
(2001) 11 P&H CK 0128

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 3388-M of 1994

V.K. Pahwa

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 26-11-2001

Acts Referred:

Insecticides Act, 1968 — Section 17, 18

Citation : (2001) 2 CriminalCC 3

Hon'ble Judges : R.C. Kathuria, J

Bench : Single Bench

Advocate : Ravinder Chopra, for the Appellant; U.S. Dhaliwal, Assistant Advocate General, Punjab, for the Respondent

Final Decision : Allowed

Judgement

R.C. Kathuria, J.—V.K.Pahwa, petitioner-accused, seeks quashing of complaint qua him filed under Sections 3(k)(1), 17, 18, 29 and 33 of the Insecticides Act, 1968 (hereinafter referred to as "the Act") read with Rule 27(5) of the Insecticides Rules, 1971, which is pending in the Court of Additional Chief Judicial Magistrate, Ferozepur.

2. On 6.7.1987, complainant-Charan Singh Bhullar, Insecticides Inspector, Ferozepur visited the shop of Surinder Mohan, respondent-accused, proprietor of M/s Gupta Seed Store, VPO Dharam Kot, Tehsil Zira, District Ferozepur, who is the authorised dealer of M/s Tropical Agro Systems Pvt.Ltd. Madras. M/s Gupta Seed Store, Dharam Kot was dealing in pesticides/insecticides under Licence no. 681 dated 9.12.1985 issued by the Licensing Authority (C.A.O.), Ferozepur. At the time of inspection of the shop, Surinder Mohan accused was present. He as informed by the Insecticides Inspector that a sample of Thunder (Butachlore 50% EC) of Batch No.9 manufactured by M/s Tropical Agro Systems Pvt.Ltd., Madras was to be drawn by him. Thereafter, three samples of Thunder (Butachlore 50% EC) each measuring @ 300 ml. each were taken from the sealed tin of 5 liters packing of Batch No.9 and were put in three plastic bottles.

The seizure memo was prepared which was signed by Surinder Mohan. The plastic bottles were put in polythene bags separately and seizure memo was also put in polythene bags. Thereafter, the sample was sealed in accordance with the prescribed procedure and one sealed bottle was handed over to Surinder Mohan, accused and receipt was taken from him in this regard. One sealed sample was sent to the State Insecticides Testing Laboratory, Ludhiana through Shri Gurdeep Singh, Insecticides Inspector, Dharam Kot and the third sample was deposited in the office on 7.7.1987. On analysis, the Analyst declared the sample to be mis-branded as it did not conform to ISI specifications in respect of its percentage, active ingredient contents as the sample contained 44.05% instead of 50% active ingredients in violation of Section 3(k)(i) of the Act. Copy of the report was delivered to the dealer on 11.9.1987. As M/s Gupta Seed Store, Dharam Kot had sold mis-branded Weedicide Thunder (Butachlore 50% EC) and it was manufactured by M/s Tropical Agro Systems Pvt.Ltd., Madras, the complaint was filed under Sections 3(k)(i), 17, 18, 29 and 33 of the Act, wherein Surinder Mohan and V.K.Pahwa were arrayed as accused to face trial in the Court of Judicial Magistrate, First Class, Ferozepur on the basis of complaint filed by Insecticides Inspector, Ferozepur on 12.4.1988 in this regard.

3. On the basis of the facts stated in the complaint, Surinder Mohan, accused, Proprietor of M/s Gupta Seed Store, Dharam Kot and V.K.Pahwa being the manufacturer of M/s Tropical Agro Systems Pvt.Ltd. were summoned to face the trial in the above mentioned case. Aggrieved by the summoning order, the present petition has been filed by the petitioner.

4. In the petition many other grounds were taken to challenge the prosecution of the petitioner under Sections 3(k)(i), 17, 18, 29 and 33 of the Act on the basis of complaint filed but during the course of arguments, the launching of the prosecution was assailed on the sole ground that no legal sanction or valid sanction of the State Government for the prosecution of the petitioner as required u/s 31 of the Act was obtained and for that reasons cognizance could not be taken against the petitioner by the learned trial Magistrate. Accordingly, it had been prayed that complaint (Annexure P-1) impleading the present petitioner is liable to be quashed. Learned Counsel cited K.G.Papu and another V. State of Punjab, 1996(1) RCR 795; Vinod Goyal V. State of Punjab, 1996(2) RCR 336; Tannu Galhotra alias Neeraj V. State of Punjab, 1994(3) RCR 501 and Jayant Navalakha V. State of Punjab, 1999(2) RCR (Criminal) 764.

5. The State counsel could not controvert the stand taken from the side of the petitioner in this regard in view of the sanction order dated 18.3.1991 (Annexure P-2) placed on record.

6. The order dated 18.3.1991 of the Joint Director of Agriculture, ICDP (exercising the powers of joint Director of Agriculture (ICDP) u/s 31 (1) of the Insecticides Act, 1968) reveals that on the basis of record placed before him, he granted sanction for instituting prosecution against M/s Gupta Seed Store, Dharam Kot and M/s Tropical Agro Company Private Limited, Madras. It is

manifest that the sanction for prosecution of V.K.Pahwa had not been granted. In the complaint filed, the petitioner had been described as "Shri V.K.Pahwa of M/s Tropical Agro System Private Limited, 118, Broadway, Madras-600 108 (Manufacturer)" but it had not been disclosed in what capacity he is co-related to the aforesaid concern. Though, the company had been described as manufacturing company but it was the duty of the complainant to have clearly mentioned as to in what capacity the petitioner was being sued. Section 31 of the Act in clear terms bars the prosecution except with the written consent of the State Government of a person authorised in this behalf by the State Government. In the absence of sanction of the said authority, the Court is not competent to try any person for the offence committed under this Act. That being the position, the stand taken by the petitioner has to be accepted.

7. Consequently, the petition is allowed and complaint and all the incident proceedings qua petitioner-V.K.Pahwa stand quashed and it is ordered that he shall stand discharged from the list of accused in the complaint.