
Before V.M. Jain and Satish Kumar Mittal, JJ

RAJINDER KUMAR—*Petitioner*

versus

STATE OF PUNJAB—*Respondent*

CrI. M. No. 18537/M of 1997

17th January, 2003

Code of Criminal Procedure, 1973—S.482—Insecticides Act, 1968—Ss.15 & 30(3)—Sample of an insecticides taken in original packing condition found to be misbranded—C.J.M. summoning the licensed retail dealer, the manufacturer and the distributor-Retail dealer selling the insecticides in sealed packed containers-No allegation against the dealer that he has tampered with the seal of the packed insecticides which he stored in the same condition in which he obtained from the manufacturer/distributor—Whether criminal proceedings against the retail dealer liable to be quashed on the basis of protection available to him under Section 30(3) of the 1968 Act—Held, no-Defence available under section 30(3) can be availed by the dealer only if he proves the facts by leading evidence during the criminal proceedings—However, where the defence of the dealer is accepted under section 15 by the appellate authority then criminal complaint filed against him liable to be quashed.

(M/s K.K. Traders versus State of Punjab, 1996(2) RCR (Criminal) 6, M/s Amar Khad Store versus State of Punjab, 1996(3) RCR (Criminal) 140, M/s Jandu Mal Des Raj versus State of Haryana, 1996(3) RLR 736, M/s Delhi Agriculture Store versus State of Punjab, 1997(1) RCR (Criminal) 42, M/s Dhamija Sales Corporation versus State of Punjab, 1997(4) RCR (Criminal), 179, M/s Sachdeva Sales Corporation and another versus State of Haryana, CrI. M. No. 3925-M of 1996, decided on 31st January, 1997, M/s Wadhawa Beej Bhandar versus State of Haryana, 1998(1), RCR (Criminal) 15

and M/s Rajindra Prasad *versus* State of Haryana, 1998(1) RCR (Criminal) 163, M/s Bharat Pesticides *versus* State of Punjab, 1998(3) RCR (Criminal) 189, M/s Onkar Pesticides *versus* State of Punjab, 2002(2) RCR (Criminal) 101, D.S. Bhullar *versus* State of Punjab 2002(3) RCR (Criminal) 118 and M/s Sahil Agrochemicals and another *versus* State of Punjab, 2002(4) RCR (Criminal) 464, held to be not laying down the good law and over-ruled).

Held, that the situation enumerated in Section 30(3) of the 1968 Act is the defence available to the accused dealer and he can avail this defence only after the prosecution leads its evidence to prove its case. Before that stage of prosecution, the criminal complaint or the criminal proceedings initiated against the accused dealer for contravention of the provisions of the Act cannot be quashed in exercise of the powers conferred under section 482 of the Code.

(Para 32)

Further held, that once the appellate authority under the 1968 Act has accepted the defence available to the dealer, in the proceedings pertaining to the cancellation of his license and a finding to that effect has been recorded, then the defence available to the dealer in the criminal prosecution cannot be deferred till the final conclusion of the trial. In such situation, where the defence has been established before the Appellate Authority under Section 15 of the Act, criminal complaint filed against the dealer is liable to be quashed by the High Court, in exercise of powers conferred upon it under section 482 of the Code, as the continuation of such proceedings, after the recording of such finding by the Appellate Authority, will be an abuse of process of law.

(Para 28)

P.K. Gupta, Advocate for the petitioner.

G.S. Gill, Senior DAG Punjab, for the respondent.

Crl. M. No. 2358-M of 1998

M/S LEKH RAJ AND SONS AND ANOTHER

versus

STATE OF PUNJAB

Ravinder Chopra, Senior Advocate, with Arun Chandra and
Mr. Naresh Manchanda, Advocates, for the petitioners.

Mr. G.S. Gill, Senior DAG, Punjab, for the respondent.

Crl. M. No. 29700-M of 1998

M/S HONDA AGRO CHEMICALS, JAGRAON

versus

STATE OF PUNJAB

P.K. Gupta, Advocate, for the petitioner.

G.S. Gill, Senior DAG, Punjab, for the respondent.

JUDGMENT

SATISH KUMAR MITTAL, J.

(1) This judgment shall dispose of Crl. Misc. No. 18537-M of 1997 and two other petitions, bearing Crl. Misc. No. 2358-M of 1998 and 2970-M of 1998, which have been ordered to be heard alongwith it.

