

Before: Surinder Singh, J.

MADAN DANGI AND OTHERS,—Petitioners,

versus

STATE OF PUNJAB AND ANOTHER,—Respondents.

Criminal Misc. No. 5544-M of 1985

April 7, 1986.

*Indian Penal Code (XLV of 1860—Section 420—Insecticides Act (XLVI of 1968)—Section 3(k)(viii) and 31—Insecticides Rules, 1971—Rule 24(2)—Insecticide sample said to be adulterated as having higher active ingredient—Analysis done as per method of examination approved by I. S.—Standard of toxicity, however, not prescribed—Said sample—Whether to be deemed to be misbranded in terms of section 3(k)—Charge under section 420 of the Code also added against the accused—Addition of the said charge—Whether entitles the Court to proceed with the prosecution ignoring the provisions of section 31 of the Act—Order summoning the accused—Whether liable to be quashed as an abuse of the process of the Court.*

*Held*, that a reading of provisions of section 3(k)(viii) of the Insecticides Act, 1968, provides that insecticide shall be deemed to be misbranded if it has a toxicity which is higher than the level prescribed. Rule 24(2) of the Insecticides Rules, 1971, lays down the method of examination of samples. However, in the absence of any standard postulated or prescribed by any authority under the Act or otherwise there can be no question of article being sub-standard or misbranded as postulated in section 3(k) of the Act.

(Para 4)

*Held*, that as per the provisions of section 31 of the Act, no prosecution for an offence under the Act could be instituted except by or with the written consent of the State Government or a person authorised in this behalf by the said government. The requirements of the aforesaid section are mandatory and are salutary provisions of law which have to be complied with before summoning the accused to face prosecution. The mere addition of a charge under section 420 of the Indian Penal Code, 1860, would not nullify the requirements of law for offences under the Act and as such the order summoning the accused is to be quashed as being nothing but an abuse of the process of the Court.

(Paras 5 and 7)

*Petition under section 482 Cr. P. C. praying that proceedings in case F.I.R. No. 144, dated 23rd May, 1984, P. S. Patti, District Amritsar for an offence under section 3K(3), 17(1), 18(1)(c) read with section 24(1) of the Insecticide Act, 1968 and under section 420 I.P.C. pending*

*in the court of Shri Hukam Chand, J.M.I.C., Patti, District Amritsar, may kindly be quashed being illegal and abuse of the process of the court.*

*It is further prayed that pending the decision of this petition, further proceedings in the said court may kindly be stayed.*

R. S. Ghai, Advocate, for the Petitioners.

Mr. Gurmukh Singh Manauli, Advocate, for A.G. Punjab, for the Respondent.

### JUDGMENT

*Surinder Singh, J.—*

(1) This is a petition filed under section 482, Code of Criminal Procedure, with a prayer for quashing of the proceedings pending in the Court of Judicial Magistrate, First Class, Patti, District Amritsar, in consequence of First Information Report No. 144, dated May 23, 1984, of Police Station Patti, registered for the offences under sections 3 k (viii), 17(1), 18(1) (c) read with section 24(1) of the Insecticides Act, 1968, and section 420, Indian Code.

(2) The facts as narrated in the petition, may be briefly recapitulated. A letter was addressed by the Chief Agricultural Officer, Amritsar, on April 19, 1984, to the Station House Officer, Patti, stating that the Plant Protection Inspector had obtained a sample of a Pesticide having the trade name of Saturn 50 E.C. from the premises of the Firm Messrs Sharma Kheti Sewa Centre, Patti. The sample, on analysis was found to possess 'higher active ingredient' and thus, the Pesticide was misbranded. Proceedings were, therefore, sought to be launched against Mohan Lal of the said Firm which had sold the 'misbranded' Pesticide. On the basis of this letter First Information Report, was registered and prosecution was launched in the Court of the Judicial Magistrate First Class, Patti, who framed a charge against Mohan Lal aforesaid for the offences, referred to above. During the trial of the said case, the statement of Karam Singh, Plant Protection Inspector was recorded and it is thereafter that the trying Magistrate passed an order summoning the three petitioners as accused in the case. The order is to the following effect:—

“During the examination of P.W. 1 Karam Singh, Plant Protection Inspector, it came to light through record that

**Madan Dangi and others v. State of Punjab and another  
(Surinder Singh, J.)**

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purchased pack of Pesticide from M/s. Janta Pesticides, Store, Tarn Taran and manufactured by M/s. Pesticides India Pvt. Ltd. The sample taken out of the stock was found to be below standard, therefore, I find there is sufficient evidence to summon Shri M. L. Dangi, Regional Manager (North Circle) and Mr. J. P. Khanna, Assistant Sales Officer of M/s. Pesticides India, Udaipur and Mr. Vijay Kumar of M/s. Janta Pesticides Store, Tarn Taran. All are liable individually and collectively to face the trial under section 3 of Pesticides Act and under section 24 of the said Act, therefore, the accused be summoned accordingly to face their Trial for the offence on 23rd May, 1985.

Sd./- . . . . .

Hukam Chand,  
(JMIC, Patti)”. ”.

