

B.P. Misra Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Mar-28-1990

Reported in : 1990CriLJ2736

Judge : P. Basu, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 482; [Insecticides Act, 1968](#) - Sections 3, 27, 29 and 30

Appeal No. : Criminal Misc. Appln. No. 1023 of 1988

Appellant : B.P. Misra

Respondent : State of U.P. and ors.

Advocate for Def. : Addl. Govt. Adv.

Advocate for Pet/Ap. : Party in Person, Jai Singh, Prabhakar Bishnoi and Sakha Ram Singh Yadav, Adv.

Disposition : Application allowed

Judgement :

ORDER

P. Basu, J.

1. These three petitions under Section 482 Cr. P.C. have been filed by Sri B. P. Misra, the then Joint Cane Commissioner Managing Director, U.P. Cooperative Cane Unions Federation, Ltd. Lucknow, for quashing of three complaints arising out of three different seizures made by three different persons as detailed hereinafter. The prayer contained in these applications is that the complaint as against him in each of the three cases should be quashed because the applicant cannot be termed within the meaning of the qualifying clauses enumerated in Section 29 of the [Insecticides Act, 1968](#) (hereinafter referred to as the Act).

2. Sri Sakha Ram Singh, learned counsel for the applicant and Sri Surendra Singh, learned A.G.A. for the State have been heard at length.

3. The Complaint Case No. 1247 of 1987 has been instituted by Sri K. S. Pundir on the allegation that on 13-5-1985 he had inspected a Store at Bhagwanpur, working under the Sahkari Ganna Vikas Samiti, Ltd. Iqbalpur at Roorkee. Some insecticides and pesticides were seized which were found later as not conforming to the standards laid down under the Act.

4. The Complaint case No. 1248 of 1987 arises out of an inspection made by Sri K. S. Pundir on 14-5-1985 at Sahkari Ganna Vikas Samiti Ltd. Iqbalpur at Roorkee itself. Some insecticides and pesticides were seized which have been found not in accordance with the standard prescribed under the law.

5. The Complaint Case No. 1246 of 1987 arises out of an inspection made on 16-5-1985 by Sri Rajvir Singh at Sahkari Ganna Vikas Samiti Ltd. at Saharanpur. Some insecticides and pesticides were seized which have been found not according to the standard prescribed under the Act. These three complaints are proceeding in the court of C.J.M. Saharanpur. The three petitions aforesaid relate to the three complaint cases detailed above respectively.

6. Sri Sakha Ram Singh, learned counsel, has drawn the attention of the Court to Section 29 of the Act which reads as under:

'29(1) Whoever --

(a) imports, manufactures, sells, stocks or exhibits for sale or distributes any insecticide deemed to be misbranded under -clause (i) or Sub-clause (iii) or Sub-clause (viii) of Clause (k) of Section 3; or

(b) imports or manufactures any insecticide without a Certificate of registration, or

(c) manufactures, sells, stocks or exhibits for sale or distributes any insecticide without any licence; or

(d) sells or distributes an insecticide, in contravention of Section 27; or

(e) Causes an insecticide, the use of which has been prohibited under Section 27, to be used by any worker; or

(f) obstructs an Insecticide Inspector in exercise of his powers or discharge of his duties under this Act or the Rules made thereunder, shall be punishable.

(i) 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;

(ii) for the second and a subsequent offence, with imprisonment for a term which may extend to three years, or with fine, or with both.

(2) Whoever uses an insecticide in contravention of any provision of this Act or any rule made thereunder shall be punishable with fine which may extend to five thousand rupees.

(3) Whoever contravenes any of the other provisions of this Act or any rule made thereunder or any condition of a certificate or registration or licence granted thereunder, shall be punishable --

(i) for the first offence, with imprisonment for a term which may extend to six months, or with fine, or with both;

(ii) for the second and a subsequent offence, with imprisonment for a term which may extend to one year, or with fine or with both.

(4) If a person convicted of an offence under this Act commits a like offence afterwards it shall be lawful for the court before which the second or subsequent conviction takes place to cause the offender's name and place of residence, the offence and the penalty imposed, to be published in such newspapers or in such other manner as the court may direct.'

7. It was argued that the allegations, in so far as it relates to the applicant, are contained only in paragraph 15 of each complaint. In Case No. 1023 of 1988, translated into English, the said averment would read as under:

'.....Therefore, the seller M/s. Sahkari Ganna Vikas Samiti Ltd. Iqbalpur at Roorkee (in Case No. 1025 of 1988 it is 'Saharanpur'), the Store Incharge and the Secretary, i.e. accused Nos. 3, 1 and 2 respectively and the producer of the insecticides, namely, M/s. India Pesticides, Lucknow, its Managing Partner, Chemist and Production Manager i.e. accused Nos. 6, 4 and 5 respectively and the distributor of Insecticide Establishment U.P. Sahkari Ganna Vikas Samiti Sangh Ltd., Lucknow and its then Manager i.e. accused Nos. 8 & 7 respectively, are guilty of offence.' (Underlining by me).

It was argued that the word 'distributor' as used in Section 29 of the Act refers only to the person who is connected with the manufacture of the insecticides and it is not, and should not, be interpreted to include a Managing Director of the Federation who was always to act under the orders of the Cane Commissioner, U.P. directing purchases to be made from several companies. One by one his directions came. Sri Surendra Singh, on the other hand relied upon Section 30 also and said that even if Section 29 be interpreted as suggested by the learned counsel for the applicant, it must be left open to the accused to come out with his defence at the trial and in these proceedings under Section 482, Cr. P.C. the relief prayed for cannot be granted.

8. After hearing the learned counsel for the parties it is a case where it is apparent that the applicant is not connected, in any way, with the manufacture or distribution on behalf and for the manufacturers. This distinction must be borne in mind because the purpose of Section 29 appears to be to punish the person who distributed through and on behalf of the manufacturer who indulges in selling an

adulterated article or misbranded article in the market. Prima facie, any Government official or officer empowered to place orders on the basis of specifications and directions of his superiors, does not commit an offence under Section 29 only because of having directed said purchases on the basis of the orders placed. Consequently the argument of the learned counsel must be accepted that prima facie the applicant does not come within the mischief of any of the words included in Section 29 of the Act. That being the position these applications must succeed.

9. These applications are allowed. The proceedings as against the applicant in criminal cases Nos. 1246 of 1987, 1247 of 1987 and 1248 of 1987 pending before the C.J.M., Saharanpur are quashed. The Magistrate is directed to expeditiously proceed with the trial in accordance with law as regards the other accused. The interim orders dated 10-2-1988 are vacated.

10. This order shall govern the other connected Crl. Misc. Applications Nos. 1024 and 1025 of 1988 also.