(2) In the main petition, the matter has been referred by learned Single Judge (R. L. Anand, J.) to the Larger Bench, in view of the conflicting decisions given by the Court while interpreting the provisions of Section 30(3) of the Insecticides Act, 1968

(hereinafter referred to as 'the Act'), to resolve the controversy and to decide the following questions of law, which invariably come before this Court :

“Whether a dealer can agitate and challenge his prosecution in the High Court in a petition under Section 482 Cr.P.C., by pleading that he acquired the insecticide from an importer or a duly licensed manufacturer, distributor or dealer thereof ;

That he did not know and could not, with reasonable diligence, have ascertained that the insecticide in any way contravened any provision of the Insecticides Act, 1968;

That the insecticide, while in his possession was properly stored and remained in the same state as and when he acquired ;

OR

Such dealer can challenge his prosecution only in the trial court by proving these facts.”

(3) As per the reference order, this Bench has been asked to give the finding that “under what circumstances the benefit of sub-section (3) of Section 30 of the Insecticides Act can be availed of by the dealer in the High Court in the proceedings under Section 482 Cr.P.C. or that such dealer should be relegated to the remedy of approaching the trial Court to prove the facts as envisaged under the provisions of said Section.”

(4) Before adverting to the controversy involved in the present case, it will be appropriate to briefly narrate the facts of the main case i.e. Crl.Misc. No. 18537-M of 1997.

(5) Petitioner Rajinder Kumar is the proprietor of M/s. Zimidara Kheti Sewa Kendar, Kotkapura, District Faridkot, who is a licensed retail dealer in insecticides/pesticides, selling the same in the packed condition as packed by the manufacturers thereof. On 29th May,

1990, the Insecticide Inspector took a sample of Monocrotophos 36% SL from the shop of the petitioner, which was manufactured by M/s. Southern Insecticides & Fertilizers, Madras. The said sample was taken in original packing condition as packed by the manufacturer. On analysis, the said sample was found as misbranded. Thereupon, the Insecticide Inspector filed the complaint (Annexure P-1) in the Court of Chief Judicial Magistrate, Faridkot under Sections 3 (k), 17, 18, 29 and 33 of the Act read with Rule 27 (5) of the Insecticides Rules, 1971 (hereinafter referred to as 'the Rules') against the petitioner as well as against the manufacturer and the distributor. On the said complaint, the Chief Judicial Magistrate, Faridkot, summoned the petitioner. Pursuant to the summoning order, the petitioner appeared before the Magistrate and filed an application under section 245 of the Code of Criminal Procedure (hereinafter referred to as 'the Code') for discharging him and for dismissing the complaint on the ground that the petitioner is only a licensed dealer and the alleged sample was taken by the Insecticide Inspector from a sealed container which was not tampered by him and was stored in a good condition. Therefore, a request was made that in view of the provisions contained in Section 30 (3) of the Act, no case is made out against him, and the complaint qua him may be dismissed and he may be discharged. The learned Magistrate,—*vide* his order dated 15th May, 1997 (Annexure P-2) dismissed the said application by observing that the plea taken by the petitioner is the defence available to him under section 30(3) of the Act and the benefit of the same can be taken by him if he proves the same by leading evidence during the course of prosecution. Thereafter, the petitioner has filed the present petition under section 482 of the Code for quashing the complaint (Annexure P-1) and the order dated 15th May, 1997 (Annexure P-2) and all subsequent proceedings pending before the Chief Judicial Magistrate, Faridkot.

(6) Primarily, the contention of learned counsel for the petitioner is that the petitioner is only a dealer and not a manufacturer or a distributor. He sells the insecticides in sealed packed containers as packed and supplied by the manufacturer. The sample was taken from him in original packed containers. There is no allegation in the complaint (Annexure P-1) that the petitioner has tampered with the

seal of the packed insecticide or the said insecticide was not properly stored by him or stored in contravention of any provision of the Act. There is also no allegation against the petitioner in the complaint that he was knowing and could have ascertained, with reasonable diligence, that the insecticide was misbranded. There is also no dispute that the petitioner acquired the misbranded insecticide from a duly licensed manufacturer, which was supplied through a licensed distributor. In view of the aforesaid factual position, the petitioner claims the benefit of provisions contained in Section 30 (3) of the Act and submits that he is not liable for the contravention of any provision of the Act. Learned counsel for the petitioner submitted that respondent did not file any reply and did not dispute that the sample was taken from a sealed container, which was acquired by the petitioner from the licensed manufacturer. There is no allegation, in the complaint that the said sealed container was not stored at a proper place or that the petitioner knew that the contents of the sample were misbranded. Then it should be presumed that the petitioner did not have knowledge that the insecticide was misbranded. In that situation, the petitioner becomes entitled for the benefit of the provisions contained in sub-section (3) of Section 30 of the Act and no offence can be said to have been committed by him. Therefore, the complaint filed against him is liable to be quashed under section 482 of the Code, as its continuation is a misuse of judicial process. He submitted that in view of the undisputed and admitted position of facts, it will be unnecessary to continue with the prosecution.

