

12 *ibid* of the 1984 Rules also held that the exemption from qualifying the test after completion of 18 years' service will be operative for those promotional posts which had fallen vacant after 21st January, 1991.

Consequently, for the reasons recorded above, para 1 of the instructions, Annexure P, 4, so far as it violates the provisions of Rule 12 of the Rules by making the notification dated 21st January, 1991 operative retrospectively stands quashed by accepting this writ petition to that extent. It is further clarified that the promotion to the posts of Assistant (now Senior Assistant) lying vacant prior to 21st January, 1991 shall be made from the eligible candidates on the basis of then existing rules by ignoring the exemption from qualifying the test granted with effect from 21st January, 1991 to those persons who had put in 18 years of service while for promotion to the posts remaining vacant due to non-availability of eligible persons or falling vacant on 21st January, 1991 and onwards, such persons who had been exempted from qualifying the test had to be treated at par with those persons who had already qualified such test and their promotion has to be made on the basis of their original seniority-cum-merit basis as Clerks/Senior Clerks/Junior Assistants.

(26) The writ petition stands disposed of accordingly. There is, however, no order as to costs in view of the peculiar circumstances of the case.

(27) In view of the majority decision this writ petition is disposed of with no order as to costs.

R.N.R.

Before Hon'ble J. B. Garg, J.

SURINDER PAL SINGH SAINI,—Petitioner.

versus

THE STATE OF PUNJAB AND ANOTHER,—Respondents.

Criminal Misc. No. 1920-M of 1993

October 21, 1993

Criminal Procedure Code (II of 1974)—S. 482—Insecticides Act 1968—Ss. 3(k) (1), 29(1), 24(4) and 31—Complaint filed as sample of Milron not in conformity to specifications—Quashing of complaint

sought on grounds that no sanction sought to launch prosecution—Complaint filed after expiry of manufacturing period—Held that complaint not maintainable liable to quashed as accused had no opportunity to get sample reanalysed.

J. B. Garg, J.

Held, that *Salig Singla v. State of Haryana* 1992 (1) R.C.R. 336 has been referred to wherein it was held that if life of the Insecticide had expired and the accused had no opportunity of getting it re-analysed, the proceedings instituted were liable to be quashed. Even the perusal of the notice shows that the manufacturer was served with notice on 9th January, 1989 whereas the sample had expired on 31st October, 1988. These pleas of facts and law have not been rebutted substantially. The conclusion is that the petition succeeds and the complaint in question and the proceedings arising therefrom are hereby quashed.

(Para 4)

P. S. Patwalia, Advocate, for the Petitioner.

G. S. Gill, A.A.G. Punjab, Arun Chandra, Advocate, for respondent No. 2.

JUDGMENT

(1) Surinder Pal Singh Saini, Regional Sales Manager, Montari Industries Ltd., Ludhiana has moved the present petition under Section 482 of the Code of Criminal Procedure challenging the complaint Annexure P.1 and the proceedings arising out of it instituted by the Insecticide Inspector, Patiala under Section 29(1) of the Insecticides Act, 1968 (hereinafter referred to as the Act) for alleged violation of Section 3(K) (i) of the Act.

(2) Briefly, the facts as alleged are that Shri Narinder Singh, Insecticide Inspector, Patiala checked the premises of M/s Gupta Agro Sales Agency Devigarh on 28th November, 1988 and took a sample of Milron 75 WP Batch No. 40 alleged to have been manufactured by Montari Industries Ltd., District Hoshiarpur and according to the report of the Public Analyst, the sample was not found in conformity to the I.S.I. specifications in respect of its percentage of active ingredients. The petitioner, *inter alia*, has alleged that the complaint is liable to be quashed inasmuch as there was no sanction for prosecution of the petitioner under Section 31 of the Act. Even otherwise, the alleged sanction Annexure P.3 in the Cyclostyled form after filling the blanks and it was illegal and invalid that milron sample was drawn on 28th November, 1988 and the complaint was instituted in the Court of Chief Judicial Magistrate, Patiala on 25th October, 1990 after about two years from the

date of its manufacture inasmuch as batch No. 40 was manufactured in October, 1988 and it expired in September, 1990, that the petitioner has been denied the opportunity of getting the sample reanalysed under Section 24(4) of the Insecticides Act that there is no specific allegation against the present petitioner and his name only finds mention in the title of the complaint, that the premises of the manufacturer are located in village Toansa in District Hoshiarpur and the petitioner has his office at Ludhiana and the court at Patiala had no jurisdiction to entertain it.

(3) The learned counsel for the petitioner has referred to the sanction Annexure P.3 issued by Joint Director of Agriculture on 16th October, 1990. Its perusal shows that neither the name of Surinder Pal Singh Saini nor his designation finds mention in the entire sanction. The plea of the petitioner is that he is not the manufacturer and is only a Regional Sales Manager and his office is located at Ludhiana. It shows that the sanction Annexure P.3 is not a valid one *qua* the petitioner.

(4) The learned counsel for the petitioner has further pointed out that the alleged sample was taken on 28th November, 1988 and the batch No. 40 of the Insecticide was manufactured in October, 1988 and its period of expiry was September, 1990. The complaint was instituted on 25th October, 1990 and the impugned order was passed on 23rd December, 1992 by some other officer in the absence of the Chief Judicial Magistrate, Patiala. On behalf of the respondent it could not be explained that how the impugned order could be passed by some official if the Chief Judicial Magistrate himself was on casual leave. The learned counsel for the petitioner has also pointed out that the complaint did contain the details as to what should have been the percentage of Icoproturon and what was deficient or excess found in the sample in question. Here, *Salig Singla v. State of Haryana* (1), has been referred wherein it was held that if life of the Insecticide had expired and the accused had no opportunity of getting it re-analysed, the proceedings instituted were liable to be quashed. Even the perusal of the notice Annexure P.2 shows that the manufacturer was served with notice on 9th January, 1989 whereas the sample had expired on 31st October, 1988. These pleas of facts and law have not been rebutted substantially. The conclusion is that the petition succeeds and the complaint in question and the proceedings arising therefrom are hereby quashed.

J.S.T.