HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Revision Case No.2286 of 2011

ORDER:

This Criminal Revision Case is preferred by the petitioners/A5 and A6 aggrieved by the judgment dated 05.01.2011 in Crl.A.No.94 of 2010 passed by learned IV Additional District and Sessions Judge, Kurnool, partly allowing the appeal and setting aside the judgment in C.C.No.201 of 2008 passed by learned Judicial Magistrate of First Class, Kurnool, convicting the accused for the offence under Section 29(1)(a) r/w 3(k) (i) of the Insecticides Act, 1968 (for short "the Act") and sentencing them to suffer SI for three months and to pay fine of Rs.10,000/- in default to suffer SI for one month.

2a) A1 is the licensed shop at Dhone; A2 is the proprietor of A1—firm; A3 is the pesticides distributor firm; A4 is the Managing Partner of A3—firm; A5 is the manufacturing unit of pesticides located at Hyderabad and A6 is the chemist and responsible for day today administration of A5—unit.

b) The prosecution case is that on 13.09.2005, the Mandal Agricultural Officer and Insecticides Inspector, Dhone inspected the premises of A1—firm and A2 was present in the shop. At the time of inspection, different types of pesticides were stocked for sale in the A1—firm which includes 34 bottles of Dicofol 18.5% EC (Hycofol) batch No.1010 mfg. Oct. 2004, distributed by A.3 and A.4 and manufactured by A5 and A6. The Inspector took samples of Dicofol 18.5% EC from A1 shop in the presence of A2 and sent for analysis. The analyst opined the sample is misbranded. Hence, the accused are liable for punishment for the offence under Section 29(1)(a) r/w 3(k)(i) of the Act.

c) The Trial Court convicted all the accused for the offence under Section 29(1)(a) r/w 3(k)(i) of the Act and sentenced them as stated supra.

d) Aggrieved, the accused carried the matter in appeal—Crl.A.No.94 of 2010. The lower Appellate Court was of the view that subject pesticide was stored in the same condition as they received from the manufacturer and they were not tampered. Therefore, it found that A.1 to A.4, who are stockists and distributors, cannot be found fault and accordingly, acquitted A.1 to A.4. However, it held that A.5 being the Manufacturer and A.6 being the Chemist, cannot escape their liability and ultimately partly allowed the appeal by acquitting A.1 to A.4. While confirming the conviction passed by the Trial Court against A.5 and A.6, however, modified the sentence directing A.5 & A.6 to pay enhanced fine of Rs.20,000/- instead of Rs.10,000/- each and in default to suffer SI for one year and set aside the sentence of 3 months imprisonment passed against A.6.

Hence the instant Criminal Revision Case by A.5 & A.6.

3) Heard arguments of Sri Koka Satyanarayana Rao, learned counsel for petitioners and learned Additional Public Prosecutor for the State (AP).

4) Severely fulminating the judgment of the lower Appellate Court holding petitioners/A.5 and A.6 as responsible for the offences, learned counsel for petitioners would argue that A.5 is the company, which manufactured the disputed pesticide Dicofol 18.5% E.C and A.6 is its Chemist. The lower appellate Court as well as the Trial Court ought to have seen that the panch witnesses have not supported the aspects of lifting samples by PW.2 and hence except the sole testimony of the interested witnesses i.e, PW.2, who is the Mandal Agricultural Officer, there is no other independent evidence to show that the samples of Dicofol 18.5% E.C pesticide were lifted from the shop of A.1 by following due procedure. On that ground itself, the Trial Court as well as the lower Appellate Court ought to have dismissed the complaint. Sofaras A.6 is concerned, learned counsel argued that he is only a chemist in the Manufacturing Unit of A.5 and he was not the in-charge or responsible to the company for the conduct of its business at the relevant time of the offence and therefore, even if it is admitted for arguments sake that he was part of the manufacture of pesticide Dicofol 18.5% E.C, he cannot be held guilty of the offence under Section 29(1)(a) r/w Section 3(k)(i) of the Act because the prosecution miserably failed to establish by cogent evidence that A.6 was in-charge or responsible to the company for the

conduct of its business. Hence A.6 deserves acquittal. To buttress his argument, learned counsel relied upon the decision reported in ***M/s. I.A. and I.C. Private Ltd., Bombay and others v. State of A.P and others***[1].

5) Learned Additional Public Prosecutor opposed the Crl.R.C and argued that both the Courts below have concurrently held that inspite of the panch witnesses turning hostile, still the evidence of PW.2 clearly demonstrated that PW.2 has lifted the samples from the shop of A.1 under due process and sent for analysis and the report showed that pesticide Dicofol 18.5% E.C was a misbranded one. Therefore, PW.2 launched prosecution against A.1 to A.6. While the Trial Court basing on the evidence on record convicted all the accused, the lower Appellate Court on reappraisal of the evidence found that A.1 to A.4 are only seller and distributor of the pesticide in question and A.1 stored the pesticide in the same condition as they were received from the manufacturer and the samples which were lifted from his shop were not found to be tampered and therefore, the seller and distributor cannot be held responsible. Learned Addl. Public Prosecutor submitted that in that regard the lower Appellate Court relying upon ***M/s. Bharat Pesticides and another v. State of Punjab***[2], wherein it was held that when it was found that the insecticides were acquired from a licensed manufacturer with the sealed containers and while in possession of the person who kept for sale, it was properly stored in

[1] 1985 CriLJ 810 (AP) = MANU/AP/0015/1984
[2] 1998 (2) ALT Crl. Pg.103 NRC

the same condition and not tampered, such person cannot be held liable for the offence, ultimately held that A.1 to A.4 cannot be held liable for the offence under Section 29(1)(a) r/w Section 3(k)(i) of the Act. However, the lower Appellate Court found A.5 being the Manufacturer and A.6 being the Chemist, responsible for the manufacture of the subject pesticide, were guilty and rightly convicted them and therefore, the Crl.R.C. is not maintainable.

