

State of Haryana

Vs

Unique Farmaid (P) Ltd. and Others

With

Criminal Appeal No. 1054 of 1999

State of Haryana

Vs

Northern Minerals Ltd. and Others

And

Criminal Appeal No. 1055 of 1999

State of Haryana

Vs

Sant Lal

Criminal Appeals Nos.1053 to 1055 of 1999

(D. P. Wadhwa, R. P. Sethi JJ)

07.10.1999

JUDGMENT

D. P. WADHWA, J.-

1. Leave granted.

2. In these appeals raising a common question of law, the state has challenged the three separate judgments of the Punjab and Haryana High Court quashing the complaints filed under Section 29(1)(a) of the Insecticides Act, 1968 (for short "the Act"). The High Court exercised its Powers under Section 482 of the Code of Criminal Procedure (for short "the Code") read with Article 227 of the constitution of India. Section 29 of the Act provides for offences and punishment. Under clause (a) of sub-section (1) of Section 29 whoever imports, manufactures, sells, stocks or exhibits for sale or distributes any insecticide deemed to be misbranded under sub-clause (I) or sub-clause (iii) or sub-clause (viii) of clause (k) of Section 3 of the Act shall be punishable for the first offence, with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees, or with both; and for the second and a subsequent offence, with imprisonment for a term which may extend to three years, or with fine, or with both.

3. To understand the rival contentions, we refer to the facts in the case in the appeal arising out of SLP (Criminal) No. 4067 of 1997. An Insecticide Inspector appointed under the Act on 5-8-1994 visited the shop premises of Sukhbir Singh, Proprietor of M/s Vikas Beej Bhandar and drew three samples of Monochrotophos-36% SL insecticide. He gave one sample to Sukhbir Singh, sent the second sample to the Senior Analyst, Quality control laboratory (Insecticides), Karnal for testing and the third sample was deposited with the Deputy Director, Agriculture, Sonapat (Sections 21 and 22 of the Act). M/s Unique Farmaid Pvt. Ltd. (for short "Unique Farmaid") is the manufacturer of the insecticide in question. Jhari Singh Verma is the Sales Officer of Unique Farmaid, the manufacturer. It was reported by the Quality Control Laboratory in its analysis report that the sample of Monochrotophos-36% SL was misbranded [sub-section (1) of Section 24 of the Act. Accordingly, notices along with the analysis report of the sample were sent on 30-9-1994 to Unique Farmaid. The reply did not find favour with the authority and after obtaining consent for launching the prosecution, the Insecticide Inspector, the Insecticide Inspector on 24-6-1995 filed a criminal complaint in the court of the chief Judicial Magistrate, Sonapat.

5. Section 22 of the Act prescribes the procedure to be followed by the Insecticide inspector when he takes any sample of an insecticide. Sub-section (6) of Section 22 is relevant and is as under:

"22. (6) The Insecticide inspector shall restore one portion of a sample so divided or one container, as the case may be, to the person from whom he takes it and shall retain the remainder and dispose of the same as follows-

(i) one portion or container, he shall forthwith send to the Insecticide Analyst for test or analysis; and

(ii) the second, he shall produce to the court before which proceedings, if any, are instituted in respect of the insecticide."

6. As to how the report of the Insecticide analyst is to be considered, reference may be made to Section 24 of the Act which is as under:

"24. *Report of Insecticide Analyst.*-(1) The Insecticide Analyst to whom a Sample of any insecticide has been submitted for test or analysis under sub-section (6) of Section 22, shall, within a period of sixty days, deliver to the Insecticide Inspector submitting a signed report in duplicate in the prescribed form.

(2) The Insecticide Inspector on receipt thereof shall deliver one copy of the report to the person from whom the sample was taken and shall retain the other copy for use in any prosecution in respect of the sample.

(3) Any Document purporting to be a report signed by an Insecticide analyst shall be evidence of the facts stated therein, and such evidence shall be conclusive unless the person from whom the sample was taken has within twenty-eight days of the receipt of a copy of the report notified in writing the Insecticide Inspector or the court before which any proceedings in respect of the sample are pending that he intends to adduce evidence in controversion of the report.

(4) Unless the sample has already been tested or analysed in the Central Insecticides Laboratory, where a person has under sub-section (3) notified his intention of adducing evidence in controversion of the Insecticide Analyst's report, the court may,

of its own motion or in its discretion at the request either of the complainant or of its own motion or in its discretion at the request either of the complainant or of the accused, cause the sample of the insecticide produced before the Magistrate Under sub-section (6) of Section 22 to be sent for test or analysis and report in writing signed by, or under the authority of, the Director of the Central Insecticides Laboratory the result thereof, and such report shall be conclusive evidence of the facts stated therein.

