

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CrI.O.P No.28840 of 2010

M.Palaniswamy (Alias) Selvaraj

... Petitioner

vs.

Government of India Represented by
Dr.Suresh Chandra Bansal,
Insecticides Chandra Bansal,
Insecticides Inspector (Deputy Director, Entomology)
Director of Plant Protection Quarantine and Storage (DPPQS)
(Ministry of Agriculture)
NH – IV Faridabad – 121 001.

... Respondent

Prayer: Criminal Original Petitions filed under Section 482 of Cr.P.C., to
call for the records of C.C.No.251 of 2007, on the file of the learned
Judicial Magistrate No.1, Coimbatore and quash the same.

For Petitioner

: Mr.D.Nellaippan

For Respondent

: Mr.J.Madanagopal
(SC GSC)

JUDGMENT

The petitioner has come up with the present original petition to quash the proceeding in C.C.No.251 of 2007 pending on the file of the learned Judicial Magistrate, No.1, Coimbatore. The short facts of the case of the petitioner is that he is dealer under M/s.Northern Minerals (limited) having registered at No.861-862 Joshwa Road, Karolbagh, New Delhi. The said Northern Minerals is the manufacturer of pesticides and from whom the petitioner purchased the insecticides under proper invoice on 07.01.2005.

2.However, a sample of Mancozeb 75% W.P. Batch No.D.M.-45-25-B, date of manufacturing May, 2004 and the date of expiry in April, 2006 from the premises of the petitioner. The samples 3 in numbers taken from the premises of the petitioner were sealed by the Inspector concerned. Out of the 3 sealed samples taken, one was handed over to the petitioner and the remaining 2 samples taken by the respondent into his custody.

3.Later in view of Section 22(6) of Insecticides Act, one sample was sent for analysis and as per the analysis report active ingredients contents found to be 69% as against 75%. Hence the sample was declared failed as the same was not within the required specification and termed as mis-branded. Subsequently, the respondent filed a complaint before the

concerned Judicial Magistrate as against the petitioner and 2 others, who are manufacture under Rule 27(5) of the Insecticides Rule, 1971 for violation of section 3 K(1) of Insecticides Acts 1968. The further case of the petitioner is that based on the complaint, the learned Judicial Magistrate No. 1 Coimbatore has taken cognizance of the complaint and issued summons to the petitioner.

4.It is the further case of the petitioner that since in taking the samples from the premises of the petitioner there are procedural irregularity and the same would definitely affect the complaint filed by the respondent. Further, no written consent is obtained from the concerned officials of the State Government. The petitioner further submits that the name of the Insecticides Inspector and laboratory where tested the sample and declared the same as mis-branded is illegal and the same is not in consonance with the Act and rules. So, the proceeding, according to the petitioner, is liable to be quashed.

5.I heard Mr.D.Nellaiappan, learned counsel appearing for the petitioner and Mr.J.Madanagopal, learned counsel appearing for the respondent and all the materials available on record are perused.

6.It is the specific case of the petitioner that the entire exercise carried out by the Insecticides Inspector is against the Insecticides Act

and Rules. Moreover, the complaint of the respondent does not disclose, any particulars regarding the taken of the sample and the place where the samples sent for analysis. He has not obtained consent from the State Government in written form. Time and again, the Hon'ble Supreme Court has held that the written consent should be specific based on the case and not standard proforma is available. Further, the learned counsel for the petitioner contended that the proceedings is liable to be quashed since no procedures adopted by the respondent, as per the provisions of the Act and the rule as contemplated under the Insecticides Act and rules. Therefore the proceedings is to be quashed.

7.The complaint, under challenge in C.C.No.251 of 2001 is perused, it is filed under section 27(5) of the Insecticide Act, 1957 for the violation of the provisions of Insecticides Act, 1968 Section 3(K)(i) Punishable under Section 29 a(i) of the Insecticides Act for the useful reference 29 a (i) of the Insecticide Act, 1968 reproduced hereunder:

29. Offences and punishment

1. Whoever,

a. imports, manufactures, sells, stocks or exhibits for sale or distributes any insecticide deemed to be misbranded under sub-clause (i) or sub-clause (iii) or sub-clause (viii) of Cl. (k) of Sec. 3 or

b. Imports or manufactures any insecticide without a

certificate of registration; or

c. Manufactures, sells, stocks or exhibits for sale or distributes an insecticide without a license; or

d. Sells or distributes an insecticide, in contravention of Sec. 27; or

e. Causes an insecticide, the use of which has been prohibited under Sec. 27, to be used by any worker; or

i. Obstructs an Insecticide Inspector in the exercise of his powers or discharge of his duties under this Act, or the rules made there under, shall be punishable

ii. For the first offence, with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees, or with both;

iii. For the second and a subsequent offence, with imprisonment for a term which may extend to three years, or with fine, or with both.

2. Whoever uses an insecticide in contravention of any provision of this Act or any rule made there under shall be punishable with fine, which may extend to five hundred rupees.

