

Narinder Singh Vs. State of Punjab

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Court : Punjab and Haryana

Decided On : Jan-09-1998

Reported in : 1998(2)ALT(Cri)6; [1998]92CompCas957(P& H)

Judge : K.S. Kumaran, J.

Acts : [Insecticides Act, 1968](#) - Sections 33

Appeal No. : Criminal Miscellaneous No. 9199-M of 1997

Appellant : Narinder Singh

Respondent : State of Punjab

Advocate for Def. : A.R. Sidhu, Adv.

Advocate for Pet/Ap. : Rakesh Verma, Adv.

Judgement :

K.S. Kumaran J.

1. On June 8, 1992, the Insecticide Inspector, Dharamkot, visited the shop of Punjab Beej Bhandar, Dharamkot, who is the authorised dealer of Chemico Pesticides and Combine. Shri Banarsi Dass of the said Punjab Beej Bhandar was present at the time of the inspection. Banarsi Dass disclosed himself to be the authorised dealer of Buta Cholor 50 per cent. E.C. manufactured by Chemico Pesticides and Combine. Three sealed containers were taken for sample and a

seizure memo was prepared, which was signed by the said Banarsi Dass. These three containers were placed in polythene bags and were sealed. One sealed sample was handed over to Banarsi Dass, and another sealed sample was sent to the State Insecticide Laboratory, Ludhiana. The remaining one sample was kept in the office of the Chief Agricultural Officer, Ferozepur. The test report disclosed that the sample does not conform to the relevant ASI specifications in active ingredient. Instead of 50 per cent. E.C. active ingredient it contains only 27.87 per cent. Thus, the sample was confirmed to be misbranded under section 3(k)(i) of the [Insecticides Act, 1968](#).

2. Punjab Beej Bhandar, Dharamkot, has committed an offence under sections 17/18/3(k)(i) and 33 of the [Insecticides Act, 1968](#), by selling misbranded insecticide. This weedicide Buta Cholor 50 per cent. was manufactured by Chemico Pesticides and Combine, Ghaziabad (U.P.), and sold through Malkiat Singh and Rajinder Singh.

3. Accordingly, a complaint (annexure P-1) was lodged before the Additional Chief Judicial Magistrate, Ferozepur, against (1) Banarsi Dass, proprietor of Punjab Beej Bhandar, Dharamkot, (2) Delhi Agriculture Store, by proprietors (i) Shri Malkiat Singh, (ii) Rajinder Singh, (3) Sh. Narinder Singh, the responsible person for the company, Chemico Pesticides and Combine, Proprietor, Shakti Pesticides Pvt. Ltd., Ghaziabad.

4. The learned Additional Chief Judicial Magistrate, Ferozepur, after referring to the complaint and going through the documents opined that a prima facie case under sections 3(k)(i), 17, 18, 29 and 33 of the [Insecticides Act, 1968](#), read with rule 27(5) of the Insecticides Rules, 1971, is made out against all the accused, and accordingly summoned all the accused.

5. Therefore, Narinder Singh, who has been implicated as the responsible person of the manufacturing company has approached this court under section 482 of the Criminal Procedure Code, 1973, for quashing the complaint as well as the summoning order (annexures P-1 and P-2) and also the consequential proceedings arising therefrom. He contends that he is the managing director of Chemico Pesticides and Combine, and contends that no show-cause notice was

served on him although it may be issued to the company. According to the petitioner, no prima facie case is made out against him since he was never personally given a show-cause notice and has, therefore, been deprived of a right of hearing. The petitioner further contends that the company of which he is the managing director has not been added as a co-accused and, therefore, the complaint as against him is not maintainable. The petitioner contends that he alone cannot be prosecuted in view of the provisions of section 33 of the [Insecticides Act, 1968](#).

6. In spite of sufficient opportunities given to the respondent-State, the respondent-State has not chosen to file a reply. Arguments of both the sides were heard.

7. A perusal of the complaint (annexure P-1) shows that the dealer, distributor, and the petitioner as the responsible person have been arraigned as the accused. The company, namely, Chemico Pesticides and Combines, has not been arraigned as a co-accused. The question is whether the complaint, in so far as the petitioner-Narinder Singh without arraigning the company of which he is stated to be the person responsible as an accused, is maintainable. It is clear that the complaint against petitioner-Narinder Singh is not maintainable. This court in *S. H. Chisty v. State of Haryana* [1997] 2 RCR 565 (P & H), held that the prosecution of a person who was responsible for the manufacturing unit where the manufacturing company has not been arraigned as an accused has to be quashed. In doing so, this court relied upon another decision of this court in *G. S. Nagpal v. State of Punjab* [1994] 1 RCR 347, where a similar view was taken. These two judgments are judgments of two learned single judges of this court. Of course there is a judgment of another learned single judge of this court in *M. N. Murli Kumar v. State of Punjab* [1996] 3 RCR 393, where the learned single judge did not accept the contention that the prosecution of the person responsible without arraigning the company itself as an accused should be quashed. The learned single judge also distinguished the decision in *G. S. Nagpal v. State of Punjab* [1994] 1 RCR 347, on the ground that in *G. S. Nagpal v. State of Punjab* [1994] 1 RCR 347, the person was not alleged to be the responsible person. With respect to the learned judge, who decided *M. N. Murli Kumar v. State of Punjab* [1996] 3 RCR 393, I differ from the view taken

by the learned judge. In *G. S. Nagpal v. State of Punjab* [1994] 1 RCR 347, this court not only found that there were no averments in the complaint that the petitioner in that case was in charge of and was responsible to the company for the conduct of the business, but also took note of the fact that the company was not an accused and, therefore, held that the complaint against the petitioner in that case could not be proceeded with, on that ground alone. Therefore, even if the person is the responsible person to the company, there cannot be a complaint against him alone without arraigning the company as an accused. I agree with the view expressed by this court in *G. S. Nagpal v. State of Punjab* [1994] 1 RCR 347 and *S. H. Chisty v. State of Haryana* [1997] 2 RCR 565 (P & H). Therefore, the complaint, impugned in this petition, as against the petitioner herein is unsustainable inasmuch as the company of which he is the responsible person has not been arraigned as an accused.

8. Accordingly, this petition is allowed quashing the complaint (annexure P-1) and the summoning order (annexure P-2) in so far as they relate to the petitioner herein.