



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.01.2019

CORAM:

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THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Cr1.OP(MD)No.22078 of 2018

Cr1.MP(MD)Nos.10267 and 10268 of 2018

R.Vijayaragavan

Petitioner /4th Accused

Vs

Agricultural Officer
Srivilliputhur 626125
Virudhunagar District

Respondent /Complaint

Prayer:- This Criminal Original Petition is filed under Section 482 of Cr.PC, to call for the records in STC.No.344 of 2018, on the file of the Judicial Magistrate II, Srivilliputhur and to quash the same, in respect of of the Petitioner/A4.

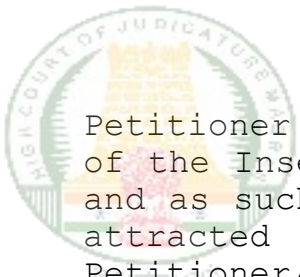
For Petitioner : Mr.M.Saravanan

For Respondent : Mr.A.Robinson, GA

ORDER

This Criminal Appeal is filed to quash the case in STC.No.344 of 2018, on the file of the Judicial Magistrate II, Srivilliputhur, in respect of the Petitioner/A4.

2. The case of the Petitioner/A4 is that the Respondent has filed the impugned complaint in STC.No.344 of 2018, before the Judicial Magistrate II, Srivilliputhur, against four accused persons, for the offence under Section 29(1) read with 3(k)(i) of the Insecticides Act, 1968, in respect of the samples of Profenophos 50% EC in 100 ml containers, taken from the Shop of the Petitioner/A4 on 7.9.2016, which were found to be 'substandard' and 'misbranded'. A1 is the authorised/responsible person of the manufacturer, A2 is the Zonal Sales Manager, A3 is the Distributor and the Petitioner/A4 is the retail seller. Hence, this Criminal Original Petition has been filed, contending that when admittedly the Petitioner/A4 being the retail seller of A1 and not being the manufacturer of the insecticide and he acquired the insecticides from A3, Authorised Distributor of the manufacturer/A1 and when the insecticide was properly stored and was not tampered with, the



Petitioner cannot be made liable for contravention of any provisions of the Insecticides Act, 1968 (herein after referred to as the Act) and as such, the provisions of Section 30(3) of the Act having been attracted against him, Prosecution initiated against the Petitioner/A4 is liable to be quashed.

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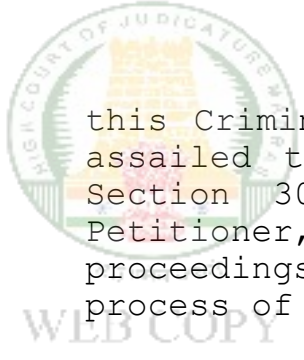
3. The learned counsel for the Petitioner, among other grounds, would mainly contend that when the conditions under Section 30 (3) of the Act are satisfied by the Petitioner/A4, Prosecution initiated against the Petitioner cannot be sustained, inasmuch as the Petitioner is only the retailer of A1, who is the manufacturer, he had received the goods through proper bills and when the samples were taken from his possession from his shop, they were properly stored and they remained in the same state when he acquired it and they were intact and there was no tampering or breakage of seals. He would further submit that as per Section 30(3) of the Act, the Petitioner, as a Dealer, shall not be made liable for contravention of any provisions of the Act. He would submit that since he did not know and could not, with reasonable diligence, have ascertained that the insecticide in any way contravened any provision of the Act and that when there is absolutely no allegation in the complaint that the samples, which were taken from the Shop of the Petitioner, were tampered with, the Petitioner cannot be burdened with facing the Prosecution for the offences and that ultimately, the Manufacturer has also accepted that they were manufactured by him and that he is defending the case. In support of his contentions, he would rely on the decision of the Honourable Supreme Court reported in **1990 Supp SCC 111 (Kisan Beej Bhandar, Abohar Vs. Chief Agricultural Officer, Ferozepur)** and of the High Court of Punjab and Haryana at Chattisgarh, reported in **2013 4 RCR (crl) 826 (Garg Brother's and Company Vs. State of Punjab)**.

4. The learned Additional Public Prosecutor for the Respondent would fairly admit that the Petitioner is an authorised dealer of A1, who is the manufacturer of the insecticides and that the Petitioner, as an authorised dealer, had purchased the same from A1 Company, who is the manufacturer of the insecticides. Further, there is no averment in the complaint that the samples were not properly stored.

5. This court heard the learned counsel on either side and also perused the materials placed on record, including the relevant provisions of the Act.

6. The allegation against the Petitioner/A4 is that he is a retailer and the samples of insecticides taken from the Shop of the Petitioner/A4 were found to be substandard and misbranded, resulting in filing of the impugned complaint under Sections 29(1) read with 3(k) (i) of the Insecticides Act, 1968.

