

(2007) 05 P&H CK 0043

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. 35746-M of 2001

M/s. Tanda Khad and
Pesticides Store and
Another

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: May 23, 2007

Citation: (2007) 3 RCR(Criminal) 784

Hon'ble Judges: S.D. Anand, J

Bench: Single Bench

Advocate: Rakesh Verma, for the Appellant; B.S. Sra, Dy. Advocate General, Punjab, for the Respondent

Final Decision: Allowed

Judgement

S.D. Anand, J.

The Petitioners are distributors of insecticides, sample whereof was seized by the Insecticide Inspector, Begowal, on 20.12.1996. The product had been manufactured in December, 1995 and the self-life thereof was to be over in December, 1997. The analysis report was received on 28.2.1997. The analysis report was communicated to the Petitioners vide letter dated 25.4.1997 (Annexure P-3). The Petitioners responded vide reply dated 3.5.1997 (Annexure P-4). Vide it, the Petitioners indicated that the analysis report was not acceptable to them. They requested for the re-analysis. The complainant/Inspector did not act in the context. The prosecution was launched against the Petitioners on 18.8.2000 (Annexure P-1). On the basis thereof, cognizance was taken by the learned Chief Judicial Magistrate, Kapurthala, who passed an order dated 18.8.2000 (Annexure P-2) summoning the Petitioners to stand trial.

2. Through the instant petition, the Petitioners aver invalidation of the impugned prosecution as their legal right for re-analysis stood defeated on account of delayed filing of the complaint. Further plea, in the context, is that they had indicated their

inclination for re-analysis vide letter dated 3.5.1997 (Annexure P-4) but no steps were taken in that behalf by the complainant.

3. Learned Deputy Advocate General, Punjab. appearing on behalf of the State of Punjab, argues that the re-analysis plea preferred in this matter was dismissed by the learned trial Magistrate vide order dated 19.11.1997 which (order) has attained finality because it was not challenged in any higher forum.

4. It is correctly pointed out by the learned Counsel for the Petitioners that the re-analysis application, rejected by the learned trial Magistrate, had been preferred by the manufacturer and not by the Petitioners.

5. The manufacturer and also the distributors have independent right to go in for a re-analysis of the second sample. The fact that a re-analysis plea preferred by the manufacturer came to be dismissed and attained finality, cannot defeat the legal right vested in the Petitioners to have a re-analysis exercise undertaken. The Petitioners did inform the Chief Agricultural Officer vide letter dated 3.5.1997 that they wanted to have re-analysis. In view of that response offered by the Petitioners, the complainant could have either moved the Court in the relevant behalf or could have proceeded to file the complaint in the Court forthwith in order to enable the Petitioners to raise whatever plea they wanted to in the matter of re-analysis. It is evident from the record that the complainant did not take any steps for purposes of re-analysis. The complaint was filed in the Court after inordinate delay. There is no explanation either to explain the inordinate delay in filing of the complaint.

6. Be that as it may, it cannot be controverted that the legal right vested in the Petitioners to have the re-analysis of the sample stands defeated, for no fault of theirs. In that view of things, the present prosecution against the Petitioners cannot be said to be competent.

7. The petition shall stand allowed. The complaint dated 18.8.2000 (Annexure P-1) and also the resultant order dated 18.8.2000 (Annexure P-2) shall stand quashed.