(7) On the other hand, learned counsel for the State submits that the protections claimed by the petitioner under section 30 (3) of the Act is the defence available to the dealer and the same will be available to him if he proves those facts by leading evidence in the trial court and no inquiry can be held by this Court in this regard while exercising the inherent powers under section 482 of the Code. He submitted that the complaint cannot be quashed simply by pleading the existence of three facts enumerated in section 30 (3) of the Act, as these facts are required to be proved by the dealer by leading evidence in defence after prosecution evidence.

(8) On the aforesaid controversy, two different views have been taken by this Court. According to one view, which has been taken in *M/s. K. K. Traders versus State of Punjab*, (1) *M/s. Amar Khad Store versus State of Punjab*, (2) *M/s. Jandu Mal Des Raj versus State of Haryana*, (3) *M/s. Delhi Agriculture Store versus State of Punjab*, (4) *M/s. Dhamija Sales Corporation versus State of Punjab*, (5) *M/s. Sachdeva Sales Corporation and another versus State of Haryana*, CrI. Misc. No. 3925-M of 1996, decided on 31st January, 1997, *M/s. Wadhawa Beej Bhandar versus State of Haryana*, (6) and *M/s. Rajindra Prasad versus State of Haryana*, (7) *M/s. Bharat Pesticides versus State of Punjab*, (8) *M/s. Onkar Pesticides versus State of Punjab*, (9), *D. S. Bhullar versus State of Punjab*, (10) and *M/s. Sahil Agrochemicals and another versus State of Punjab*, (11) the protection provided under section 30(3) of the Act is available only to the dealer who sells the misbranded insecticides manufactured by the licensed manufacturer, if it is not disputed that the dealer had received the misbranded insecticide from the licensed manufacturer and sold the same in the packed condition in which it was received by him and further if there is no allegation in the complaint that the misbranded insecticide was not properly stored by the dealer or he was having any knowledge that the insecticide was misbranded or he could have such knowledge by exercising due diligence, or he had tampered with the sealed container. In view of the aforesaid factual position, the complaint filed by the Insecticide Inspector qua the dealer is liable to be quashed as continuation of such complaint will be an abuse of process of the Court. The contention of the State that the protection provided under section 30 (3) of the Act is the defence of the dealer which he can avail only if he established the facts mentioned in this sub-section by leading evidence at the time

- (1) 1996 (2) RCR (Criminal) 6
- (2) 1996 (3) RCR (Criminal) 140
- (3) 1996(3) RLR 736
- (4) 1997(1) RCR (Criminal) 42
- (5) 1997 (4) RCR (Criminal) 179
- (6) 1998 (1) RCR (Criminal) 15
- (7) 1998 (1) RCR (Criminal) 163
- (8) 1998 (3) RCR (Criminal) 189
- (9) 2002(2) RCR (Criminal) 101
- (10) 2002(3) RCR (Criminal) 118
- (11) 2002(4) RCR (Criminal) 464

of trial, was not accepted. It has been held that once the aforesaid factual position is not disputed and the complaint is lacking in definite averments regarding improper storing of the insecticide, selling of the insecticide in loose condition and the knowledge regarding selling of the misbranded insecticide, then certainly the dealer is entitled to the protection provided under section 30(3) of the Act and the complaint is liable to be quashed.

(9) According to the second view, which has been taken in *Ashwani Kumar Bhakoo* versus *State of Punjab*, (12), *Ashok Kumar* versus *State of Punjab*, (13), *Manmohan Chopra* versus *The State* (14), *M/s. Hybrid Seeds and Pesticides, Abohar* versus *State of Punjab*, (15) and *M/s. Dhaliwal Agro Centre, Sahnewal* versus *State of Punjab*, (16), the protection provided under Section 30 (3) of the Act is the defence available to the dealer which he can avail after proving the same by leading evidence before the trial court; and a complaint filed under the Act cannot be quashed under Section 482 of the Code merely on the basis of the averments made in the complaint regarding the existence or non-existence of the facts enumerated in Section 30 (3) of the Act. If a dealer successfully established the three facts mentioned in Section 30 (3) of the Act by leading evidence at the time of trial, only then he will become entitle for the protection provided in that sub-section. Before that stage, the complaint or the criminal proceedings initiated against the dealer cannot be quashed.