7. Though there are several other grounds, raised by the learned counsel for Petitioner, in the affidavit filed in support of



this Criminal Original Petition, the only ground, on which, he has assailed the impugned complaint is that when the provisions of Section 30(3) of the Insecticides Act, are satisfied by the Petitioner, the Petitioner cannot be held guilty and thereby, the proceedings initiated against him is nothing, but an abuse of process of law.

8. At this juncture, it is relevant to refer to the provisions of Section 30(3) of the Insecticide Act, as under:-
30. Defence, which may or may not be allowed in prosecutions under this Act:-

(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 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."

9. On perusal of the records, particularly from the impugned complaint, it is seen from the complaint itself that there are four accused persons/A1 to A4 and they are carrying on the business of insecticides. Admittedly, A1 is the Manufacturer and the Petitioner/A4 is the retail seller of A1, for selling the insecticides. During the inspection at the Shop of the Petitioner/A4, it was found that the insecticides were kept in the sealed containers and they were not tampered with.

10. Further, nowhere in the complaint, it is alleged that the samples, which were taken from the Shop of the Petitioner, were tampered with. There is also no material to indicate that the insecticides were not properly stored. Therefore, it can be safely, held that the provisions of Section 30(3) of the Act are attracted in favour of the Petitioner and consequently, the Petitioner cannot be made liable for contravention of any provisions of the Act, when the Petitioner has satisfied with the ingredients of Section 30(3) of the Act, as stated above.

11. In this context, reliance is placed on the decision of the Honourable Supreme Court reported in **1990 Supp SCC 111 (Kisan Beej Bhandar, Abohar Vs. Chief Agricultural Officer, Ferozepur)**, wherein it was laid down that once the Appellant's claim that he had purchased a full sealed tin from authorised distributor and that the seal had not been tampered with when the tin was recovered from his



shop, is established, the burden under Section 30(3) has been discharged and he became entitled to protection thereunder.

12. Reliance is also placed on the decision of the High Court of Punjab and Haryana at Chandigarh reported in **2013 4 RCR (crl) 826 (Garg Brother's and Company Vs. State of Punjab)**, wherein, while relying upon the decision of the Honourable Supreme Court reported in **1990 Supp SCC 111 (Kisan Beej Bhandar, Abohar Vs. Chief Agricultural Officer, Ferozepur)**, it was held as under:-

"6. Admittedly, the Petitioner is not the manufacturer of the insecticide but is selling the same. Hence, the Petitioner cannot be held responsible if the sample was not found to be up to the standard by the analyst. The Petitioner was merely involved in sale of the insecticide. The complaint was also filed against the manufacture. From the complaint, it cannot be said that the insecticide had not been sold properly by the Petitioner. The samples were drawn by the Inspector from the original packing. In appeal vide Annexure 3rd Petitioner licence of the Petitioner was restored in view of Section 30(3) of the Act.

7. Accordingly, the Petition is allowed. Criminal complaint (Annexure 2nd Petitioner) under Section 3(k)(i), 17, 18, 29 and 33 of the Insecticides Act, 1968 read with rule 27(5) of the Rules, 1971 and all the consequent, proceedings arising there from, qua the Petitioner, are quashed."

13. On the facts, it is found that admittedly, the Petitioner/A4 is not the manufacturer of the insecticide, but a retail dealer of A1 and the insecticide was kept in a sealed condition at the time when it was recovered from the shop of the Petitioner/A4. Further, as per the averment in the complaint, the samples were drawn from the sealed containers and there is no averment of tampering and they have been sent to the lab intact along with necessary forms. In view of the same, the liability arising out of misbranding or sale of substandard goods cannot be at any cost attributed to the Petitioner/A4. Once it was found that the insecticide was in a sealed container, it can be stated that the burden that lay on the Petitioner under the provisions of Section 30(3) has been satisfactorily discharged. When such being so, this Court is of the opinion that the proceedings against the Petitioner/A4 is nothing but an abuse of process of Court. Therefore, the impugned complaint is not sustainable, in so far as the Petitioner/A4 alone is concerned.

14. For the reasons stated above and in the light of the provisions of 30(3) of the Insecticides Act, 1968, which have been satisfactorily discharged by the Petitioner/A4, including the decisions cited supra, the impugned complaint is liable to be quashed.

15. In the result, this Criminal Original Petition is allowed, as prayed for. The impugned complaint in STC.No.344 of



2018, on the file of the Judicial Magistrate II, Srivilliputhur, is quashed, in respect of the Petitioner/A4 alone. Consequently, the connected MPs are closed.

Sd/-

Assistant Registrar (CS)

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Sub Assistant Registrar(CS)

To:

1.The Judicial Magistrate II, Srivilliputhur

2.The Additional Public Prosecutor,
Madurai Bench of Madras High court, Madurai.

+1 CC to M/s.M.SARAVANAN, Advocate (SR-42861[F] dated 25/01/2019)

sp/08.04.2019/5p/4c

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25.01.2019