IN THE FEDERAL SHARIAT COURT
(Original Jurisdiction)

PRESENT

MR.JUSTICE HAZIQUL KHAIRI, CHIEF JUSTICE
MR.JUSTICE ALLAMA DR.FIDA MUHAMMAD KHAN
MR.JUSTICE SALAHUDDIN MIRZA
MR. JUSTICE MUHAMMAD ZAFAR YASIN

SHARIAT PETITION NO.1-K-2000

1 Inayatullah son of Muhammad Idrees Soomro .
Proprietor Al Madina Pesticide Store, Hospital Road,Kandiaro
2. Qamaruddin son of Haji Allahdin Sheikh,
Proprietor Abdullah Form Service Dadu Road Moro,
District Naushahro Feroze.
3. Ghulam Hussain son of Bilawal Khan Morio,
Proprietor Ghulam Hussain Morio.Pesticides Store,
Tharushah,Taluka Bhiria,District Naushahro Feroze
4 Ansar Mahmood son of Ghulam Mahmood Cheema,Proprietor Cheema Pesticide Store.Mehrabpur.Taluka Kandiaro. District Naushahro Feroze
5. Muhammad Rafique son of Hizbullah abro. proprietor Abro Pesticides Store, Hospital Road. Kandiaro

Petitioners

Versus

1 Province of Sindh to be served through Secretary Ministry of Agriculture, Government of Sindh. Karachi
2. Federation of Pakistan to be served through Secretary. Ministry of Law, Federal Government of Pakistan, Islamabad

Respondents

Counsel for petitioners	Sardar Akbar F Hujjan, Advocate
For the Government of Sind	Mi Farid-ul-Hassan,AAG
Date of Institution	21.10.2000
Date of hearing	5.1 2009
Date of decision	6-4-2009

JUDGMENT

MUHAMMAD ZAFAR YASIN, JUDGE.- Through this Shariat petition filed under Article 203 D of the Constitution, petitioner Inayatullah along with four others havechallenged sub-section (3) and (6) of section 18 of the Agricultural Pesticides Ordinance, 1971 as amended by Ordinance No XLIX of 1997, with the plea that the said sub-sections of section 18 are repugnant to the Holy Qur'an and Sunnah of Holy Prophet (PBUH), thus prayed for a declaration in this respect

2 The petitioners are doing business as retail sellers of Pesticides since long They purchase the pesticides of various companies registered under "The agricultural Pesticides Ordinance,1971" The said companies are registered by the Federal Government for importing, manufacturing, and packing the pesticides in small containers and labeling the same The grievance of the petitioners is that they have neither any facility of chemical laboratories to check the quality as per standard specification of the chemical formula of the pesticides, which they purchase from various registered companies, for sale as retail sellers nor they are

authorized to remove the ceiling applied by the manufacturer on the container, while such facility is fully available with the Federal Government of Pakistan as well as with the provincial government. Therefore, the retail seller should not be held liable for any penalty, if sample of pesticide is taken from his possession by the Inspector under this Ordinance and it is found sub-standard or adulterated by the pesticide laboratory. The relevant provisions challenged through this Shariat petition i.e. sub section 3 and (6) of section 18 of the Agricultural Pesticides Ordinance, 1971 as amended in 1997 read as under -

M.Z. Jaswal

(3) Any document purport to be a report signed by the Government Analyst of an analysis conducted by him under this Chapter shall be conclusive evidence of the particulars stated therein against the person from whose possession the sample has been taken unless the person to whom the report has been delivered under sub-section (2) disputes the correctness of the analysis conducted by the Government analyst and, within thirty days of the delivery of the report to him, places before the (Federal Government) evidence which in his opinion controverts the correctness of such analysis

(6) A certificate of analysis prepared by the Pesticide Laboratory shall be conclusive evidence of the facts stated therein, against the person from whose possession the sample has been taken

The petitioners have not cited/quoted any Qur'anic Verses or any Hadith of the Holy Prophet (PBUH) to substantiate their plea that the above noted provisions under challenge are violative of Injunctions of Islam but the petitioners have simply alleged so and have referred following Qur'anic verses in the foot note of the Shariat petition

For convenience the Qur'anic Verses referred in foot note are reproduced here

1 "Those are a people who have passed away Theirs is that which they earned, and yours is that which ye earn And ye will not be asked of what they used to do. (Al-Baqra-134)"

2. "Allah tasketh not a soul beyond its scope For it (is only) that which it hath earned, and against it (only) that which it hath deserved. Our Lord! Condemn us not if we forget, or miss the mark! Our Lord ! Lay not on us such a burden as thou didst lay on those before us! Our Lord! Impose not on us that which we have not the strength to bear! Pardon us. absolve us and have mercy on us, Thous. our Protector. and give us victory over the disbelieving folk (Al-Baqara- 286)"

3. Those who disbelieve say unto those who believe Follow our way (of religion) and we verily will bear your sins (for you) They cannot bear aught of their sins. Lo! They verily are liars (Al-Ankaboot-12)"

4 "But they verily will bear their own loads and other loads beside their own, and they verily will be questioned on the Day of resurrection concerning that which they invented" (Al-Ankaboot-13).

Relevant portion of Last sermon (Khutba tul Widah) of the Holy Prophet (PBUH) is as under:

> "Beware, no one committing a crime is responsible for it but himself. Neither the child is responsible for the crime of his father, nor the father is responsible for the crime of his child "

3. The learned counsel for the petitioners has also challenged the said provisions of law on the touch stone that these provisions are in violation of Article 25 of Constitution of Islamic Republic of Pakistan being discriminatory

4. Pre-admission notice was issued to the respondents, thereafter the petitioners, with permission of the court, had struck off the names of respondents No.1,2 and 4 This Shariat petition was admitted to regular hearing on 9.4 2008 Thereafter the Federal Government filed the requisite comments On behalf of Respondent No.3 i e province of Sindh, District Officer Agriculture Naushahro Feroz filed the para wise comments and also argued the matter We have heard the arguments of the learned counsel for the petitioner as well as the respondents.