(10) In view of the aforesaid two different views, the matter has been referred to the Larger Bench.

(11) Before we analyse the relevant provisions of the Act and the conflicting opinions taken by this Court in the aforesaid judgments, it will be appropriate to quote the provisions of Section 30 of the Act, which is re-produced as under :

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

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- (12) 1994(1) RCR (Criminal) 349
 - (13) 1997(2) RCR (Criminal) 679
 - (14) 1997(3) RCR (Criminal) 477
 - (15) 1997(3) RCR (Criminal) 768
 - (16) 2002(1) RCR (Criminal) 716

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

(12) From the aforesaid provision, it is clear that it shall be no defence in a prosecution under the 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. However, in sub-section (3) of this Section, an exception has been made out in case of a person who is only a dealer and is not an importer or a manufacturer of the insecticide or his agent for the distribution thereof. According to this sub-section, such person is not liable for the offence for the alleged contravention under the Act if he proves three things i.e. (a) he acquired the misbranded insecticide from an importer or a duly licensed manufacturer or distributor, (b) he did not know and could not, with reasonable diligence, have ascertained that the insecticide in any way was misbranded and (c) the said insecticide was properly stored by him in the same condition, in which it was acquired.

(13) Now the question to be determined is as to when the said dealer can claim the aforesaid protection, at the stage prior to leading of the prosecution evidence or at the stage when the dealer is required to establish his defence by leading evidence; and further whether such dealer can seek quashing of the complaint under Section 482 of the Code on the basis of protection available to him under Section 30 (3) of the Act, if the aforesaid three facts mentioned in this sub-section have not been disputed or have not been alleged in the complaint.

(14) There is another situation, in which before filing criminal complaint under the Act for the alleged sale of misbranded insecticide, the Licensing Authority suspended or revoked the license of the dealer under Section 14 of the Act on the basis of the report of the Analyst in which the sample was found as misbranded. And against such order of revocation or suspension of license, if an appeal was filed and the Appellate Authority had set aside such order by recording a finding that the dealer was entitled for the protection available to him under Section 30 (3) of the Act, as he sold the misbranded insecticide in the sealed packed condition in which he acquired it and he stored the same in proper condition and he cannot be presumed to know that the contents of the insecticide were misbranded. In that situation, whether the dealer can seek quashing of the criminal prosecution launched against him on the ground that once it is found as a matter of fact by the Appellate Authority, in exercise of the power conferred upon it under Section 15 of the Act, that the dealer was entitled for the

protection under Section 30 (3) of the Act, then continuation of the criminal proceedings will be nothing but an abuse of process of the Court and the defence available to him cannot be deferred till the time he will be entitled to lead his evidence in defence.

(15) Learned counsel for the petitioner submitted that this Court has consistently taken the view that when from a dealer a sample of insecticide is taken from the original sealed packed container, which was supplied to him by the licensed manufacturer and if there is no allegation in the complaint that such dealer did not store the said insecticide in a proper condition; or that he had any information about misbranding of the insecticide contained in the sealed container, as supplied by the manufacturer; or he could not know, with reasonable diligence, that the insecticide in any way contravened any provision of the Act, then the burden which lay on him under Section 30 (3) of the Act must be held to have been discharged. In such a situation, the proceedings against such dealer cannot be allowed to continue and the same are liable to be quashed under Section 482 of the Code. In support of his contention, learned counsel for the petitioner relied upon the decision of the Apex Court in *M/s. Kisan Beej Bhandar, Abohar* versus *Chief Agricultural Officer, Ferozepur and another*, (17) wherein it has been held as under :

“We are inclined to accept the submission and take the view that whether it is prosecution or contravention leading to cancellation, sub-section (3) applies. In this view of the matter on the facts found that it was a full tin in a sealed condition, the liability arising out of misbranding was not of the appellant. Unless he had any other source of information about misbranding and it has not been established the appellant is entitled to the protection of sub-section (3). In the facts once the appellant’s contention that it was sealed tin intact has been found, the burden that lay on him under the provision of sub-section (3) has been satisfactorily discharged, even in the matter concerning the question of cancellation of licence and, therefore, his licence should not have been cancelled.”

