

(2006) 05 P&H CK 0202

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. 51425-M of 2005

M/s. Jindal Machinery Store

APPELLANT

Vs

State of Punjab thru. Insecticide
Inspector

RESPONDENT

Date of Decision: May 5, 2006

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482

Citation: (2006) 3 RCR(Criminal) 204

Hon'ble Judges: Satish Kumar Mittal, J

Bench: Single Bench

Advocate: Rakesh Verma, for the Appellant; N.S. Gill, A.A.G., Punjab, for the Respondent

Final Decision: Allowed

Judgement

Satish Kumar Mittal, J.

The petitioner firm has filed this petition u/s 482 of the Code of Criminal Procedure for quashing the complaint, Annexure P-1, titled as State of Punjab v. M/s. Jindal Machinery Store, Cheema and others, pending in the Court of Sub Divisional Judicial Magistrate, Sunam, under Sections 3(K)(i), 17, 18, 29 and 33 of the Insecticides Act, 1968 (hereinafter referred to as 'the Act') and further for quashing all the consequent proceedings arising out of the said complaint.

2. The petitioner, a licensed dealer firm, dealing in selling the insecticides/pesticides at Cheema Mandi, Tehsil Sunam, District Sangrur, in packed condition as packed by the manufacturers. One pack of 5 liters Butachlor 50% E.C., batch No. B-106, manufacturing date May, 1997 and expiry date April, 1999, manufactured by M/s. J&K Pesticides and Chemicals Corporation, was taken from the premises of the petitioner firm on 29.5.1998, which was found to be misbranded by the Senior Analyst Insecticide Testing Laboratory, Amritsar. Thereupon, the aforesaid complaint was filed.

3. In the instant petition, the primary contention of the petitioner firm is that it is neither the manufacturer nor distributor. It sells the insecticides in sealed packet as packed and stored by the manufacturer. The sample was taken from the original packet which was stored in proper condition. Thus, it is entitled for protection u/s 30(3) of the Act and the complaint filed against it under the Act is liable to be quashed.

4. Counsel for the petitioner further submitted that on the basis of the report of the Insecticides Testing Laboratory, in which sample of insecticide taken from the petitioner firm was found to be misbranded, its license was cancelled u/s 14 of the Act by the Licensing Authority vide letter dated 3.8.1998. Against that order, the petitioner firm filed an appeal u/s 15 of the Act before the Appellate Authority. In the said appeal, the petitioner took the aforesaid plea and claimed the protection u/s 30(3) of the Act. The appellate Authority vide order dated 12.10.1998 allowed the said appeal while holding that the petitioner is entitled for protection u/s 30(3) of the Act being dealer.

5. The learned counsel for the petitioner submitted that in view of this fact also, the complaint filed by the Insecticide Inspector against the petitioner is liable to be quashed.

6. The controversy involved in this petition is squarely covered by a decision of this Court rendered in *Rajinder Kumar v. State of Punjab*, 2003(2) RCR (Cri) 244, wherein it has been held as under :-

...It is, therefore, held that if the defences available to the dealer have been accepted in the proceedings pertaining to the cancellation of license by the appellate Authority u/s 15 of the Act by recording a finding in his favour, then the criminal prosecution for the contravention of the same provisions of the Act cannot be allowed to continue and can be quashed by the High Court, in exercise of the powers conferred upon it u/s 482 of the Code.

In view of the aforesaid discussion, we hold that the situation enumerated in Section 30(3) of the Act is the defence available to the accused dealer and he can avail this defence only after the prosecution leads its evidence to prove its case. Before that stage of prosecution, the criminal complaint or the criminal proceedings initiated against the accused dealer for contravention of the provisions of the Act cannot be quashed in exercise of the powers conferred u/s 482 of the Code on the basis of the averments made in the petition and admitted position in the complaint pertaining to the three situations mentioned in clauses (a), (b) and (c) of sub-section (3) of Section 30 of the Act. The only exception in which the criminal complaint and the prosecution can be quashed, is there where the defence available to the dealer u/s 30(3) of the Act has been accepted by the Appellate Authority u/s 15 of the Act while setting aside the order of suspension or revocation of his license. Thus, the question of law referred to this Bench is answered accordingly.

7. The instant case of the petitioner firm squarely falls under the aforesaid exception as its defence was accepted by the appellate Authority and a finding was recorded that it was entitled to protection available u/s 30(3) of the Act.

In view of the aforesaid discussion, the instant petition is allowed. The complaint (Annexure P-1) and the subsequent proceedings thereto are hereby quashed.

Petition allowed.