5. Learned counsel for the petitioners has argued that the retail seller has been held liable under the impugned provision of law even if he has not committed offence of adulteration or made the pesticide sub-standard, simply because sample of pesticide has been from his possession, which has been found adulterated or sub-standard by the official Pesticide Laboratory Thus to penalize the retail seller for the wrong done by the manufacturer, importer or the formulator, is contrary to injunctions of Islam

6. On the other hand it has been argued that the impugned provisions of law are in no way violative of any injunction of Qur'an or Sunnah. The law has been enacted to ensure that the consumer gets unadulterated and per standard specification pesticide for use

7 Under Islamic law it is well established position that a person is considered to be the owner of an article from whose custody it has been recovered Thus if an adulterated or sub-standard pesticide is recovered from a retail seller it would be presumed that he was its owner and responsible of its being substandard or adulterated Otherwise the

retailer has a full right to get the said pesticide checked from Government Chemical Laboratory, whether these are according to prescribed Chemical formula and also unadulterated, when he had purchased from the importer or formulator. Otherwise also the relevant provisions of the Agricultural Pesticides Ordinance, 1971 as amended in 1997 is to be read as a whole and sub-section 3 and sub-section 6 of section 18 are not to be read in isolation. If we read the whole Ordinance it would clearly show that it is not the retail seller who is responsible but any one from whose custody the adulterated or sub-standard pesticide has been recovered is liable to the penalties prescribed by this law In this respect relevant provisions are sections 10, 20,21 and 22 of the Agricultural Pesticide Ordinance, 1971 which are reproduced for convenience:-

> Sec.10. Labelling of packages.- (1) No person shall sell or offer or expose for sale, or advertise or hold in stock for sale any pesticide unless each package containing the pesticide, and every tag or label durably attached thereto, is (branded or) marked in printed characters in such form and in such manner as may be prescribed.
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> (2) In the even of a distributor, dealer, wholesaler, retailer agent or vendor selling any adulterated or sub-standard

pesticide, the importer, manufacturer or formulator from or through whom the said pesticide has been obtained shall also be guilty of the offence committed by the aforementioned distributor, dealer, wholesaler, retailer, agent or vendor. as the case may be, and be liable to the same punishment

Provided that, pesticide in the same package or label are recovered from the warehouse or store of the importer, manufacturer, distributor or formulator, as the case may be, and established to be also adulterated or substandard

(3) Any dealer wholesaler, retailer or an agent who has been convicted of not less than two offences under this Ordinance shall be black listed by the importer, manufacturer, distributor or formulator of the pesticide in question

Sec 20 Purchaser of pesticide may have it tested or analyzed —(1) Any person who has purchased a pesticide may apply to a Government Analyst to conduct test or analysis of the pesticide

(2) An application under sub-section (1) shall be made in such form and manner and be accompanied by such fee as may be prescribed.

(3) The Government Analyst to whom an application is made in accordance with sub-section (2) shall conduct the test or analysis and issue to the applicant a report signed by him of the test or analysis

Sec.21 Offences and penalties:- (1) Any person who imports, manufactures, formulates, sells, offers or exposes for sale, holds in stock for sale or advertises for sale an adulterated or sub-standard pesticide shall be guilty of an offence

(2) The person guilty of an offence under sub-section (1) shall be punished -

(a) in the case of an adulterated pesticide, in relation to a first offence with imprisonment for a term which shall not be less than one year or more than three years and with fine amounting to five hundred thousand rupees and for every subsequent offence

with imprisonment for a term which shall not be less than two years or more than three years and with fine which shall not be less than five hundred thousand rupees or more than one million rupees, and

(b) in the case of a sub-standard pesticide, in relation to a first offence with imprisonment for a term which shall not be less than six months or more than two years and with fine which may extend to five hundred thousand rupees and for every subsequent offence with imprisonment which may extend to three years and with fine but shall not be less than the punishment given or the first offence "

Sec.22 Whoever gives a false warranty to a dealer or purchaser in respect of adulterated or sub-standard pesticide shall, unless he proves that when he gave the warranty he had good reason to believe the same to be true3, be guilty of an offence punishable in the same manner and to the same extent as provided for under section 21.

8. As regards the arguments of the learned counsel for the petitioners that the impugned provisions of the Ordinance are in violation of Article 25 of the Constitution of Islamic Republic of Pakistan being discriminatory, the learned counsel has failed to point out any discrimination reflected through the impugned provisions of amended law. Furthermore to challenge any law on the touchstone of fundamental rights, given in the Constitution, the forum is High Court and not this Court

9. In view to secure interest of consumer this law has been enacted and amended, while no provision of the amended law has been found to be contrary to the Injunction of Qura'n or Hadith referred in the foot note of the petition.

10. In view thereof there is no merit in this Shariat petition, therefore, the same is dismissed

M. Z. Yasin

JUSTICE MUHAMMAD ZAFAR YASIN

6/4/09

JUSTICE HAZIQUL KHAIRI
CHIEF JUSTICE

JUSTICE ALLAMA DR FIDA MUHAMMAD KHAN

JUSTICE SALAHUDDIN MIRZ

Announced on 6-4-09
At Lahore
M Akram/

Approved for reporting

M. Z. Yasin