(16) Following the aforesaid decision of the Hon'ble Supreme Court, learned Single Judge of this Court (M. L. Kaul, J.) in **M/s. Amar Khad Store's case** (*supra*) has taken the following view :

“Thus from the said case law laid down by the Apex Court, it is found and established that once the petitioners have sold the insecticides in the sealed containers and the samples have been taken out from such containers and there is no proof otherwise with the prosecution that the petitioners misbranded the insecticides, the petitioners cannot be held to have committed any offence within the provisions of the Act.”

(17) The learned Single Judge, in the aforesaid case of Amar Khad Store, also observed as under :

“In this regard reference has also been made by Mr. Chopra on the authority of the Single Bench of this Court reported as 1992 (1) Recent Criminal Reports 613. In that case the petitioner had acquired the insecticide from a duly licensed manufacturer i.e. Markfed Agro Chemicals, S.A.S. Nagar, Mohali. The sample while it remained in possession of the petitioner was properly stored and remained in the same state as when he acquired it. There were no allegation in the complaint that the sample was not properly stored or it was not found in the same state as when it was acquired. It was, therefore, held that as the sample was purchased from a licensed manufacturer, the petitioner could not know with reasonable diligence that the insecticide in any way contravened any provision of the Act.”

(18) The similar view was taken by another learned Single Judge of this Court (M. L. Singhal, J.) in **M/s. Jandu Mal Des Raj's, M/s. Wadhawa Beej Bhandar's** and **M/s. Rajindra Prasad's cases** (*supra*). In Wadhawa Beej Bhandar's case, the learned Judge has observed as under :

“... For misbranding an insecticide dealer/distributor is not liable if it appears on the face of it that dealer/distributor

had stored the insecticide in the same condition in which it had taken from the manufacturer in sealed pack, object of criminal prosecution is not to prosecute the so-called offender but to prosecute him to vindicate the larger interests of the society.”

(19) The same view was further reiterated by another learned Single Judge of this Court (K. S. Kumaran, J.) in **M/s. Delhi Agriculture Store's case** (*supra*), wherein the following observation was made :

“ where it is clear that the insecticides in question were being sold by the petitioners herein in the same sealed and packed condition as supplied by the manufacturer and when there is no allegation that the petitioners had any information about misbranding of the insecticides contained in sealed tins as supplied by the manufacturer, the burden which lay upon them under sub-section (3) of Section 30 of the Insecticides Act must be held to have been discharged. In this case there is also no allegation that the insecticides were not stored properly or that they were tampered with by the petitioners. Therefore, the proceedings against the petitioners cannot be allowed to continue.”

(20) In **M/s. Dhamija Sales Corporation's case** (*supra*), another learned Single Judge of this Court (Dr. Sarojnei Saksena, J.), while placing reliance on the decision in **M/s. Kisan Beej Bhandar's case** (*supra*) held as under :

“In this case also in the complaint there is no allegation that petitioner knew that insecticide is misbranded or with due diligence he could have known that it is misbranded or that it was not properly stored or that petitioner in connivance with accused No. 2 manufacturer was selling the misbranded insecticides. There is nothing in the complaint to suggest that tins were not properly stored or that same were not properly stored or that same were tampered with in any manner. The contention of the

petitioner is that he stored the article properly and it remained in the same state as when he acquired it from the duly licensed manufacturer. Petitioner did not know and could not with due diligence had ascertained that the insecticide in any way contravened any provisions of the Act. In these circumstances, petitioner is protected and is not liable even if the sample was found to be misbranded. The petitioner is not alleged to be the agent of the manufacturer. It is a licensed dealer. I find that the petitioner is entitled to avail protection provided by sub-section (3) of Section 30 of the Act.”

(21) Similarly, in **M/s. Sachdeva Sales Corporation's case** (*supra*), another learned Single Judge of this Court (S. S. Sudhalkar, J.) has taken the view that when admittedly the sample was taken from the original packed sealed containers and when the same was duly stored in the position in which it was received from the licensed manufacturer, then the dealer cannot be blamed for the alleged misbranding of the insecticide and the prosecution of such dealer will be an abuse of the process of law. A direction was issued to the State of Haryana that initiation of the criminal proceedings against such dealers should be discontinued as early as possible. Against this judgment, the State of Haryana filed Petition for Special Leave to Appeal (Crl.) No. 2658 of 1997, which was dismissed in limine by the Hon'ble Supreme Court on 31st July, 1998.

