report of the Analyst to IDM Laboratory (P) Ltd. Section 24(3) and (4) of the Act make the following provisions :

Section 24(3) "Any document purporting to be the report signed by the Insecticide 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 tends to adduce evidence in contravention of the report.

(4) Unless the sample has already been tested or analysed in the Central Insecticide Laboratory, where a person has under subsection (3) notified his intention of adducing evidence in contravention of the Insecticide Analyst's 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 subsection (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 the conclusive evidence of the facts stated therein."

4. The communication Annexure R4 was sufficient to give indication to the authorities that the petitioners wanted to challenge the report of the Analyst. The matter of prosecution was, however, delayed by complainant and although the report of the Analyst had been received prior to 26.7.1991, when the show cause notice was issued, yet the filing of the complaint was delayed till 2.12.1991. The petitioners were summoned for a date subsequent to the date of expiry of the shelflife of the product, thereby depriving them of a very valuable right to make a prayer to the Court for analysis of the sample from the Director, Central Insecticide Laboratory. The petitioners having been deprived of their defence, the trial of the complaint cannot end in a conviction and continuation thereof will amount to an abuse of process of the Court. I hereby accept the criminal miscellaneous and quash the impugned complaint and the criminal proceedings.

Misc. allowed.