
(2005) 05 P&H CK 0164

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. 5478-M of 2003

L.S. Negi

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: May 18, 2005

Acts Referred:

- Insecticides Act, 1968 - Section 3(k)(i)

Citation: (2005) 14 CriminalCC 853

Hon'ble Judges: Uma Nath Singh, J

Bench: Single Bench

Advocate: Rakesh Verma, for the Appellant; Ashok Bhardwaj, AAG, Punjab, for the Respondent

Final Decision: Allowed

Judgement

Uma Nath Singh, J.

Heard learned counsel for the parties and perused the records. This order shall also dispose of connected CrI.Misc.No.7846-M of 2004. In both these cases, the petitioner being production manager is an employee of a manufacturing company known as M/s. Trilo Agro Industries Ltd. In the instant case being CrI.Misc.No.5478-M of 2004, an Insecticide Inspector drew a sample of pesticide known as Isoporturon 75% w.p. from the shop premises of the dealer firm, being M/ s. Namdhari Seed Store, Nawanshahr on 27.11.1998. The sample was sent to the State Insecticide Testing Laboratory, Amritsar, and vide test report No. 1532 dated 8.12.1998, it was found not to conform to the I.S. specifications in respect of its active ingredients contents, i.e. 65.15% against given strength 75% and hence, it was found to be substandard as per the definition u/s 3(k)(i) of the Insecticides Act, 1968 (for short "the Act"). The petitioner was sent to copy of the report in time and he had shown no grievance on that count. Thereafter, a complainant (Annexure P-1) was presented under Sections 3(k)(i), 17,18,29(1)(a) and 33 of the Insecticides Act, 1968 as also under Rule 27(5) of the Insecticides Rules, 1971. Learned Judicial Magistrate 1st Class, Nawanshalir, look cognizance of the complaint and the

petitioner was summoned vide order dated 22.2.2000 (Annexure P-2). In the connected matter being Crl.Misc.No.7846-M of 2004, a sample of Methyle Parathion 2% D.P. was taken from the shop premises of the dealer known as M/s. Namdhari Seed Store, Nawanshahr on 18.5.1999. The sample was sent to the State Insecticide Testing Laboratory, Ludhiana, for analysis which vide a test report No.AR-37 dated 26.5.1999, found that the same did not conform to I.S.specifications with respect to its percentage of active ingredient content requirements. Hence, the sample was found to be misbranded in terms of Section 3 of the Act. Consequently, the petitioner was held liable to be prosecuted and punished u/s 29(1) (a) of the Act.

2. The main submissions of learned counsel for the petitioner are three-fold, namely, (i) the company has not been arrayed as party, which is contrary to the settled principles of law pronounced and reiterated in the judgments of Hon"ble the Apex Court so also of this Court; (ii) no where in the complaint it is mentioned that the petitioner was incharge of and responsible to conduct of day to day affairs and business of the company; and (iii) even if the prosecution decided to correct the defect in terms of judgment of Hon"ble the Apex Court reported in AIR 1988 SC 1128 (U.P. Pollution Control Board v. Modi Textile and others), it would not be possible to do so in view of bar created u/s 468 Cr.P.C. as the offence is punishable only with a sentence of two years and the limitation prescribed thereunder is three years. On the other hand, learned State Counsel submitted that in terms of U.P. Pollution Control Board's case (supra), the defect could have been removed and further in terms of Section 470 Cr.P.C. the period of limitation can also be got over. Learned counsel also referred to the provisions of Section 473 Cr.P.C. to say that the court has been given discretion to condone delay in the interest of justice. Learned counsel also referred to Para No. 11 of the order (Annexure P-1) to argue that the petitioner has been nominated as responsible officer.

3. Having heard the rival submissions and from perusal of the record, I find considerable force in the submissions of learned counsel for the petitioner inasmuch as, the sanctioning authority vide Annexure P-3 had found the companies, namely, M/ s. Namdhari Seed Store, Nawanshahr and M/s. Trilo Agro Industries Ltd., Ambala City, liable to be prosecuted but in the complaint, they have not been arrayed as parties and further the complaint does not contain a vital averment that the petitioners were incharge of and responsible to conduct of day-to-day affairs and business of the company. Learned counsel also cited an order of this Court in Crl.Misc.No.31259-M of 1998, rendered after placing reliance on three judgments of Hon"ble the Apex Court reported as : (i) Sham Sunder and others v. State of Haryana, 1989(2) RCR 494; (ii) State of Haryana v. Brij Lal Mittal, 1998(2) RCR 608; and (iii) Monaben Ketanbhai Shah and another v. State of Gujarat and others, 2004(3) CCC 598 (S.C.): 2004 ACJ 473 (S.C.): 2004(3) RCR 799. The Court in its concluding paragraph has held as under:-

Hving given anxious considerations to the rival submissions and from perusal of the record and the judgments cited, it would appear that the position is very clear that only a partner being in charge of and responsible for conduct of day-to-day business of the

company/firm can be prosecuted for contravention of provisions of the Act or Control Order and none else. Needless to say that Hon"ble the Supreme Court has reiterated this principle time and again in successive judgments on this point. Thus, submissions of learned State counsel do not carry any force as the aforesaid provisions cannot be construed and understood in the manner he has submitted. That apart, this being a Control Order, has to be sub-servient to and should also be in conformity with the provisions of the Act.

4. Learned counsel also referred to a judgment of this Court reported in 1997(2) RCR(Cri.) 565 (S.H. Chisty v. State of Haryana) wherein, it has been held that no prosecution can be lodged against any officer of the company without prosecuting the company itself. A similar view was also taken in another judgment of this Court reported in 1998(1) RCR(Cri.) 340 (Narender Singh v. State of Punjab). In yet another judgment of this Court reported in 1998(2) RCR(Cri.) 611 (K.R. Das, M.D. Vantech Industries Ltd. v. State of Punjab), the aforesaid ratio has been further reiterated. Even in a judgment on Essential Commodities Act containing pari material provisions reported in 2003(1) CCC 149 (P&H): 2002(4) RCR(Cri.) 436 (S.C. Sharma, Managing Director v. State of Haryana), a similar view has been taken. Other judgments cited on this point are reported in 2002(4) RCR(Cri.) 704 (Ram Singh v. State of Haryana) and 2002(2) CCC 1 (P&H): 2002(2) RCR(Cri.) 50 (Manjit Singh Guliani v. State of Punjab). As regards the second submission of learned counsel for the petitioner that there should be specific averment to the effect that the petitioner was incharge of and responsible to conduct of day-to-day affairs of the company, it is covered by the order of this Court in CrI. Misc. No.31529-M of 1998 (supra) wherein three judgments of Hon"ble the Apex Court have been referred to. Regarding the third submission of learned counsel, in terms of Section 29 of the Act, the offence is punishable with two years sentence and, therefore, barred under the provisions of Section 468 Cr.P.C. The sample was taken way back in 1999 and after a gap of six years, even if the prosecution takes steps to remove the infirmity as pointed out in the complaint, the provisions of Section 468 Cr.P.C. would create a clear bar against taking of cognizance by the Court.

5. Under the circumstances, the impugned complaints and summoning orders cannot endure the test of judicial scrutiny and thus to continue with such proceedings would amount to abuse of process of the Court. Hence, to secure the ends of justice, both the petitions are allowed and consequently, the impugned complaints and summoning orders are hereby quashed.