

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-935-SBA-2005 (O&M)

Date of decision: September 25, 2017.

State of Punjab

... **Appellant**

v.

M/s Satnam Kheti Store and others

... **Respondents**

CORAM: **HON'BLE MR. JUSTICE A.B. CHAUDHARI**

Present: Shri Dhruv Dayal, Sr. Dy. AG, Punjab.

None for the respondents.

A.B. Chaudhari, J. (Oral):

Being aggrieved by the judgment and order dated 1.11.2004 passed by SDJM, Baba Bakala in complaint case No.232 filed by the State through Insecticides Inspector, Mehta, District Amritsar under the Insecticides Act by which the respondents/accused were acquitted, present appeal against acquittal was filed by the State of Punjab.

In support of the appeal, Learned Counsel for the State vehemently argued that the impugned judgment and order of the trial court is clearly illegal. According to him, the finding that the independent witness was not joined, would not go against the prosecution as the law by now is well settled that it is not necessary to have independent witness in such a case. He then argued that the mere fact that the licence was restored to the respondents would make no difference as the criminal law is independent of the administration action of restoring the licence. He then argued that the

trial court has wrongly rejected the sanction at least qua the accused for whom it was granted.

None appears for the respondents.

I have gone through the impugned judgment and order passed by the trial court. I have gone through the sanction order that was issued by the competent authority. At the outset, I find that the sanction was passed against three persons whereas the complaint was filed against seven persons. Thus, filing of the complaint itself was misconceived against the remaining persons.

In so far as the first contention raised by Learned Counsel for the State is concerned, I find that this Court has consistently taken the view in several judgments, which have been cited by the trial court in its judgment. I quote the following from paragraph 10 thereof, which clearly shows that the trial court relied on all those judgments to hold that if the competent authority after receipt of the report from the laboratory restores the licence, the prosecution would not be maintainable or otherwise the accused will have to be acquitted. The relevant extracts from paragraph 10 read thus:-

“... The learned defence counsel had relied upon Rajinder kumar vs. State of Punjab (DB) reported in 2003(2) RCR (Criminal) 244 in which it has been held by our Hon'ble High Court that “prosecution of accused on allegation of selling misbranded insecticide. Departmental authority exonerated the accused and restored his licence. Prosecution against accused quashed on the ground as department found him not guilty.” The same view was taken by our Hon'ble High Court in 2003(3) RCR (Criminal) 843 in case titled as M/s Kissan Sales Corporation vs. State of Punjab, 2003(2) RCR (Crl.) 650 in case titled as M/s S.S. Aggarwal & Co. & others vs. State of Punjab and 2003(3) RCR (Criminal) 725 in case

titled as M/s Dashmesh Pesticide, Boha Distt. Mansa vs. State of Punjab through Insecticide Inspector Mansa. The law laid down in these citations is fully applicable to the facts of the case in hand. In the instant case also departmental authority exonerated the accused and restored his licence. It is clearly held by our Hon'ble High Court that if the defences available to the dealer have been accepted in the proceedings pertaining to the cancellation of licence by the appellate authority under Section 15 of the Act by recording a finding in his favour, then the criminal prosecution for the contravention of the same provision of the Act cannot be allowed to continue. The defence, as available to such a dealer under sub-section (3) of Section 30 of the Act, cannot be different in the proceedings pertaining to cancellation of his licence and in the criminal proceedings initiated against him. When his licence has been restored by accepting his defence under Section 30(3) of the Act, then accused is entitled to benefit of doubt.”

“... In view of these citations, it is clear that dealer/distributor has no knowledge that insecticide sold by him is misbranded. It is not case of the complainant that dealer/distributor had tampered with the original seal of container or was selling the insecticides in loose condition. ...”

Those judgments are binding on this Court and, therefore, there is no reason to take another view of the matter. Admittedly, in the present case, as admitted by the Insecticides Inspector in his cross examination, the licence was restored by the competent authority. Thus, the question in the present case is no more *res integra* this Court having delivered the judgments accordingly.

In the result, I find no merit in the appeal. The same is consequently dismissed.

September 25, 2017.

kadyan

[A.B. Chaudhari]
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No