
(1999) 02 P&H CK 0048

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 25477-M of 1997

United Pesticides

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 08-02-1999

Acts Referred:

Citation : (1999) 1 AICLR 614 : (1999) 2 RCR(Criminal) 477

Hon'ble Judges : K.K.Srivastava, J

Advocate : S.S. Randhawa, Ravinder Chopra, Advocates for appearing Parties

Judgement

K.K. Srivastava, J.

1. This is a petition filed under Section 482 Cr.P.C. by M/s. United Pesticides 13/477, Nayapara, Raipur, (M.P.) seeking quashing of complaint filed by respondent, Insecticide Inspector, Abohar, District Ferozepur under Sections 3(k) (i), 17, 18, 33 punishable under Section 29 of Insecticide Act, 1968 read with Rule 27(5) of the Insecticides Rules, 1971 and all consequential proceedings flowing therefrom and pending in the Court of Sub Divisional Judicial Magistrate, Abohar.

2. The petitioner, a partnership concern deals in the manufacture of insecticides. The insecticide involved in the impugned complaint is Monocrotophos 36% SL. The said insecticide had batch No. UPLM12. The insecticide in question was manufactured in July, 1991 and the expiry date of the same was June, 1992. According to the averments made in the complaint, the respondent, Insecticide Inspector, Abohar visited the shop of Punjab Kheti Centre, Abohar on 4.10.1991 and drew a sample of the said insecticide Monocrotophos 36% SL. The Insecticide Inspector prepared three samples of the said insecticides which were duly sealed. One of the samples was sent for analysis to the Insecticides Testing Laboratory, Ludhiana by the Chief Agriculture Officer, Ferozepur. The other sample was given to the dealer and the third sample was kept in the office of the Chief Agriculture Officer, Ferozepur. After analysis by the Insecticide Testing Laboratory, Ludhiana, the sample of the insecticide was found to be misbranded

as it did not conform to the relevant ISI specifications in its active ingredients percentage. A show cause notice was sent to the dealer, Punjab Kheti Centre, Abohar and thereafter the impugned complaint was filed in the Court of Sub Divisional Judicial Magistrate, Abohar on 23.12.1992. In the impugned complaint, copy Annexure P1, the petitioner, M/s. United Pesticides was impleaded as accused No. 3.

3. The petitioner seeks the quashing of the impugned complaint on the ground that the copy of the analysis report was not sent to him by the Chief Agriculture Officer, Ferozepur, and as such the petitioner did not know about the report of the analysis of the insecticide aforesaid conducted by the Insecticide Testing Laboratory, Ludhiana and the petitioner could not apply for reanalysis of the other sample by the Central Insecticide Laboratory and by the time the impugned complaint was filed, the shelf life of the insecticide in question had already expired. It has been contended that the petitioner has, thus, been deprived of a valuable right of having the insecticide in question reanalyzed by the Central Insecticide Laboratory and to prove that the same was in accordance with the ISI specifications and, therefore, the impugned complaint was liable to be quashed qua the petitioner.

4. Notice was issued to the respondent, who filed his written statement in the form of affidavit of Shri Sukhdev Singh, Insecticide Inspector, Abohar. In para 4 of the reply the averments made by the petitioner in para 4 of the petition were denied as being wrong and it was averred that the analyst report was sent to M/s United Pesticides Company. It was, however, admitted that the complaint was filed on 23.12.1992 and the expiry of the insecticide was in June, 1992. However, it was contended that the valuable right of the petitioner was not lost as provided under Section 24(4) of the Insecticide Act.

5. I have heard learned counsel for the petitioner and the learned DAG for the State of Punjab and have carefully perused the record of the case.

6. Mr. Ravinder Chopra, learned counsel for the petitionermanufacturer referred to the averments made in the impugned complaint, copy Annexure P1, wherein no averment was made about the sending of the report of the analyst to the petitioner. The only reference in regard to the sending of the report of the analyst is in para 8 of the impugned complaint, copy annexure P1, which reads as under :

"That the copy of analyst report was delivered to dealer vide Chief Agricultural Officer, Ferozepur, show cause notice No. 20100 dated 4.11.1991 alongwith the report of Insecticide test report under registered cover."