3. Whoever contravenes any of the other provisions of this

Act or any rule made there under or any condition of certificate of registration or license granted there under, shall be punishable

- a. For the first offence, with imprisonment for a term which may extend to six months, or with fine or with both;
- b. For the second and a subsequent offence, with imprisonment for a term which may extend to one year, or with fine or with both.

4. If any person convicted of an offence under this Act commits a like offence afterwards it shall be lawful for the Court before which the second or subsequent conviction takes place to cause the offenders name and place of residence. The offence and the penalty imposed to be published in such newspapers or in such other manner as the Court may direct.

8. It is not in dispute that the petitioner is the dealer dealing with pesticide by obtaining the same from a licensed manufacture. It is also not in dispute that on 07.01.2005, 3 samples of Mancozap 75% W.P. (Dhanuga) M-45 available in 250 grams originally sealed packing was drawn in the presence of Senior Scientific Assistant-III. Two samples were taken by the concerned officer one sample was handed over to the petitioner. As per the analysis report the active ingredient contents found

to be 69% as against 75% . Hence the sample is termed as mis-branded. Whereas, the complaint does not disclose that prior to that whether the Inspector of Insecticides obtained any consent letter from the State Government in this regard.

9. Moreover, no procedure in taking the samples from the petitioner is followed. So, according to the Counsel for the petitioner the act of mis-branded the samples taken from the petitioner is illegal in view of the law laid by the Hon'ble Supreme Court in 1991 CRLJ 264 and 1994 CRLJ 158.

10. Per contra, the learned counsel appearing for the respondent has stoutly denied the averments of the petitioner and the point raised by the counsel for the petitioner, Further, similar case was already dealt with by this Court in a different occasion in CrI.O.P.No.35569 of 2007 dated 13.08.2010, wherein it is held that:

"13. Insofar as the first accused is concerned, the cause title of the complaint reads as follows:

"Government of India, Rep. By,
Dr. Suresh Chandra Bansal,
Insecticides Inspector (Deputy Director, Entomology)
Directorate of Plant Protection Quarantine and Storage
(DPPQS)
(Ministry of Agriculture)
NH-IV, Faridabad-121001. .. Complainant

Vs.

1. Shri M.K. Dhanuka,

Managing Director, Northern Minerals Limited,
(Pesticide Division)
Dhanuka House, 861-862, Joshi Road,
Karol Ragh,
New Delhi 11005 (Manufacturer)

.. Accused -1

2.Shri R.Shankar, Regional Marketing Manager,
Northern Minerals Limited,
4/48, Anna Salai, Swarna Puri,
Salem-636004 (Manufacturer)

.. Accused -2

3.Shri M.Palaniswamy (Alias) Selvaraj,
N.S.M. Fertilizers,
6, Panchayat Complex, M T P Main Road,
Thudiyalur P.O,
Coimbatore-641 034 (Dealer)

.. Accused -3"

As per the cause title the Managing Director viz., Mr.M.K.Dhanuka, Northern Minerals Limited (Pesticide Division), New Delhi-110005 is prosecuted and not manufacturer viz., Northern Minerals Limited. The cause title also does not read as Northern Minerals Limited (Pesticide Division) represented by the Managing Director, M.K.Dhanuka. If the company represented by the Managing Director is prosecuted then the ratio laid down in JT 2005 (8) SC 450 in S.M.S.Pharmaceuticals Ltd. v. Neeta Bhalla and Anr. and the unreported decision of this Court made in CrI.O.P.Nos.28237 of 2004 etc., batch dated 28.10.2009 are applicable. But an individual in his capacity as the Managing Director of the manufacturer is being prosecuted as stated above and there is no whisper/any allegation against the petitioners that they are in charge of and responsible for the conduct of the business of affairs of the company and the complaint proceeding on the basis of the chemical analysis reports given by the laboratories. It is pertinent to point out at this juncture, the company is not arrayed as accused but it's Managing Director is prosecuted. In the considered opinion of

this Court, the decision rendered by the Punjab & Haryana High Court (cited supra) is squarely applicable to the facts of this case.

13.In the absence of any specific averments and in the light of the reasons recorded above, this Court is of the considered opinion, that the proceedings in C.C.No.251 of 2007 pending on the file of Judicial Magistrate No.I, Coimbatore insofar as the petitioners/A1 and A2 are concerned are liable to be quashed.

14.In the result, the criminal original petition is allowed and the proceedings in C.C.No.251 of 2007 pending on the file of the Judicial Magistrate No.1, Coimbatore insofar as the petitioners 1 and 2/A1 and A2 are quashed. Consequently, connected miscellaneous petition is closed."

11.The case on hand has also having nexus with the order passed by this Court in CrI.O.P.No.35569 of 2007. At this juncture, this Court has no option except to quash the proceedings in C.C.No.251 of 2007 on the file of the Judicial Magistrate No.1.Coimbatore accordingly quashed.

Note:Issue order copy on 09.08.2017

Internet : Yes

Index : Yes

vs

To

The Judicial Magistrate No.1,
Coimbatore

M.V.MURALIDARAN,J.

VS



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