

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Sr. No.201

CRM-M-10044 of 2014

DECIDED ON: December 14, 2018

M/S HARYANA KRISHI SEWA KENDER & ANR

..PETITIONERS

VERSUS

STATE OF HARYANA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. J.C. Malik, Advocate, for the petitioners.
Mr. Deepak Grewal, DAG, Haryana.

SUDHIR MITTAL, J. (ORAL)

The petitioners seek quashing of complaint No.190 of 2008 dated 07.02.2008 (P-1) filed under Section 17(1) (a) of Insecticide Act, 1968 (for short “the Act”) as well as chargesheet dated 05.12.2013 (P-2) and judgment dated 24.02.2014 (P-3) passed by learned Additional Sessions Judge, Panipat, whereby revision against order dated 05.12.2013 (P-2) has been dismissed.

The petitioner No.1 is a stockist of insecticides which he is licensed to stock and sell and petitioner No.2 is its proprietor.

On 21.08.2007 samples of '*Endosulfan*' were drawn from his shop and were sent to the office of Director of Agricultural, Haryana on 24.08.2007. Five days later, the same samples were sent for examination to the concerned laboratory for testing. Report dated 20.09.2007 was received and the samples were found misbranded. Accordingly, the aforementioned complaint was filed against the petitioners as well as manufacturer.

Learned counsel for the petitioners has drawn my attention to para 3 of the complaint (P-1), wherein it is mentioned that “three original sealed packing of one liter sealed packing each of Endosulfan branded 35%

E.C. were taken for the sampling”.

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The argument is that the samples were drawn from sealed packings and therefore, the violation has been committed by the manufacturer. The petitioners being only stockist and seller cannot be held liable under the circumstances as is evident from Section 30(3) of the Act.

Section 30(3) of the Act is reproduced below:-

30. Defences which may or may not be allowed in prosecutions under this Act.—

1. xxxxxxxxxx

2. xxxxxxxxxx

3. *A person not being an importer or a manufacturer of an insecticide or his agent for the distribution thereof, shall not be liable for a contravention of any provision of this Act, if he proves —"*

(a) that he acquired the insecticide from an importer or a duly licensed manufacturer, distributor or dealer thereof;

(b) that he did not know and could not, with reasonable diligence, have ascertained that the insecticide in any way contravened any provision of this Act; and

(c) that the insecticide, while in his possession, was properly stored and remained in the same state as when he acquired it."

Thus, if a person is not an importer or manufacturer of an insecticide or an agent for distribution thereof, he shall not be liable for contravention of any provisions of the Act, if he has obtained the insecticide from a duly licensed manufacturer, distributor or dealer and had properly stored the insecticides and could not have known with exercise of due diligence that the insecticide was misbranded. In *M/s Des Raj Satish Kumar & others vs. State of Punjab, 2013 (1) RCR (Criminal) 151*, a Single Bench of this Court by placing reliance upon *Kishan Beej Bhandar*,

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623, has held that a person not being a manufacturer of insecticide is not liable for any violation of the provisions of the Act by virtue of Section 30 (3) of the Act.

In the reply filed on behalf of the respondent, it has nowhere been stated that the sample was not drawn from a sealed packing and therefore, the learned State counsel is not in a position to controvert the arguments of learned counsel for the petitioners.

The petition is accordingly allowed, complaint No.190 of 2008 dated 07.02.2008 (P-1) along with chargesheet dated 05.12.2013 (P-2) pending before Chief Judicial Magistrate, Panipat, judgment dated 24.02.2014 (P-3) passed by learned Additional Sessions Judge, Panipat and consequential proceedings having arisen therefrom, are quashed so far as the petitioners are concerned.

December 14, 2018

Ankur

**(SUDHIR MITTAL)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No