

(2003) 07 P&H CK 0182

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. 35837-M of 1999

M/s Dashmesh Pesticides

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: July 2, 2003

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Insecticides Act, 1968 - Section 14, 15, 17, 18, 29

Citation: (2003) 6 CriminalCC 342 : (2003) 3 RCR(Criminal) 725

Hon'ble Judges: Satish Kumar Mittal, J

Bench: Single Bench

Advocate: Arun Chandra, for the Appellant; Swati Gupta, AAG Punjab, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Satish Kumar Mittal, J.

The petitioner has filed the instant petition u/s 482 of the Code of Criminal Procedure for quashing the complaint filed against it under Sections 3(k) (1), 17, 18, 29 and 33 of the Insecticides Act, 1968 (hereinafter referred to as "the Act") read with Rule 10 of the Insecticide Rules, 1971 by the Insecticide Inspector and further for quashing all the consequent proceedings arising out of the said complaint.

2. Petitioner is a licensed dealer and who deals in selling the insecticides in packed condition as packed by the manufacturers. A sample of Butachlor 50% EC Batch No.01, manufacturing date 5/95 and expiry dated 4/97 was taken from it on 14.6.1996 which was found to be mis-branded by the Public Analyst. Thereupon, the aforesaid complaint was filed.

3. In the instant petition, the primary contention of the petitioner is that it is not the manufacturer or distributor. It sells the insecticides in sealed packed container as

packed and stored by the manufacturer. The sample was taken from it in original packed container 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of the Public Analyst, in which sample of insecticide taken from the petitioner was found to be misbranded, its license was revoked u/s 14 of the Act by Licensing Authority vide order dated 24.4.1997. Against that order, the petitioners 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 11.5.1998 allowed the said appeal while holding that the petitioner is entitled for protection u/s 30(3) of the Act being dealer. 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.

5. 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 the 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 where the defence available has been accepted by the Appellate Authority u/s 15 of the Act while setting aside the order of suspension or revocation of his licence. Thus, the question of law referred to this Bench is answered accordingly.

6. The instant case of the petitioners squarely falls under the aforesaid exception as their defence was accepted by the Appellate Authority and a finding was recorded that the dealer 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-2) and the subsequent proceedings thereto are hereby quashed.