

CRM-M-52084-2019 (O & M) ::1:

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-52084-2019 (O & M)
Date of decision: 26.04.2023

Gurjit Singh and ors. ... Petitioners
V/s
State of Punjab through Insecticide Inspector ...Respondent

CORAM: HON’BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Rakesh Verma Advocate,
and Ms. Manish Verma, Advocate,
for the petitioners.

Ms. Ramta K Chaudhary, DAG, Punjab.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition is for the quashing of criminal complaint No. 10199 dated 25.07.2018 under Sections 3(k)(i), 17, 18, 29 and 33 of the Insecticide Act, 1968 read with Rules 27(5) of the Insecticide Rules, 1971, punishable under Section 29(1) of the Act, 1968 titled as “State Vs. M/s Ekam Gulati Khetibari Sewa Centre & others’ (Annexure P-1), summoning order dated 25.07.2018 (Annexure P-2) and all consequential proceedings arising therefrom qua the petitioners.

2. The brief facts of the present case as emanating from the pleadings are that on 12.08.2015, the complainant visited the shop premises of petitioner No.2 i.e. M/s Ekam Gulati Khetibari Sewa Centre, Village

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sample of insecticide, namely, Cartap Hydrochloride 4% G having Batch No.02, manufacturing date Aug-2015 and expiry date July-2017, out of one 5 kg. Originally sealed packing. That insecticide material had been manufactured and supplied by M/s Unido Insecticides Pvt. Ltd., Bahadurgarh (Haryana).

3. Thereafter, out of three representative parts of the sample, one part was sent to the Senior Analyst, Insecticide Testing Laboratory, Ludhiana for analysis on 13.08.2015 and the same was found to be mis-branded after analysis.

4. On 25.07.2018, the impugned complaint was instituted by the Insecticide Inspector, Block Mangat, Distt. Ludhiana in the Court of the Chief Judicial Magistrate, Ludhiana. Based on the said complaint, the petitioners alongwith their co-accused came to be summoned vide order dated 25.07.2018. A copy of the complaint dated 25.07.2018 and the summoning order dated 25.07.2018 are attached as Annexures P-1 and P-2 to the present petition.

5. The aforementioned complaint (Annexure P-1), summoning order dated 25.07.2018 (Annexure P-2) and all subsequent proceedings arising therefrom are under challenge in the present petition qua the petitioners.

6. The learned counsel for the petitioners has raised a number of grounds in the present petition. However, the primary ground raised by him is that the sample had been drawn from the original sealed packing weighing

Thereafter, the Insecticide Inspector had prepared three loose test

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sample portions weighting 300 grams each. There was no allegation that the petitioners had tampered with the original sealed packing of the manufacturer. Therefore, they were not liable to be proceeded against for the mis-branding of the insecticide once they had sold the insecticide in the same condition and in the same packing in which they had received it. Protection in terms of Section 30(3) of the Insecticides Act, 1968 is claimed by the petitioners. Reliance is placed on a judgment of this Court in '*M/s Shambu Khad Store and another versus State of Punjab through Insecticide Inspector (CRM-M-5183-2021 decided on 24.04.2023)*'.

As regards petitioner No.3, the learned counsel contends that he has been roped in only on account of the fact that he is the brother of petitioner No.1. In fact, no sanction for prosecution of petitioner No.3 has been accorded as per the sanction order (Annexure P-3).

7. The learned counsel for the State, on the other hand, contends that the case against the petitioners and their co-accused is well-established. They were at liberty to raise all the grounds as raised in the present petition at the stage of the Trial. No case for quashing of the complaint (Annexure P-1) and the summoning order dated 25.07.2018 (Annexure P-2) was made out. He, however, concedes that, firstly, there is no denial in the reply dated 18.04.2022 to the averments raised in the petition that the samples obtained by the complainant/answering respondent was from a sealed original packing as had been supplied to the dealers/petitioners by the marketing company. He also concedes the fact that as per the aforementioned reply no

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8. I have heard the learned counsel for the parties at length.

9. Before proceeding further, it would apposite to refer to the provisions of Section 30 of the Insecticide Act. The same are reproduced hereinbelow:-

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

(1) Save as hereinafter provided in this section, it shall be no defence in a prosecution under this Act to prove merely that the accused was ignorant of the nature or quality of the insecticide in respect of which the offence was committed or of the risk involved in the manufacture, sale or use of such insecticide or of the circumstances of its manufacture or import.

(2) For the purposes of section 17, an insecticide shall not be deemed to be misbranded only by reason of the fact that—

(a) there has been added thereto some innocuous substance or ingredient because the same is required for the manufacture or the preparation of the insecticide as an article of commerce in a state fit for carriage or consumption, and not to increase the bulk, weight or measure of the insecticide or to conceal its inferior quality or other defect; or

(b) in the process of manufacture, preparation or conveyance some extraneous substance has unavoidably become intermixed with it.

(3) A person not being an importer or a manufacturer of an insecticide or his agent for the distribution thereof, shall not be

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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;

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

10. This Court in the case of ***‘M/s Shambu Khad Store and another versus State of Punjab through Insecticide Inspector (CRM-M-5183-2021 decided on 24.04.2023)’***, held as under:-

“10. A perusal of the aforementioned judgments would show that where the Insecticide Inspector had drawn the sample of insecticide from the original packing as had been supplied by the manufacturer to the dealer from whom the sample was being taken, the dealer could not be held to be liable as he could possibly not have known that the insecticide was mis-branded as the same had been received by him in a sealed condition and he (dealer) was also selling the same ahead in a sealed condition.

11. In view of the aforementioned discussion, as the sample in the present case had been drawn from the original packing as had been supplied by the marketing company i.e. M/s Anu Products Limited, Samba (J & K) to the petitioners who are stated to be the dealers and even the Department has restored the licence to the petitioners’ Firm, the continuance of the

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proceedings arising out of the complaint (Annexure P-1) and the summoning order dated 09.11.2020 (Annexure P-2) would be nothing but an abuse of the process of the Court”.

11. A perusal of the aforementioned judgment would show that where the Insecticide Inspector had drawn the sample of insecticide from the original packing as had been supplied by the manufacturer to the dealer from whom the sample had been taken, the dealer could not be held to be liable as he could not have possibly known even with due diligence that the insecticide was mis-branded as the same had been received by him in a sealed condition and he (dealer) was also selling the same ahead in the same condition.

12. In view of the aforementioned discussion, as the samples in the present case had been drawn from the original packing as had been supplied by the manufacturer/supplier M/s Unido Insecticides Pvt. Ltd. to the petitioners who are stated to be the dealers, the continuance of the proceedings arising out of the complaint (Annexure P-1) and summoning order dated 25.07.2018 (Annexure P-2) would be nothing but an abuse of the process of the Court. In addition, as regards petitioner No.3, no sanction for prosecution has been accorded. Therefore, proceedings cannot continue against petitioner for No.3 for this additional reason as well.

13. Therefore, I find merit in the present petition and the complaint (Annexure P-1), the summoning order dated 25.07.2018 (Annexure P-2) and all subsequent proceedings arising therefrom stand quashed qua the

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14. The present petition is disposed of accordingly.

April 26, 2023
sukhpreet

(JASJIT SINGH BEDI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No