

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M 25881 of 2016

Pronounced on: 04.07.2023

Bhupinder Singh & Ors.

.....Petitioners

Versus

State of Punjab and Anr.

.....Respondents

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH.

Present: Mr. Rakesh Verma, Advocate for

Mr. Manish Verma, Advocate for the petitioners.

Mr. Gurpreet S. Shergill, AAG, Punjab.

GURBIR SINGH, J (ORAL)

The present petition has been filed under Section 482 Cr.P.C. for quashing of FIR No.155 dated 10.09.2015, under Sections 420, 120-B IPC, Section 7 of Essential Commodities Act 1955 and Section 29 of Insecticides Act, 1968, registered at Police Station City Kotkapura, District Faridkot, and all subsequent proceedings arising out of the said FIR.

The case in question is registered on the complaint of Shri Karanjeet Singh Gill, Block Agriculture Officer, Kotkapura. As per allegation, on 10.09.2015, complainant along with others had conducted checking of the premises of M/s Gujarat Mineral, Vijay Cotton Factory, Jalalena Road, Kotkapura. During the course of checking, unauthorized medicines of M/s Gujarat Mineral Company along with unauthorized stocked medicines of M/s National Pesticides and Chemical, Jodsahida Road, Kotkapura and M/s Fineline Agri aids Pvt. Ltd. Shop No.84 New Danna Mandi, Kotkapura were found stored. No license, records, stock register, bill book etc., was found at the spot as such this firm had violated

the provisions of Insecticides Act, 1968 and Rules of 1971 as such the concerned firm had perpetuated fraud with the agriculturists and violated Rule 29 of the Insecticide Act, 1968. Apart from that, the firm by storing the organic fertilizers of M/s Fineline Agricides Co., as such the concerned firm had also violated Rule 29 of the Fertilizer Control Act, 1985 and Section 7 of the Essential Commodities Act, 1955, for playing a fraud with the farmers. The FIR was registered against the said firm and its responsible persons namely, Bhupinder Singh son of Tej Singh and owner of the company Ramesh Vyas and Naresh Vyas sons of Vishwa Nath Vyas. On the said complaint, case under Sections 420, 120-B IPC, Section 7 of Essential Commodities Act 1955 and Section 7 of Insecticides Act, 1968, was registered.

Learned counsel for the petitioners has argued that M/s Gujarat Mineral Company was having a valid license to sell, stock or exhibit for sale or distribution of insecticide which is valid upto 31.12.2016, issued by the Licensing Authority i.e. Deputy Director of Agriculture (LC&PP), Punjab. Similarly, the sister concern of this Company i.e. M/s Fineline AgriAids Pvt. Ltd. was also having a valid license to sell, stock or exhibit for sale or distribution of insecticide, which is valid upto 31.12.2015, issued by the Licensing Authority i.e. Deputy Director of Agriculture (LC&PP), Punjab. Copies of the Licenses are annexed as Annexure P-2 and P-3). It is further submitted that samples of insecticide, as drawn from the godown premises on the spot have already been found to be PASS i.e. according to the specifications by the Central Insecticides Laboratory, Faridabad, which is a conclusive report (Annexure P-6). It is further submitted that both the aforesaid companies have appointed their C&F Agent to Chelawasia

Agrotech-C&F Kotkapura for distribution of the insecticides in the State of Punjab. The C&F Agent is having the control over the godown situated at Jalanena Road, Kotkapura. The firm M/s National Pesticide and Chemicals has also appointed the said Chelawasia Agrotech C&F Kotkapura as their C&F Agent. The ledger account of 2012-13 of said C&F Agent is annexure P-4 and relationship of said C&F Agent and M/s Gujarat Minerals is annexed as Annexure P-5. It is submitted that there is absolutely no allegation that there was any defect in the medicines of insecticides which had been recovered from the godown at Kotkapura. The allegations are already covered under a special legislation, so FIR could not be registered and registration of FIR with the aid of the provisions of general law is not sustainable in the eyes of law. No prior sanction in terms of Section 31 of Insecticides Act, 1968, was obtained. Without obtaining prior mandatory written consent/sanction from the Sanctioning Authority no complaint could be filed and no prosecution is possible. The complainant filed the affidavit in this Court that under the provisions of Insecticide Act, 1968, FIR is not maintainable as well as sanction is required before launching the prosecution.

It is further argued that prior to 04.02.2016, the Bio-Products, were neither covered under Insecticides Act, 1968 nor Fertilizer Control Order, 1985. The manufacture and sale of the said Bio-Products was not prohibited at all. In CWP No.12536 of 2011 titled as M/s Biostadt India Ltd. Vs. State of Haryana and Ors, decided on 04.02.2016, this Court directed all Manufactures/Marketers to obtain necessary permission from the concerned department of Agriculture after submitting their samples and in case it is found that the products being manufactured by any person seeking to sell

the same does not fall within terms 'insecticide' or 'fertilizer' the necessary permission shall be granted.

There is no allegation made by any farmer and there is no complaint from any corner that any cheating was committed, so provisions of provisions of Sections 420, 120-B IPC are not attracted at all.

Learned counsel for the petitioners has placed reliance upon the judgments of this Court '(i) Pardeep Kumar Garg and Ors. Vs. State of Punjab and Ors., passed in CRM-M-7268-2008, decided on 23.05.2012, (ii) Rakesh Kumar Vs. State of Harayana, 2011(1) RCR (Criminal) 102, (iii) Padam Bansal Vs. State of Hayrana, 2005(4) RCR (Criminal) 68, (iv) Piyara Singh and Ors. Vs. State of Haryana, 2002(3) RCR (Criminal) 290 and (v) CRM-M-20884-2018 titled as 'Yadwinder Singh Vs. State of Punjab and Ors', decided on 05.12.2018.'

