
(2005) 05 P&H CK 0144

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 35938-M of 2004

Uttam Singh

APPELLANT

Vs

State of Punjab thru Insecticide Inspector

RESPONDENT

Date of Decision : 18-05-2005

Acts Referred:

Insecticides Act, 1968 — Section 14, 30(3)

Citation : (2005) 14 CriminalCC 418

Hon'ble Judges : Uma Nath Singh, J

Bench : Single Bench

Advocate : Rakesh Verma, for the Appellant; Ashok Bhardwaj, AAG, Punjab, for the Respondent

Final Decision : Allowed

Judgement

Uma Nath Singh, J.—Heard learned counsel for the parties and perused the records. This order shall dispose of connected Crl. Misc. 35940-M of 2004 as there is a common question of law impugned in both the petitions inasmuch as, in both the cases samples drawn from the dealers from original packages of the articles were found to be misbranded and thereafter their licences were cancelled; in both the cases the dealers submitted appeals and learned Appellate Authority having carefully examined the cases, allowed the appeals and restored their licences and in both the cases, the points of law raised are said to be covered by a Division Bench judgment of this court reported in 2003(2) RCR(Cri.) 244 (Rajinder Kumar v. State of Punjab), rendered after placing reliance on a judgment of Hon'ble the Apex Court reported in 1990 SCC 623. In the instant case, Crl.Misc.No.35938-M of 2004, petitioner being the sole proprietor of the firm, namely, M/s. Namdhari Seed Store, Nawanshahr, was carrying on his business under a valid licence under the insecticides Act.

2. On 13.5.1999, an Insecticide Inspector drew a sample of insecticide known as Methyl Parathion 2% D.P. from the shop of the petitioner's firm. The sample was sent to Insecticide Testing Laboratory and the same vide report dated 26.5.1999

was found to be misbranded. Resultantly, his licence was cancelled by Chief Agricultural Officer, Nawanshahr on 30.6.1999, however, on his representation vide Annexure 3, the licence was restored because the department could not attribute any fault to the dealer and rather he was found to be fulfilling the conditions of Section 30(3) of the Insecticide Act, 1968 (hereinafter referred to as "the Act")- Accordingly, he was found entitled to get and thus granted requisite protection. In another case, being CrI.Misc.No.35940-M of 2004, it appears that sample of acid (insecticide ?), namely Isoproturon 75% was taken from the shop of the petitioner's firm on 27.11.1998. The sample was eventually found to be misbranded as it could not meet the I.S. specifications and, therefore, in exercise of powers u/s 14 of the Act, the Chief Agricultural Officer, Nawanshahr, being competent authority, cancelled the licence. However, in appeal, on having found no fault of any kind on the part of the dealer and rather having found him to be fulfilling all the conditions of Section 30(3) of the Act, he was given protection under this section and his licence was restored. Thus, he was permitted to sell the said insecticide item.

3. The main submission of learned counsel for the petitioner is that these cases are squarely covered by judgment of this court rendered by a Division Bench which has relied on a judgment of Hon"ble the Apex Court reported in 1990 SCC (Cri.) 623 (M/ s. Kisan Beej Bhandar, Abohar v. Chief Agricultural Officer,, Ferozepur and another). According to learned counsel, in terms of the above ratio, the complaint so also the summoning order cannot endure as the same would amount to abuse of the process of the court. Learned counsel submitted that when the departmental authority itself has not found any fault on the part of the petitioner and rather he has been given protection u/s 30(3) of the Act, launching of prosecution of the petitioner appears to be misconceived. On the other hand, learned counsel for the State submitted that the petitioner-dealer is liable to be prosecuted for the reason that he failed to store the article properly as is required under the provisions of the Act. Leaned State counsel also relied upon the above Division Bench judgment of this Court but in different context.

4. Thus, on due consideration of rival submissions, it appears that the petitioner's licence was restored by the Appellate Authority by granting him protection u/s 30(3) of the Act as the petitioner was found to fulfill the requisite conditions. That be so, the petitioner cannot be held criminally liable in any manner and further the test report of sample even though having found it misbranded, cannot be said to be an incriminating circumstance in every case because the sample had been drawn from an original package. Hon"ble the Apex Court in M/s. Kisan Beej Bhandar's case (supra) has held that "we are inclined to accept the submission and take the view that whether it is prosecution or contravention leading to cancellation, sub-section (3) applies. In that view of the matter, on the facts found that it was a full tin in a sealed condition, the liability arising out of misbranding was not of appellant. Unless he had any other source of information about misbranding and it has not been established, the appellant is entitled to the protection of sub-section (3). In the facts once the appellant's

contention that it was a sealed tin intact has been found, the burden that lay on him under the provisions of sub-section (3) had been satisfactorily discharged, even in the matter of considering the question of cancellation of licence and, therefore, his licence should not have been cancelled." That apart, in two other reported cases, it appears that this court has quashed the proceedings on that ground. They are (i) 2003(3) CCC 253 (P&H): 2003(3) RCR (Cri.) 650 (M/s. S.S. Aggarwal & Co. and others v. State of Punjab) and (ii) 2003(3) CCC 229 (P&H): 2003(3) RCR (Cri.) 596 (M/s. Satyug Pesticides, Baghapurana v. State of Punjab).

Under the circumstances, continuation of proceedings would amount to abuse of the process of the court, which may lead to miscarriage of justice. Hence, the complaints so also the proceedings including the summoning orders impugned in these petitions are hereby quashed and resultantly, both the petitions are allowed.