(5) The cost of a test or analysis made by the Central Insecticides Laboratory under sub-section (4) shall be paid but the complainant or the accuses, as the court shall direct."

7. Report of the Insecticide analyst is dated 22-9-1994 in the form prescribed (Form IX) and is as under:

"REPORT OF THE SENIOR ANALYST

1. Name of Insecticide Inspector DDA, Sonapat.

From whom received

2. Serial No. and date of L. No.35 date 8-8-1994
 Insecticide

Inspector's memorandum

Batch No. 94 UF 703.

Manufacturing date March 1994.

Expiry day February 1995.

Date of Sampling

3. No. of sample One.

4. Date of receipt 8-8-1994.

request for re-testing should have been made to the court concerned. Then the State has further submitted that no other defense than prescribed under Section 30 of the Act could be allowed to be raised in the prosecution filed under the act and further that the shelf life of the sample was not relevant as the Act does not prescribe any expiry date. There is no substance in either of these contentions. If the expiry date is not relevant, there was no reason why in the form prescribed for submission of the report by the Insecticide Analyst, the dates of manufacture of the article and the expiry date are mentioned. We do not find any answer to this by the State. In support of this submission, no rule has been cited and no evidence produced showing that the export date of the insecticide is inconsequential. Section 30 provides for defenses, which may or may not be allowed in prosecution under the Act. Section 30 is as under:

"30. Defences which may or may not be allowed in prosecution 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, and 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 liable of 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."

11. Sub-Section (1) of Section 30 which appears to be relevant only prescribes in effect that ignorance would be of no defence but that does not mean that if there are contraventions of other mandatory provisions of the Act, the accused have no remedy. The procedure for testing the sample is prescribed and if it is contravened to the prejudice of the sample is prescribed and if it is contravened to the prejudice of the accused, he certainly has the right to seek dismissal of the complaint. There cannot be two opinions about that. Then in order to safeguard the right of the accused to have the sample tested from the Central Insecticides Laboratory, it is incumbent on the

prosecution to file the complaint expeditiously so that the right of the accused is not lost. In the present case, by the time the respondents were asked to appear before the Court, the expiry date of the insecticide was already over and sending of the sample to the Central Insecticides Laboratory at that late stage would be of no consequence. This Issue is no longer res integra. In *State of Punjab v. National Organic Chemical Industries Ltd.*¹ this Court in somewhat similar circumstances said that the procedure laid down under Section 24 of the Act deprived the accused to have the sample tested by the Central insecticides Laboratory and adduce evidence of the report so given in his defence. This Court stressed the need to lodge the complaint with utmost dispatch so that the accused had been deprived of a valuable right statutorily available to him. On this view of the matter, the Court did not allow the criminal complaint to proceed against the accused. WE have cases under the Drugs and cosmetics Act, 1940 and the Prevention of food Adulteration Act, 1954 involving the same question. In this connection reference be made to decisions of this Court in *State of Haryana v. Brij Lal Mittal*² under the Drugs and Cosmetics Act, 1940, *Municipal Corpn .of Delhi v. Ghisa Ram*³, *Chetumal v. state of M.P.*⁴ and *Clacutta Municipal Corpn. v. Pawan Kumar Saraf*⁵ all under the Prevention of food Adulteration Act, 1954.

12. It cannot be gainsaid, therefore, that the respondents in these appeals have been deprived of their valuable right to have the sample tested from the Central Insecticides Laboratory under sub-section (4) of Section 24 of the Act. Under sub-section (3) of Section 24 report signed by the insecticide Analyst shall be evidence of the facts stated therein and shall be conclusive evidence against the accused only of the accused do not, within 28 days of the receipt of the report, notify in writing to the Insecticide Inspector or the court before which proceedings are pending that they intend to adduce evidence to controvert the report. In the present case the Insecticide Inspector was notified that the accused intended to adduce evidence to controvert the report. By the time the matter reached the Court, the shelf life of the sample had already expired and no purpose would have been served informing the Court of such an intention. The report of the Insecticide Analyst was, therefore, not conclusive. A valuable right had been conferred on the accused to have the sample tested from the central Insecticides laboratory and in the circumstances of the case the accused have been deprived of that right, thus, prejudicing them in their defence.

13. In these circumstances, the High Court was right in concluding that is will be an abuse of the process of the court if the prosecution is continued against the respondents, the accused persons. The High Court rightly quashed the criminal complaint. We uphold the order of the High Court and would dismiss the appeals.