Learned State counsel has fairly admitted that the petitioners have been issued licence by the State Licencing Authority in the name of M/s Gujarat Mineral, Vijay Cotton Factory, Jalaleana Road Kotkapura. The petitioners are proprietor and Incharge of godown. Sample drawn from the premises of the petitioner were found inorder. He has submitted that the alleged firm is duly authorized for sale of only Insecticides but petitioner violated the Fertiliser Control Order 1985. The bio-products recovered from the premises of licence come within the Fertilizer Control Order, 1985 and Essential Commodities Act 1955.

I have heard submissions made by the learned counsel for the petitioners and learned State counsel.

Insecticides Act is self contained and provide punishment to the person committing the offence. In case 'Padam Bansal Vs. State of Haryana

(*supra*), the State counsel accepted that no sanction under Section 31 of the Insecticides Act, was obtained and this Court allowed the petition for want of sanction while exercising revisional jurisdiction. In case 'Rakesh Kumar Vs. State of Haryana, 2011(1) RCR (Criminal) 102', the FIR was registered on the ground that offence alleged to have been committed by the petitioner falls within purview of the Insecticides Act. There was no complaint from any quarter that any offence of cheating was committed. It was improper to use Section 420 IPC in the instant case as Section 29 of the Insecticides Act provides punishment for violation of various provisions of the said Act. The matter regarding the bio-products came before this Court in case 'M/s Biostadt India Ltd. Vs. State of Haryana and Ors', which was disposed of. The contention of the petitioners was that the petitioners were manufactures of bioproducts, which were claimed to be substitute of insecticides and fertilizers but not strictly falling in the defination of insecticides as contained in the insecticides Act 1986 and the Fertilizer (Control) Order 1985. Some of the petitioners got permission from the State of Punjab and Haryana for selling their products whereas some had not sought. The case of petitioners was that the products manufactured by them were covered under the above mentioned Act and Order and the State had no authority to stop the production and sale thereof. The stand of the State of Punjab and Union of India before this Court is as under:-

'Learned counsel for the State of Punjab submitted that the matter regarding legislation or for issuance of guidelines, for production and sale of bioproducts is pending considering with the Government of India for the last more than eight years. In the absence thereof, it is difficult to regulate the same. The Government of India may be directed to expedite the matter and either amend the Act or the Order concerned.'

Learned counsel appearing for the Union of India submitted that she will apprise the competent authority about the seriousness of the matter and press upon them to consider the same and take appropriate steps, whichever required for the purpose of proper regulation of the products being manufactured by the petitioners or any other manufacturer in certain specified time.

She further submitted that the samples of the products manufactured by the petitioners were got tested in various laboratories controlled by the Government of India and it was found that their products, the samples of which were drawn did not fall within the definition of 'insecticides' or 'Fertilizer'. She further submitted that if any other products are being manufactured by the petitioners, the same will also have to comply with the provisions of the Act or the Order.'

In the said case, inter alia directions are issued 'any manufacturer producing any bioproduct claiming to be substitute of 'insecticides' or 'fertilizer' but not strictly covered under the definition of 'insecticides' or 'fertilizer' shall apply to the Director General Agriculture, Haryana and Director, Agriculture Punjab, in respective States seeking permission for selling its products in the States concerned.

The Learned State counsel has failed to point out that bio-products recovered from the godown which was raided were falling under the Fertilizer (Control) Order, 1985. Since, the raid was conducted prior to the year 2016, so it cannot be said that there was violation of any Fertilizer (Control) Order, 1985 by the petitioners at that time.

The question arises if FIR in the instant case could be registered. In this case, complainant was specifically directed by this Court to file a specific affidavit as to whether FIR is maintainable under the provision of Insecticide Act and sanction is required under Section 31 of the Act which is pre conditions before filing a criminal complaint. Reply by

way of affidavit dated 12.01.2018 was filed. The extract of the same is as under:-

“6. That it is correct that under the provisions of Insecticide Act, 1968, FIR is not maintainable, as well as sanction is required before launching the prosecution. However, keeping in view the above facts and circumstances of the case, the answering respondent had no option, but to report the matter to the police due to the illegal sale. Since this present F.I.R. had been registered not only under the provisions of Insecticides Act, 1968 but also under Sections 420, 120-B of the IPC and Sections 7 and 10A of the Essential Commodities Act, 1955, for which no sanction is required, hence this F.I.R. is maintainable. Since the challan had been presented by the Police in this case before the learned Court of Chief Judicial Magistrate, Faridkot. The the petitioners must plead their defence before the learned trial court.

In case Pardeep Kumar Garg and other cited Supra, FIR was registered under Insecticides Act 1968, Insecticides Rules, 1971, The Seeds Act, 1966, The Seeds (Control) Order 1983, The Fertilizers (Control) Order 1985, The Essential Commodities Act 1955 and under Sections 420, 467, 468, 471 of Indian Penal Code. The FIR was quashed that complaint is maintainable and registration of FIR is misused of process of law.

In the light of the above discussion, I am of the view that FIR No.155 dated 10.09.2015, under Sections 420, 120-B IPC, Section 7 of Essential Commodities Act 1955 and Section 29 of Insecticides Act, 1968, registered at Police Station City Kotkapura, District Faridkot, and all

subsequent proceedings arising therefrom qua the petitioners are hereby quashed and petition stands disposed of accordingly.

It is clarified that this order will not stand in the way of any proceedings being taken after following the due process of law.

04.07.2023
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(GURBIR SINGH)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No