(3) A large number of grounds have been raised in the present petition, on the basis of which the order summoning the three petitioners has been impugned. As the order itself indicates, M. L. Dangi (Petitioner No. 1) has been summoned in his capacity as Regional Manager (North Circle) and J. M. Khanna (Petitioner No. 2) as Assistant Sales Officer of Messrs Pesticides India, i.e., the manufacturing Firm. Vijay Kumar (Petitioner No. 3 has been summoned as a representative of the Firm Messrs Ajanta Pesticides Stores, Tarn Taran. Although the order itself does not indicate so, but it is stated at the bar that the said respondent is the Distributor of the Pesticides at Tarn Taran. At the time of the arguments, the learned counsel for the petitioners confined his address to two grounds mentioned at Serial Numbers (a) and (b) of Para 7 of the petition. Let us examine the same.

(4) The learned counsel has referred to the provisions of section 3 k (viii) of the Insecides Act, 1968 which provides that an insecticide shall be deemed to be misbranded if it has a toxicity which is higher than the level prescribed, etc. The straight contention in this behalf is that the toxicity level of various types of insecticides has not been prescribed under any rule or regulation, much less of the product of which the sample was obtained. A written statement has been filed in this case on behalf of the respondents. **Queerly enough**

in to the above objection contained in clauses (a), what is recited is merely Rule 24(2) of the Insecticides Rules, 1971 which lays down the method of examination of samples. The argument adopted is that since the sample was analysed as per the method of examination approved by the I.S.I., and same was found to contain 'higher active ingredient', it should be deemed to be 'misbranded' as postulated under section 3(k) of the Act. In view of this stand taken on behalf of the respondents, the petitioners filed a Rejoinder to the written statement and along with the said Rejoinder, certain important documents have been annexed. Annexure 'A' is a letter from the Central Insecticides Board and Registration Committee addressed to Messrs Pesticides India, Udaipur, on the subject of Clarification of section 3, sub-section k(viii) of the Insecticides Act'. It is stated in the letter issued by the Secretary of the Board that the 'toxicity level' and 'active ingredient' are two completely different entities. It is further stated that the toxicity level for any registered product has not yet been notified under the Insecticides Act, 1968. Annexure 'B' to the Rejoinder is a letter addressed by Dr. H. C. L. Gupta, Insect Toxicologist to Mohan Sukhadia, University Department of Entomology respondent No. 1. The point to which the learned counsel has made a reference is that in this letter, it has been stated that the percentage of active ingredient and toxicity are two different items. Still another letter is Annexure 'C' from the Deputy Director (Agr. and Food) Indian Standards Institution, addressed to Messrs Pesticides India, New Delhi, saying that it is confirmed that ISI has not published any standard on Denthio-carb 50 per cent EC, which as mentioned in Annexure 'B' is the chemical of which the trade name is Saturn. On the basis of this material, the learned counsel for the petitioners has rightly submitted that in the absence of any standard of toxicity prescribed by any authority under the Act or otherwise, there was no question of the article being substandard or misbranded. There is no effective reply to this contention and the same must prevail.

(5) Coming now to the objection contained in clause (b) of Para 7 of the petition, it is surprising, the way the trial Court has bypassed a mandatory and salutary provision of law before summoning the petitioners as accused in the case. The trial Court, while dealing with the matter in its order dated August 28, 1985, directing the framing of the charge, completely ignored the provisions of section 31 of the Insecticides Act as per which no prosecution for an offence under the said Act could be instituted except by, or with the written

Ved Parkash v. Darshan Lal Jain (D. V. Sehgal, J.)

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consent of the State Government or a person authorised in this behalf by the State Government. In fact, it adopted a novel course to by-pass the said provision by observing that section 420, Indian Penal Code, had also been added as one of the offence for which the accused had been charged. It was further observed that 'the dealers have cheated the innocent farmers by supplying substandard medicines and have thus caused loss to the poor farmers and have given undue profit to the manufactures, dealers and the suppliers'. Even the learned counsel for the State has not been able to point out any material whatsoever on the basis of which this observation was made by the trying Magistrate. It is obvious that the mere addition of section 420, Indian Penal Code, would not nullify the requirements of law for offences under the Insecticides Act.

(6) It is needless to go into another serious objection in regard to the summoning of the three petitioners who are not even *prima facie* shown to be Incharge of the manufacturing process of the item concerned. The trial Court could not just pick and choose a person connected with the Firms in question, to face a criminal charge.

(7) The result is that the order summoning the three petitioners as accused in the case is nothing but an abuse of the process of Court and the same is quashed. The present petition is accordingly allowed.

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H.S.B.

Before: D. S. Tewatia and D. V. Sehgal, JJ.

VED PARKASH,—Petitioner.

versus

DARSHAN LAL JAIN,—Respondent .

Civil Revision No. 1734 of 1984

April 24, 1986.

*East Punjab Urban Rent Restriction Act (III of 1949)—Section 13(2) (ii) & (iii)—Tenant occupying two adjacent shops belonging to different persons—Wall intervening between the two shops demolished by the tenant—Value and utility of the demised shop thereby admittedly impaired—Demolition of the wall within the knowledge of the landlord but rent accepted thereafter for a long*