(22) In **M/s. Bharat Pesticides's case** (*supra*), another learned Single Judge of this Court (B. Rai, J.) has taken the similar view while holding as under :-

“Once it was found that the insecticide was acquired from a licensed manufacturer in sealed containers and while in possession of the petitioners, the insecticide was properly stored and remained in the same condition when it was acquired. It is not the case of the respondents that the containers of the insecticide were found to be tampered with. The facts and circumstances stated do persuade me to form a firm opinion that filing of the impugned complaint against the petitioners is abuse of the process of

the Court. I am, therefore, of the considered view that the impugned complaint Annexure P1 and all subsequent proceedings thereto taken therein by the Chief Judicial Magistrate, Amritsar, deserve to be quashed.”

(23) Similar view was taken by both of us in **M/s. Onkar Pesticides's case** (V. M. Jain, J.) and **M/s. Sahil Agrochemicals and another's case** (Satish Kumar Mittal, J.).

(24) On the other hand, learned counsel for the respondent-State put reliance upon a recent decision of the Hon'ble Supreme Court in **The State of Andhra Pradesh versus M/s. Venu Veterinary Division and Another, (18)**, where the Hon'ble Apex Court has interpreted Section 19 (3) of the Drugs and Cosmetics Act, 1940 (hereinafter referred to as 'the Drugs Act'), which is reproduced below for ready reference :-

“Section 19 (3) A Person, not being the manufacturer of a drug or cosmetic or his agent for the distribution thereof, shall not be liable for a contravention of section 18 if he proves-

- (a) that he acquired the drug or cosmetic from a duly licensed manufacturer, distributor or dealer thereof;
- (b) that he did not know and could not, with reasonable diligence, have ascertained that the drug or cosmetic in any way contravened the provisions of that section; and
- (c) that the drug or cosmetic, while in his possession was properly stored and remained in the same state as and when he acquired it.”

(25) The above sub-section is exactly similar to Section 30 (3) of the Act) and while setting aside the decision of the Andhra Pradesh High Court,—*vide* which the criminal complaint under the Drugs Act against the dealer was quashed, the Hon'ble Supreme Court has held that the plea of a dealer cannot be accepted that he cannot be prosecuted under the Drugs Act because he could not have ascertained, by due

diligence, that the sealed packed drugs contravened the provisions of the Drugs Act. It was further held that the situation enumerated in clauses (a), (b) and (c) of sub-section (3) of Section 19 of the Drugs Act is the defence available to the dealer and the dealer can avail this defence only after completion of the prosecution evidence by establishing these facts by leading evidence. The Hon'ble Supreme Court has held as under :

“The High Court of Andhra Pradesh in its order totally overlooked the provisions contained in sub-section (1) of the section 19 of the Act which denies defence plea to the accused that **‘he was ignorant of the nature, substance and quality of the drug or the circumstances of its manufacture’**. The only defence available to him as set out in clause (b) of sub-section (3) is that **‘he did not know and could not, with reasonable diligence have ascertained, that the drug or cosmetic in any way contravened the provisions of the Act’**. This defence plea if at all available to the accused would be considered in accordance with sub-section (1) read with sub-section (3) of Section 19 of the Act only after the prosecution has led its evidence to prove its case. There is no prohibition in any of the provisions of the Act that a dealer cannot be prosecuted for sale of spurious drug or drug of below standard quality without manufacturer being made a co-accused. Such a conclusion by the High Court is not borne out from the provisions of the Act as discussed above.” (Underline Added)

(26) Learned counsel for the respondent-State, while putting reliance upon the aforesaid judgment of the Apex Court, has contended that the ratio of aforesaid decision fortify another view taken by this Court in **Ashwani Kumar Bhakoo versus State of Punjab (supra)**, **Ashok Kumar versus State of Punjab (supra)**, **Manmohan Chopra versus The State (supra)** **M/s. Hybrid Seeds and Pesticides, Abohar versus State of Punjab (supra)** and **M/s. Dhaliwal Agro Centre, Sahnewal versus State of Punjab (supra)**, wherein it has been held that the situation enumerated in Section 30(3) of the Act is the defence available to the accused-dealer and such defence can

be availed by the dealer only if he proves these facts by leading evidence during the criminal proceedings. The Court cannot proceed on the premises that the dealer could not know with due diligence that the insecticide which he was selling or possessing was misbranded. He has to prove in the prosecution that with due diligence he could not know that the insecticide in any way contravened any provision of the Act and it was properly stored by him. Such facts are to be gone into and decided by the trial court and this Court, in exercise of its inherent powers under section 482 of the Code, cannot go into such facts which are yet to be proved by the dealer. The learned Judges, while taking the aforesaid view, had put much stress on the word "if proves" used in sub-section (3) of Section 30 of the Act and observed that mere averments in the petition about these facts cannot be deemed to be the evidence.

