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Mohan Lal Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Sep-21-1999

Reported in : 2000CriLJ2623

Judge : G.L. Gupta, J.

Acts : Insecticides Act, 1968 - Sections 17(1), 22(6), 24, 24(3), 24(4) and 29(1)A; Drugs and Cosmetics Act, 1940 - Sections 25

Appeal No. : Cri. Misc. Petn. No. 434 of 1992

Appellant : Mohan Lal

Respondent : State of Rajasthan

Advocate for Def. : O.P. Singhania, Public Prosecutor

Advocate for Pet/Ap. : Ravi Bhansali, Adv.

Disposition : Petition allowed

Judgement :
ORDER

G.L. Gupta, J.

1. This misc. petition is directed against the order dt.11-8-92 passed by the learned Judicial Magistrate, Nohar whereby he rejected the application of the

petitioner for dropping the proceedings against him pending in his Court under Section 17(1)A r/w Section 29(1)A of the Insecticides Act, 1968.

2. Mr. Bhansali, learned counsel for the petitioner, pointing out that the petitioner has been denied the right of retesting of the sample before the expiry of the shelf life of the insecticide, contends that the proceedings against him are nothing but abuse of the process of the Court. Relying on the cases of State of Haryana v. Brij Lal Mittal (1998) 3 JT (SC) 584 : 1998 Cri LJ 3287, Bayer India Limited v. State of Rajasthan 1997 RCC Suppl 692, Pesticides India Limited v. State 1998 Cri LR (Raj) 438, S.K. Ahuja v. State of Rajasthan 1991 RCC 254, and Hindustan Ciba Geigy Ltd. v. State of Rajasthan 1994 Cri LR (Raj) 785 : 1995 Cri LJ 618 he submits that the proceedings pending against the petitioner be quashed.

3. The learned Public Prosecutor, on the other hand, contends that the petitioner can agitate this point at the stage of framing of the charge and his petition is premature.

4. I have considered the above arguments. The relevant facts are that Shri Dinesh Chandra, Insecticides Inspector took a sample of Methyl Parathion 2% Dust on 29-11-1990 from M/s. Kraya Vikraya Sahakari Samiti, Rawatsar, of which petitioner Mohan Lal was General Manager. After sealing the samples in accordance with the rules, he sent one sample to Insecticides Analyst, who vide report dated 31-1-1991, opined that Methyl Parathion 2% Dust was misbranded. The Inspector thereupon sent a notice to the petitioner on 4-2-1991. The petitioner made a request for retesting of the sample by the Central Laboratory vide his letter dated 18-2-1991 but it was not done. The Insecticides Inspector, after obtaining sanction for prosecution, filed a criminal complaint in the Court of the Magistrate on 23-10-1991, whereupon summons were issued to the petitioner. The petitioner put in appearance in the Court on 20-4-1992. He moved an application for getting the sample tested on 27-4-1992. The application of the petitioner for retesting of the sample by the Central Laboratory was rejected on the ground that the shelf life of the sample was going to end in April, 1992 itself. Thereafter, the petitioner made an application for dropping the proceedings against him, which was rejected by the impugned order.

5. It is obvious that the sample of the insecticide was not retested by the Central Laboratory despite the request of the petitioner. Sub-sections (3) and (4) of Section 24 of the Act of 1968 read as under :-

(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 order 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 Report, the Court may, 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 to the said Laboratory, which shall make the 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.

6. A reading of Sub-section (3) makes it clear that the person from whom the sample was taken may notify in writing that he wanted to adduce evidence in controversion of the report. Under Sub-section (4), the second sample of the insecticide can be sent to the Central Insecticides Laboratory on the request of the complainant or of the accused. The Court may of its own motion also can get the sample retested by the Central Insecticides Laboratory.

7. In the instant case, admittedly, the petitioner had intimated his intention of adducing evidence in controversion of the report of the Insecticides Analyst sent to him vide his letter dated 18-2-1991. The Insecticides Inspector did not take steps to get the second sample retested by the Central Insecticides Laboratory. As already stated, under Sub-section (4), the second sample can be ordered to be analysed by the Central Insecticides Laboratory on the request of the complainant

Inspector also. Once the petitioner had made a request for getting the sample retested by the Central Insecticides Laboratory, it was the duty of the Insecticides Inspector to file the complaint promptly and make a request to the Court for getting the sample analysed by the Central Insecticides Laboratory). The facts indicate that the complaint was filed on 23-10-1991 but no request was made by the Insecticides Inspector for getting the sample retested by the Central Insecticides Laboratory. The petitioner did not have the knowledge of filing of the complaint on 23-10-1991. He came to know about the filing of the case for the first time when he received the summons and appeared before the Court on 20-4-1992. The petitioner did not waste time and made an application on 27-4-1992 for sending the sample to the Central Insecticides Laboratory. However, the Court refused the sending of the sample for retesting on the ground that the shelf life of the sample was April, 1992 itself.

8. If the sample was not analysed by the Central Insecticides Laboratory, it is obvious , it was not for the fault on the part of the petitioner. He had even requested the Insecticides Inspector himself within 14 days of the receipt of the intimation from him to get the sample retested by the Central Insecticides Laboratory. He then made an application before the Court also. In view of the fact that the shelf life of the sample was up to April, 1992 only, the learned Magistrate was not wrong in not sending the sample to the Central Insecticides Laboratory.

9. This Court, in the cases cited by Mr. Bhansali has clearly held that if an accused is deprived of his right of retesting of the sample by the Central Insecticides Laboratory, the proceedings against him are nothing, but abuse of the process of the Court. The Apex Court in State of Haryana v. Brijlal 1995 Cri LJ 3287 (supra) which was a case under the Drugs and Cosmetics Act, 1940 has recognized the right of an accused to notify to the inspector his intention to adduce evidence in controversion of the report. The provisions of the Section 25 of the Drugs and Cosmetics Act, 1940 are identical to the provisions of Section 24 of the Insecticides Act, 1968.

10. In view of the fact that the petitioner has been deprived of his right of retesting of the sample by the Central Insecticides Laboratory, despite his request to get it

examined by the said Laboratory, the proceedings against the petitioner are obviously the abuse of the process of the Court. The petition, therefore, deserves to be allowed.

11. Consequently, the petition succeeds. The proceedings against the petitioner pending in the Court of Judicial Magistrate, Nohar are hereby quashed.

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