6) In the light of above respective arguments, the point for consideration in this Crl.R.C is:

> *"Whether the judgment of the lower Appellate Court is factually and legally sustainable?"*

7) **POINT**: I have given my anxious consideration to the judgment in Criminal Appeal No.94/2010 passed by the learned IV Additional District and Sessions Judge, Kurnool. As can be seen, the lower Appellate Court having found that there was no evidence to the effect that the vendor and distributor have in any way tampered with the subject pesticide which was acquired from the manufacturer and on the other hand, the record showed that they acquired the pesticide from the licensed manufacturer and they did not contravene any provisions of the Act and further, while the pesticide was in their possession, it was properly stored and remained in the same state as when it was acquired, rightly held that A.1 to A.4 were not guilty of the offence under Section 29(1)(a) r/w 3(k)(i) of the Act.

8) Now coming to A.5, it is not in dispute and so also the evidence would establish, A.5 is the manufacturer of pesticide Dicofol 18.5% E.C , which was ultimately found to be misbranded by the analyst. Therefore, A.5 cannot escape its liability. Ofcourse, it was faintly argued, questioning the mode of lifting of the samples due to lack of support from the independent witnesses to the evidence of PW.2. However, both the Courts below turned down such contention having regard to the legal position and I see no reason to come to a different conclusion. Therefore, the conviction and sentence recorded against A.5 shall hold good.

9) Now coming to A.6, who is a Chemist, the argument of learned counsel for petitioner requires careful consideration. Section 33 of the Act deals with offences by companies. It reads thus:

> *"**Section 33 - Offences By Companies.—***
>
> *(1) Whenever an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, or was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:*
>
> *Provided that nothing contained in this sub-section shall render any such person liable to any punishment under this Act if he proves that the offence was committed without the knowledge or that he exercised all due diligence to prevent the commission of such offence.*
>
> *(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a*

company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.-- For the purpose of this section,--

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm."

So apart from a company, if any other person related to the company is to be prosecuted, certain conditions have to be fulfilled as noted in the above Section, which says, every person, who at the time of offence was committed, was in-charge of, or was responsible to the company for the conduct of the business of the company shall be deemed to be guilty of the offence along with the company. Admittedly, petitioner/A.6 is only a Chemist and in the evidence of PW.2 we don't find that apart from being a Chemist, he was in-charge of and responsible to the company for the conduct of the business. As per Section 33, unless a person was shown to be in charge or was responsible to the company for the conduct of its business, he cannot be held guilty. Unfortunately, both the Courts below have not properly considered this aspect. In ***M/s. I.A. and I.C. Private Ltd., Bombay***'s case (1 supra), a learned Judge of this Court observed thus:

> *“**<u>Para 11</u>**: It is next submitted by the learned counsel for the petitioners that in C.C. No. 83 of 1983 the Managing Director and the Chief Chemist of Accused No.6 firm are impleaded as accused and there is no allegation in the complaint that they are in charge of the business of the said company. In Para 11 of the complaint it is stated that Accused No.6 company is the manufacturer and accused No.7 is the Managing Director of the said company and he is responsible for all the affairs of the firm. So far as the chemist accused No. 8 is concerned it is stated that he has formulated the misbranded sulphur under his supervision and supplied to Accused No. 1 shop direct. So far as the chemist is concerned it is stated that he has merely formulated the misbranded sulphur. He cannot be said to be in charge of the business of the company. It is no doubt true that the Managing Director is stated to be responsible for all the affairs of the firm. <u>When a chemist is not concerned with the business of the company, he cannot be impleaded as an accused having regard to the provisions under S. 33 of the Act. If in the course of trial it is found by the court below that any other person is liable to be proceeded against, the court can at any stage try any person along with the accused and proceed against such person for the offence which he appears to have committed. It is not mentioned in the complaint that accused No. 8 is in charge of the business of the company. In such a case, I hold that so far as the accused No.8 is concerned, the complaint is liable to be quashed</u>. (Emphasis supplied).*

Needless to emphasize, the above ruling applied with all its fours to the case on hand. Therefore, the conviction and sentence recorded against A.6 is liable to be set aside.

10) In the result, this Criminal Revision Case is partly allowed by setting aside the conviction and sentence passed by the lower Appellate Court in Crl.A.No.94/2010 against petitioner/A.6 only. Sofaras petitioner/A.5 is concerned, the conviction and sentence passed by the lower Appellate Court in Crl.A.No.94/2010 shall hold good.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 09.11.2018

Note: Issue C.C by Monday.
(b/o)
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