(27) We have considered the submissions made by learned counsel for the parties and have perused the various judgments relied upon by them. The ratio of decision in **The State of Andhra Pradesh versus M/s. Venu Veterinary Division and Another**, (*supra*) is very clear and while interpreting the *pari materia* provision of the Drugs Act, the Hon'ble Supreme Court has clearly held that the situation enumerated in clauses (a), (b) and (c) of Section 19 (3) of the Drugs Act, which is exactly similar to Section 30 (3) of the Act, is the defence available to the dealer and he can avail this defence only after the prosecution leads the evidence to prove its case. In view of this ratio, no different view can be taken by us that this defence available to the dealer can be established at a prior stage when the accused dealer has been summoned and that too on the basis of the averments made in the complaint and by making averments in the petition under section 482 of the Code for quashing of the criminal proceedings. This defence will be available to the dealer only after the evidence is led by the prosecution. Thereafter, the dealer can establish this defence either by showing from the prosecution evidence that the factors enumerated in Section 30 (3) of the Act giving him the defence have been established on record or by leading positive evidence to prove those factors, establishing his defence. But prior to that stage, the dealer is not entitled to claim this defence and the complaint filed against him cannot be quashed on the ground that undisputedly the sample was taken from him in the original packed sealed containers which he stored in the same condition in which he obtained if from

the licensed manufacturers or distributors; and that there is no averment in the complaint that the said dealer has tampered with the seal of the packed container or was selling the insecticide in loose condition or was having any knowledge that the insecticide sold by him was misbranded or could have known the said fact by exercising due diligence. This Court while taking the first view had taken support from the judgment of Apex Court in **Kisan Beej Bhandar's case** (*supra*). In that judgment, the present question was not directly involved. But in the subsequent decision in **The State of Andhra Pradesh versus M/s. Venu Veterinary Division and another** (*supra*), the controversy in question has been directly answered. Therefore, in view of this recent decision of the Hon'ble Supreme Court, the first view taken by this Court in various judgments, some of which have been referred to by us in this judgment, cannot be held to be laying down the good law and the said view is hereby reversed.

(28) However, there is one exception to the aforesaid legal position. If on the basis of the report of Public Analyst, in which the sample of insecticide taken from the dealer was found to be misbranded, the license of the said dealer had been suspended or revoked under Section 14 of the Act by the Licensing Authority; and if such dealer filed appeal against that order of revocation and suspension of his license before the Appellate Authority under section 15 of the Act and such authority had set aside that order by recording a finding that the dealer is entitled for protection available to him under section 30 (3) of the Act, as he sold the misbranded insecticide in the sealed container in which he acquired it and he stored the same in proper condition and cannot be presumed to know that the contents of the insecticide were misbranded. In that situation, the criminal complaint filed against such dealer by the Insecticide Inspector is liable to be quashed. As after recording the aforesaid finding by the Appellate Authority, the complaint filed against such dealer cannot be proceeded further as it will amount to misuse of the judicial process. Once the Appellate Authority under the same Act has accepted the defence available to the dealer, in the proceedings pertaining to the cancellation of his license and a finding to that effect has been recorded, then the defence available to the dealer in the criminal prosecution cannot be deferred till the final conclusion of the trial. In such situation, where the defence has been established before the Appellate Authority under section 15 of the Act, criminal complaint filed against the dealer is

liable to be quashed by the High Court, in exercise of powers conferred upon it under section 482 of the Code, as the continuation of such proceedings, after the recording of such finding by the Appellate Authority, will be an abuse of process of law.

(29) The aforesaid view is supported by the decision of the Hon'ble Supreme Court in **M/s. Kisan Beej Bhandar's case** (*supra*), wherein it has been held that the protection enumerated in sub-section (3) of Section 30 of the Act is available to the dealer both in case of cancellation of his license and also for his criminal prosecution under the Act for the contravention of the provisions of the Act. In both the situations, whether it is criminal prosecution or proceedings leading to cancellation of license, sub-section (3) shall apply. If that is so and when a finding recorded by the Appellate Authority under Section 15 of the Act, in which the defences of the dealer were accepted and an order was passed in his favour, then for the same contravention, the prosecution against such dealer cannot be allowed to continue as it will amount to the misuse of judicial process. The defence, as available to such a dealer under sub-section (3) of Section 30 of the Act, cannot be different in the proceedings pertaining to the cancellation of his license and in the criminal proceedings initiated against him.

