
(1999) 10 P&H CK 0074

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 35052-M of 1998

Vishwa Nath, Proprietor Shiv Reej Bhandar

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 05-10-1999

Acts Referred:

Citation : (2000) 1 RCR(Criminal) 106

Hon'ble Judges : Bakhshish Kaur, J

Advocate : S.R. Verma, Vijay Dahiya, Advocates for appearing Parties

Judgement

Bakhshish Kaur, J.

1. Shri Randhir Singh, Quality Control Inspector, filed a complaint under Section 29 of the Insecticides Act, 1968, and the rules made thereunder for the violation of Sections 3(k), 17 and 18 of the Insecticides Act, 1968 (hereinafter referred to as 'the Act').

2. On August 19, 1995, a sample of Phorate 10% C bearing batch No. 139 was withdrawn into three parts under Section 21(1) of the Act, which was manufactured by AAR CEE Crop Care Insecticide Private Limited, Sikandrabad. The sample was taken in a sealed packing after giving the intimation in form 12 (Annexure A1) as prescribed under rule 33. It was followed by further formalities as required under the Rules. Sample was sent to the State Quality Control Insecticides Laboratory, Karnal, on August 21, 1995. The Senior Analyst Quality Control declared the sample as misbranded and it was sent to the office on September 20, 1995. Copy of the Analyst report was sent to the dealer Messrs Surinder Khad Bhandar, Rajond. The proprietor (petitioner) of the firm was also informed. The accused petitioner along with other accused were advised to get permission from the competent court for reanalysis of their sample. On these allegations, the complaint was filed by the complainant against all the accused including Vishwa Nath, accused petitioner, who is also proprietor of the firm.

3. Vishwa Nath, petitioner, has prayed for the quashing of the complaint by way

of filing the petition under Section 482, Code of Criminal Procedure.

4. The petition is resisted by the other side.

5. I have heard Mr. S.R. Verma, Advocate, for the petitioner and Mr. Vijay Dahiya, Assistant Advocate General, Haryana.

6. The sample was sent to the State Quality Control Insecticides Laboratory, Karnal for testing and it was found that the insecticide contained 1.67% instead of 10% G; thus the product was misbranded. The grievance of the petitioner is that the shelf life of the product is one year. The product was manufactured in April, 1995 and expired in March, 1996 and the petitioner was summoned by the trial Court on August 8, 1996, whereas the complaint against the petitioner was filed on May 29, 1996. During this time, the date of sample had expired. In this way the petitioner has been denied the right to get the sample retested from the Central Insecticide Laboratory. It is contended by the learned Counsel for the petitioner that where there is a denial of valuable right on account of deliberate conduct of the prosecution, grave prejudice is caused to the petitioner, therefore, the continuation of the proceedings against him would amount to an abuse of the process of the Court. The copy of the summoning order by the court is Annexure P2 and copy of this report is Annexure P3.

7. To meet this argument, the learned State Counsel has contended that the issuance of the process by the Court is legal and the petitioner is not entitled for invoking the writ jurisdiction of this Court for quashing and setting aside the order passed in the complaint. The petitioner was duly informed about the report received from the Analyst and no irregularity or illegality has been caused nor it can be said that the shelf life of the sample has expired.

8. I have considered the rival contentions put forth by the learned Counsel for the parties. I am, however, in agreement with the submission made by the learned Counsel for the petitioner. The accused petitioner was summoned by the trial Court on May 29, 1996, vide Annexure P2. He had applied to the Deputy Director of Agriculture, Kaithal, requesting for retesting the second part of the sample (Phorate 10% G) and it was replied vide Annexure P5 that he should get permission from the court for retesting of sample. Accordingly he moved an application before the Chief Judicial Magistrate, Kaithal, alleging therein that the report of the sample was received on October 6, 1995 from the department and on October 19, 1995, the applicant made the request before the department for sending the second part for re analysis. The sample was admittedly taken on August 19, 1995. The complaint was filed on May 29, 1996 and the accused was summoned for August 8, 1996. He had applied for retesting the second sample. On October 19, 1995, his request was declined and he was directed to approach the Court vide letter, Annexure P5. In this way, the accused petitioner had lost the opportunity to get the second sample analysed because when the Court was approached the shelf life of the sample had expired. It was thus contended that where the sample of Insecticide was found to be misbranded by the State

Insecticides Laboratory and the request made by the accused to the department to get the second sample analysed from the Central Insecticides Laboratory, but no action was taken, the proceedings are liable to be quashed as the complaint has been filed when the shelflife had expired. In that case, the accused had lost opportunity to get his sample analysed. In support of this argument, reliance has been placed on M/s. Shelja Pesticides Centre, Abohar v. State of Punjab, 1998(4) RCR(Crl.) 533 and Messrs Charan Singh and Co. and others v. State of Punjab, 1996(3) Recent CR 117 . In the given case in hand too the petitioner has been deprived of the valuable right to have the sample re analysed from the CEntal Insecticides Laboratory. Thus, the continuation of this complaint would be an abuse of the process of the Court.

9. In view of the foregoing discussion, this petition is allowed and the impugned complaint, Annexure P1, the summoning order as also the consequential proceedings flowing therefrom are hereby quashed qua the petitioner.