M/s. Hindustan Pulverizing Mills Vs State of Haryana

CRM-M-6097 of 2012 (O and M)

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: July 30, 2013

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) â€" Section 482#Insecticides Act, 1968 â€" Section 17, 18, 24, 24(3), 24(4)

Hon'ble Judges: R.P. Nagrath, J

Bench: Single Bench

Advocate: Anurag Chopra, for the Appellant; Manish Deswal, DAG, for the Respondent

Final Decision: Allowed

Judgement

R.P. Nagrath, J.
This petition u/s 482 Cr.P.C. has been filed for quashing complaint No. 669/2 dated 09.08.2008 (Annexure P-7) under

Sections 3(k)(i), 17, 18, 29 and 33 of the Insecticide Act, 1968 read with Rule 27(5) of Insecticide Rules, 1971 (to be referred in short as "the

Act") alongwith summoning order dated 09.08.2008 (Annexure P-8). I have heard learned petitioner"s counsel and State Counsel and perused

the record.

2. The premises of authorized dealer for sale of pesticide manufactured by petitioner was raided by Insecticide Inspector on 27.11.2007. Sample

of Carbendazim 12% + Mencozeb 63% WP insecticide manufactured on 13.08.2006 with date of expiry 12.08.2008, was taken. One part of the

sample was also handed over to the dealer. On receipt of the report of Insecticide Quality Control Laboratory, the sample was found misbranded

as it contained Carbendazim 11.9% + Mencozeb 57.6% WP against the prescribed standard. Copy of the test report was sent to the petitioner

and other accused vide letter dated 21.01.2008 (Annexure P-2). The complaint was filed before the Chief Judicial Magistrate on 09.08.2008 for

various offences falling under the Insecticide Act, 1968 and order (Annexure P-8) summoning the petitioner and others as accused, for

29.10.2008.

3. Learned counsel for the petitioner vehemently contended that petitioner moved an application dated 15.02.2008 (Annexure P-3) u/s 24(4) of

the Act before Chief Judicial Magistrate within the prescribed time for sending the second sample to the Central Insecticide Laboratory (CIL). The

Chief Judicial Magistrate dismissed the application on 16.04.2008 holding that the application was not filed by an authorized person of the

company. The petitioner through the same area Manager filed petition CRM-M-13407 of 2008, challenging the order of Chief Judicial Magistrate

and this Court allowed the petition by an order dated 07.08.2008 (Annexure P-6) that the expiry date of the product was 12.08.2008 and the

prayer for sending the sample could not be declined on mere technicality. The order passed by Chief Judicial Magistrate was, thus, set aside. It

was directed that the application filed by the petitioner be entertained and sample be sent for retesting u/s 24(4) of Insecticide Act.

4. The above order of this Court should have put the complainant/department on alert to ensure that sample reaches CIL on time but the order of

Chief Judicial Magistrate dated 13.08.2008 (Annexure P-10) would show that direction was issued to send the sample to CIL for re-analysis as

per rules, matter was fixed for 24.09.2008 for awaiting the report. However, Director, Central Insecticide Laboratory vide Annexure P-11 states

that sample was received on 20.08.2008 and the laboratory does not analyze the date expired pesticides as no conclusive decision could be taken

about the quality of the date expired pesticide due to presence of unknown degraded products generated in this type of pesticide sample.

5. It is, thus, quite clear that the petitioner on its part was not at all responsible for the events, as it had applied for re-testing on 15.02.2008 itself,

exercising the right available to it for sending second sample.

6. In view of the above undisputed facts this petition deserves to be allowed. The law laid down by Hon"ble Supreme Court in Northern Mineral

Ltd. Vs. Union of India (UOI) and Another, is squarely applicable to the facts of instant case. That was the petition filed by the manufacturer of the

insecticide. The Hon"ble Supreme Court held as under:-

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11. From a plain reading of Section 24(3) of the Act, it is evident that an accused within 28 days of the receipt of the copy of the report of the

Insecticide Analyst to avoid its evidentiary value is required to notify in writing to the Insecticide Inspector or the Court before which the

proceeding is pending that it intends to adduce evidence in controversion of the report. Section 24(4) of the Act provides that when an accused

had notified its intention of adducing evidence in controversion of the Insecticide Analyst report u/s 24(3) of the Act, the court may of its own

motion or in its discretion at the request either of the complainant or the accused cause the sample to be sent for analysis to the Central Insecticides

Laboratory. Under the scheme of the Act when the accused had notified its intention to adduce evidence in controversion of the report of the

Insecticide Analyst, the legal fiction that the report of the Insecticide Analyst shall be conclusive evidence of the facts stated in its report looses its

conclusive character. The Legislature has used similar expression i.e. the ""intention to adduce evidence in controversion of the report"" in both Sub-

section (3) and Sub-section (4) of Section 24 of the Act, hence both the expression has to be given one and the same meaning. Notification of an

intention to adduce evidence in controversion of the report takes out the report of the Insecticide Analyst from the class of ""conclusive evidence

contemplated under Sub-section (3) of Section 24 of the Act. Further intention of adducing evidence in controversion of the Insecticide Analyst

report clothes the Magistrate the power to send the sample for analysis to the Central Insecticides Laboratory either on its own motion or at the

request of the complainant or the accused. In face of the language employed in Section 24(4) of the Act, the act of the accused notifying in writing

its intention to adduce evidence in controversion of the report in our opinion shall give right to the accused and would be sufficient to clothe the

Magistrate the jurisdiction to send the sample to Central Insecticide Laboratory for analysis and it is not required to state that it intends to get

sample analysed from the Central Insecticides Laboratory. True it is that report of the Insecticides Analyst can be challenged on various grounds

but accused can not be compelled to disclose those grounds and expose his defence and he is required only to notify in writing his intention to

adduce evidence in controversion. The moment it is done conclusive evidentiary value of the report gets denuded and the statutory right to get the

sample tested and analysed by the Central Insecticides Laboratory gets fructified.

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14. We are distressed to note the casual manner in which the whole exercise has been done. Insecticide Inspector had collected the sample on

10th September, 1993 and sent it to the Insecticide Analyst for analysis and report. Insecticide Analyst submitted its report dated 13th October,

1993. Notice of the report was sent to the appellant on 1st November, 1993, in reply whereof by letter dated 17th November, 1993 it intimated

its intention to adduce evidence in controversion of the report. The shelf-life of the pesticide had not expired by that time but expired in February

1994. However, permission to file complaint was given on 23rd February, 1994 and the complaint was actually filed on 16th March, 1994. Had

the authority competent to grant consent, given consent and complaint lodged immediately after the receipt of intimation of the accused, sample

could have very well sent for analysis and report, before the expiry of shelf-life. It is interesting to note that Section 24(3) and (4) of the Act obliges

the Insecticide Analyst and Central Insecticides Laboratory to make the test and analysis and report within thirty days. When 30 days is good

enough for report, there does not seem any justification not to lodge complaint within 30 days from the receipt of the intimation from the accused

and getting order for sending the sample for test and analysis to the Central Insecticides Laboratory. All who are entrusted with the implementation

of the provisions of the Act, would be well advised to act with promptitude and adhere to the time-schedule, so that innocent persons are not

prosecuted and real culprits not left out.

Keeping in view the above principle, it is held that petitioner"s right to get the second sample analyzed, has been defeated for which he made

strenuous efforts. The petition is allowed and the complaint (Annexure P-7) and the summoning order (Annexure P-8) are quashed qua the

petitioner only.