

(2008) 08 P&H CK 0182

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. 5329-M. of 1994

Kissan Agro Chemicals

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision: Aug. 9, 2008

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Insecticides Act, 1968 - Section 17, 18, 3(k), 31, 33

Hon'ble Judges: Hemant Gupta, J

Bench: Single Bench

Advocate: R.S. Cheema, with Mr. Rajiv Trikha, for the Appellant; Swati Gupta, Asstt. Advocate General, Punjab, for the Respondent

Final Decision: Allowed

Judgement

Hemant Gupta, J.

The petitioner which is a Unit of Puri Agro Chemicals Pvt. Ltd. this petition u/s 482 Cr.P.C. has sought quashing of complaint under Sections 3 (k), 17, 18 and 33 of the insecticides Act, 1968 read with rule 27(5) of the Insecticides Rules, 1971 and subsequent proceedings.

2. The brief facts out of which the present petition has arisen are that Satwant Singh Insecticides Inspector inspected the shop of Madan Trading Corporation on 29.8.1985 and purchased 3 tins of 500 ml. each of Insecticides Monokiss (Monocrotophos 36%) manufactured by the petitioner. Three separate samples were prepared and sealed. One sealed sample was handed over to the dealer (Madan Lal) along with declaration form No. XII. The other sample was deposited in the office of Chief Agricultural Officer, Bathinda, whereas the third sample was sent to Senior Analyst Insecticide Testing Laboratory, Ludhiana who reported that the active ingredient was only 22.697% against 36% and therefore, the sample is misbranded. Notice of the report was given to the dealer vide registered letter dated

8.10.1995. Subsequently, the present complaint had been filed.

3. Since the dealer has not exercised any option to get the sample re- analysed, the Joint Director Agriculture, exercising the powers u/s 31 of the Act, granted sanction for institution of proceedings against Madan Trading Corporation, Bathinda and its partners Madan Lal and Ajay Kumar, vide order dated 28.7.1994, Annexure P4. On the basis of such Sanction, complaint, Annexure P.1 was instituted not only against Madan Trading Corporation through its partners Madan Lal and Ajay Kumar but also against the petitioners through its Directors.

4. The petitioner has sought quashing of the complaint inter alia on the ground that there was no Sanction by the State Government u/s 31 of the Act, in respect of manufacturer and its Directors. Therefore, a complaint against such manufacturers is an abuse of the process of law. The petitioner has also sought quashing of complaint on the ground that filing of complaint after the expiry of shelf-life defeats the valuable right granted to the manufacturer to seek re-analysis and on the ground that there is no allegation in the complaint that the petitioners were incharge or responsible to the company for the conduct of its business.

5. A perusal of the sanction order, Annexure P4 would show that it is only in respect of Madan Trading Corporation, Bathinda and its partners. No Sanction has been granted in respect of the petitioners who have been impleaded in the complaint as manufacturer of the insecticides. The petitioner has relied upon Jayant Navlakha v. State of Punjab, 1999 (2) RCR (Cri) 765 ; K.G. Papu and another v. State of Punjab, 1996 (1) RCR 795 and Vinod Goyal v. State of Punjab 1996 (2) RCR 336 to contend that if the prosecution has not obtained mandatory Sanction u/s 31 of the Act, the Magistrate cannot take cognizance against the petitioners.

6. On the other hand, learned State Counsel argued that Section 31 of the Act, contemplates sanction in respect of the prosecution or an offence and not prosecution in respect of any offender, therefore, competent authority having granted sanction in respect of an offence would be deemed to be a valid Sanction in respect of the petitioner as well.

7. I have heard Shri Rajiv Trikha, Advocate, learned counsel for the petitioners and Miss Swati Gupta, Assistant Advocate General, Punjab and with their assistance have gone through the record of the case. However, I am unable to agree with the contention raised by the learned State Counsel. It is consistent view, being held by different High Courts as well that the "prosecution" if reasonably interpreted, must have reference to specific individuals and to specific facts against them. Thus, the authority instituting the prosecution or authorising the prosecution is expected to apply his mind to the alleged commission of an offence by the accused person and should be satisfied that the accused has been prosecuted for the said offence. Reliance has been made to Bijai Lal Vs. State, in which reliance has been made on City Corporation of Trivandrum Vs. V.P.N. Arunachalam Reddiar and Another, the

Hon"ble Rajasthan High Court was dealing with the provisions contained in Section 28 of the Prevention of Food Adulteration Act, wherein it was held that "Now, Section 28 of the Act, clearly implies that the legislature has thought it proper to treat the offences under the Act, as falling into special category and requires that the prosecution for these offences can be instituted by or with the consent of the authorities and persons named in the Sub-section. In my opinion, the expression "prosecution reasonably interpreted must have reference to specific individuals and to specific facts against them. It follows that the authority instituting the prosecution of authorising the prosecution by his consent should apply his mind to the alleged commission of an offence by the accused person and should be satisfied that the accused has to be prosecuted for the said offence." Such view of the Rajasthan High Court has been followed in State through Nagar Mahapalika v. Prem Parkash Jauhar, AIR 1966 All 504; and Dr. Guneshwar Singh v. the State of Bihar and others 1975 (1) F.A.C. 143 as well as the judgments cited by the petitioner as mentioned above.

8. In view of above when the Sanction to lodge prosecution has been granted only in respect of M/s. Madan Trading Company and its partners, therefore, the prosecution of the petitioner as party in the said complaint is an abuse of the process of law and contravenes the mandatory provisions of Section 31 of the Act.

9. Since the petition is liable to succeed only on the ground that there is no Sanction to launch prosecution against the petitioner as contemplated u/s 31 of the Act, therefore, there is no necessity to deal with the other arguments of the petitioner.

10. Consequently, I allow this petition and quash the complaint, Annexure P4 (-sic-) qua the petitioners. The learned trial Court is directed to proceed in the matter in accordance with law.