

Dow Agro Sciences India Private Limited Vs The State of Bihar

Court: Patna High Court

Date of Decision: Nov. 10, 2014

Acts Referred: Insecticides Act, 1968 " Section 24(1), 24(3), 29
Penal Code, 1860 (IPC) " Section 420

Hon'ble Judges: Ashutosh Kumar, J

Bench: Single Bench

Advocate: Keshav Srivastava, Sr. Advocate, Bhuneshwar Prasad and Vijay Shankar Sinha, Advocate for the Appellant; Jharkhandi Upadhyaya, APP, Advocate for the Respondent

Judgement

Ashutosh Kumar, J.
Heard.

2. Petitioner No. 1 is a Company incorporated and is a Indian Subsidiary of Dow Agro Sciences, L.L.C., U.S.A., a joint venture Company of

Mauritius and Mumbai. Petitioner No. 2 is the Sales Executive of petitioner No. 1.

3. The present application is filed against the order dated 07.01.2008 passed by the learned Chief Judicial Magistrate, Muzaffarpur in connection

with Complaint Case No. C-05 of 2008, whereby cognizance has been taken under Section 29 of the Insecticide Act and Section 420 of the

Indian Penal Code.

4. One Insecticide Inspector-Cum-Junior Plant Protection Officer, Muzaffarpur launched a prosecution against the petitioners and others alleging

that the Insecticide (Miraculan) which was drawn from M/s. Kushwaha Traders, Muzaffarpur was found to be misbranded as it lacked the

necessary strength of its major ingredient. The generic name of (Miraculan) is (Triacontanol) and the content of it is expected to be not less than

0.05%. On analysis of the sample of (Miraculan) referred to above it was found to be having strength of 0.02%.

5. Learned counsel for the petitioners submits that the entire prosecution is bad on the ground that the samples so drawn from M/S Kushwaha

Traders, Muzaffarpur was not in accordance with Rules in that regard. The petitioners are not even aware as to whether the storage of the sample

was also not in accordance with the Rules. The petitioners are also completely unaware about whether the entire phial of the Insecticide was sent

for analysis or only a portion of the same.

6. The petitioners also raise a grievance that in terms of Section 24(1) of the Insecticide Act, the analysis has to be completed within 30 days of its

receipt. The analysis admittedly was done after the required period of 30 days. The petitioners were not satisfied about the genuineness of the

analysis and therefore, in terms of Section 24(3) of the Insecticide Act and Rules framed thereunder, made a demand for its re-analysis before

State level Laboratory. Such a prayer for the petitioners was refused.

7. Learned counsel for the petitioners further submits that the concerned batch of the Insecticides in question has passed the test of specifications

deficiency was found by the testing Laboratory.

8. Considering the fact that the samples were not drawn and stored in accordance with Rules and that the petitioners were not afforded the liberty

of having the sample re-analyzed, no charges could be maintained as against the petitioners. The prosecution has miserably failed in its duty of

properly drawing the sample, storing the same and having its analysed within the specified period.

9. Considering the above fact and on the aforementioned reasons the order taking cognizance dated 07.01.2008 is set aside.

10. The application is allowed.