7. I have carefully perused the copy of the complaint, Annexure P1, and find that there is no reference at all about the sending of the analyst report to the petitionermanufacturer, M/s United Pesticides Company. In the absence of any averments made in the impugned complaint, copy Annexure P1, the averments made in the written statement filed in this case in para 4 about the sending of

the analyst report to the petitionerM/s. United Pesticides Company is of no consequence. The averment made in para 4 of the written statement is generally without any nature and is devoid of the details regarding the date of the notice vide which the report of the analyst was sent to the petitioner. There is no mention made in the written statement about the date when the show cause notice along with the analyst report was served on the petitioner and no document has been placed on record with the written statement showing service of any such notice vide which the analyst report was sent to the petitioner. Under these circumstances, the mere averment made in para 4 of the written statement to the effect that "No. 4 is wrong hence denied". The analyst report was never sent to the petitionermanufacturer. The impugned complaint was admittedly filed after the expiry of the shelf life of the insecticide in question inasmuch as the complaint was filed on 23.12.1992 whereas the expiry of the insecticide in question was in June, 1992. Learned counsel for the petitioner placed reliance on the judgment of the Hon"ble Supreme Court in the case of The State of Punjab v. National Organic Chemical Industries Ltd., 1998(4) RCR (CrL.) 578 : JT 1996(10) S.C. 480 . The Hon"ble Apex Court held that the appellantState had not given the third sample to the respondent manufacturer and as a result the respondent has been deprived of his statutory opportunity to have the sample tested by the Central Insecticide Laboratory. The Hon"ble Apex Court held that the respondent had been deprived of a valuable defence statutorily available to him and upheld the order of quashing of the complaint passed by the High Court. While dealing with the right of the manufacturer provided under Section 24(4) of the Insecticide Act, the Hon"ble Apex Court held as under :

"Subsection (4) of Section 24 envisages the "unless the sample has already been tested or analysed in the Central Insecticides Laboratory, where a person has under subsection (3) notified his intention of adducing evidence in controversion, 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 said 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 therein". Under subsection (6) the cost of the test or analysis made by the Centre Insecticide Laboratory, under subsection (4) shall be paid by the complainant or the accused, as the court shall direct. Thus, it would be clear that after the inspection and seizure of the insecticide, the Insecticide Inspector shall divide the insecticide into three portions, as contemplated and in the manner prescribed and deliver one such sample to the manufacturer or person from whom insecticide (sic) one should be sent to the Insecticide Analyst. After the receipt of the report, the accused would be notified of the result of the report. Thereafter, the complaint is required to be lodged in the Court. At that the stage, two options are open to the accused. The

accused is entitled to have one copy of the sample entrusted to him to have it notified to the Court for proving to be contrary to the conclusive evidence of the report of the analyst; after such a notification having been given to the Court, he is entitled to have it tested by Central Insecticide Laboratory and adduce evidence of the report so given. That such certificate by the Director of the CIL has a proof of his defence to dislodge the conclusiveness attached to the report of the Insecticide Analyst under subsection (3) of Section 24. The other option is, the copy of the sample that is lodged with the Court by the Insecticide Inspector, would be requested to be sent by the Court to the CIL and the report thus given by the Director of CIL shall be conclusive evidence as to the quality, consent (contents ?) and facts stated therein. The cost thereof is to be borne either by the complainant or by the accused, as may be directed by this Court."

8. The other authority relied on by the learned counsel for the petitioner is a decision of a Single Bench of this Court in *Surinder Pal Saini v. State of Punjab*, 1997(1) RCR 602 wherein the sample of insecticide was found to be misbranded by the Insecticide Testing Laboratory and the criminal complaint was lodged in the Court when shelf life of insecticide had already expired. It was held that the accused lost his valuable right to get the second sample tested from the Central Insecticide Laboratory and the criminal proceedings were quashed. This Court had relied on a decision reported in *M/s. Jai Chemicals, Faridabad v. State of Punjab*, 1995(3) RCR 220 expressing the said view.

9. It is, thus, abundantly clear that the petitioner manufacturer, who was entitled to have the report of the analyst with the notice, was not sent the report of the analyst and as such he could not ask for reanalysis of the other sample by the Central Insecticide Laboratory within the period when the shelf life of the insecticide had not expired and when the impugned complaint was eventually filed, the shelf life of the insecticide had already expired. The petitioner has, thus, been deprived of his valuable right under Section 24(4) of the Insecticide Act and the impugned complaint and proceedings are liable to be quashed qua the petitioner. It is relevant to mention that the initially testing in this case was made by the Insecticide Testing Laboratory, Ludhiana and not by the Central Insecticide Laboratory.

10. Resultantly, this petition has considerable merit and is allowed. The impugned complaint and proceedings flowing therefrom and pending before the Sub Divisional Judicial Magistrate, Abohar are quashed qua the petitioner.