(30) Learned counsel for the respondent-State referred to the decision in **Ashok Kumar versus State of Punjab** (*supra*) where this Court has rejected the contention raised by the accused dealer that when the Appellate Authority allowed his appeal and set aside the cancellation of his license by giving him the benefit of defence available to him under sub-section (3) of Section 30 of the Act, then the said dealer cannot be prosecuted, by observing as under :

“Under sub-section (3) of Section 30, if the accused proves that he could not know with reasonable diligence that the insecticide in any way contravened the provisions of the Act and further that while the insecticide was in his possession, it was rightly stored, he would not be liable. But the said defence is only open in the prosecution. One wonders as to how when appeal against the order suspending the licence was filed, the Appellate Authority under Section 15 of the Act could look into a defence under Section 30 (3) of the said Act. It could only be pressed into

service in defence to a prosecution. The said findings in that regard that benefit of Section 30 (3) of the Act could be given to the petitioner must be ignored.”

(31) We have perused the aforesaid judgment of this Court. In this judgment, the decision of the Hon'ble Supreme Court in **M/s Kisan Beej Bhandar's case** (*supra*) has neither been cited nor considered. The aforesaid observation made by the learned Single Judge of this Court is totally contrary to the ratio of law given by the Hon'ble Supreme Court in **M/s Kisan Beej Bhandar's case** (*supra*), wherein it has been clearly held that the protection available to the accused dealer under sub-section (3) of Section 30 of the Act is available in both the proceedings i.e. in the proceedings pertaining to cancellation of his license and his criminal prosecution for the alleged contravention of the provisions of the Act. Thus, the contention of learned counsel for the respondent-State in this regard cannot be accepted. It is, therefore, held that if the defences available to the dealer have been accepted in the proceedings pertaining to the cancellation of license by the Appellate Authority under Section 15 of the Act by recording a finding in his favour, then the criminal prosecution for the contravention of the same provisions of the Act cannot be allowed to continue and can be quashed by the High Court, in exercise of the powers conferred upon it under Section 482 of the Code.

(32) In view of the aforesaid discussion, we hold that the situation enumerated in Section 30 (3) of the Act is the defence available to the accused dealer and he can avail this defence only after the prosecution leads its evidence to prove its case. Before that stage of prosecution, the criminal complaint or the criminal proceedings initiated against the accused dealer for contravention of the provisions of the act cannot be quashed in exercise of the powers conferred under Section 482 of the Code on the basis of the averments made in the petition and admitted position in the complaint pertaining to the three situations mentioned in clauses (a), (b) and (c) of sub-section (3) of Section 30 of the Act. The only exception, in which the criminal complaint and the prosecution can be quashed, is that where the defence available to the dealer under Section 30 (3) of the Act has been accepted by the Appellate Authority under Section 15 of the Act while setting aside the order of suspension or revocation of his license. Thus, the question of law referred to this Bench is answered accordingly.

(33) Since in all the three cases, which are being decided by this judgment, no proceeding regarding cancellation of the license of the dealer was initiated and the petitioner-accused is seeking quashing of the criminal complaint and the proceedings thereof at the initial stage, on the basis of the averments made in the complaint and the admitted position, the same cannot be allowed in view of the aforesaid view taken by us. Thus, these petitions filed by the petitioner-accused are hereby dismissed.

J.S.T.

BEFORE S. S. NIJJAR AND SATISH KUMAR MITTAL, JJ

GURMEET SINGH AND ANOTHER—Petitioners

versus

*CONSOLIDATION OFFICER, LUDHIANA AND OTHERS —
Respondents*

C.W.P. No. 15009 of 2000

1st November, 2002

Punjab Village Common Lands (Regulation) Act, 1961—S. 2(g)—Constitution of India, 1950—Art. 226—Assistant Consolidation Officer changing the mutation of the Shamlat Deh land in favour of the individual proprietors without holding an enquiry and without issuing any notice or providing an opportunity of hearing to the affected persons—Whether the Assistant Consolidation Officer has jurisdiction to change such a mutation—Held, no—Before changing the mutation it is necessary to be decided whether the land in question is a Bachat land or shamlat deh as required under section 2(g) of the 1961 Act—Petition allowed while quashing the impugned orders being violative of the principles of natural justice.

Held that, the Assistant Consolidation Officer was having no jurisdiction to change the mutations from the name of Shamlat Patti Rajputan and Shamlat Patti Awana to the name of individual proprietors and to re-partition the land. Further, whether the land in question is a Bachat land or Shamlat deh which vests in the Gram