SPC Guiding Case No. 13: Case of Wang Zhaocheng et al. for Illegal Purchase, Sale, and Storage of Hazardous Substances

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Unofficial English translation prepared for reference only. The official Chinese text prevails.

Discussed and adopted by the Judicial Committee of the Supreme People's Court; issued on January 31, 2013.

Keywords

Criminal / illegal purchase, sale, and storage of hazardous substances / toxic substances

Holding

1. Highly toxic chemicals such as sodium cyanide, which are subject to strict state supervision and administration, can easily cause human poisoning or death and pose great toxicity and danger to the human body and the environment, and fall within the "toxic" substances prescribed in Article 125, paragraph 2 of the Criminal Law.

2. "Illegal purchase and sale" of toxic substances means the act of purchasing or selling toxic substances on one's own initiative without the approval or permission of the relevant competent department, in violation of the provisions of law and the competent state departments; it does not require the concurrent existence of both purchase and sale conduct.

Basic Facts

The public prosecution organ alleged that the defendants Wang Zhaocheng, Jin Guomiao, Sun Yongfa, Zhong Weidong, and Zhou Zhiming illegally purchased and sold sodium cyanide, endangering public safety, and that this was a joint crime; they should be held criminally liable for the crime of illegal purchase and sale of hazardous substances. However, because they all truthfully confessed their crimes, purchased the sodium cyanide for electroplating, and had not caused serious consequences, they could be given lighter punishment, and it was recommended that suspended sentences be applied to the five defendants.

The defender of the defendant Wang Zhaocheng argued that sodium cyanide is a restricted-use, not a prohibited-use, highly toxic chemical, and does not fall within the category of toxic substances; that the conduct of Wang Zhaocheng and others in purchasing sodium cyanide on their own initiative did not meet the constituent elements prescribed in Article 125, paragraph 2 of the Criminal Law; and that, in the absence of serious consequences, they should not be held criminally liable, and therefore requested that the defendant be acquitted.

Upon trial, the court found that the defendants Wang Zhaocheng and Jin Guomiao, without lawfully obtaining a purchase and use permit for highly toxic chemicals, agreed that Wang Zhaocheng would purchase sodium cyanide on their behalf. From October 2006 to the end of 2007, Wang Zhaocheng purchased sodium cyanide from Ni Ronghua (handled in a separate case) three times at a price of RMB 1,000 per barrel, paying Ni Ronghua a total of RMB 40,000. From August 2008 to September 2009, Wang Zhaocheng purchased sodium cyanide from Li Guangming (handled in a separate case) three times at a price of RMB 975 per bag, paying Li Guangming a total of RMB 117,000. Wang Zhaocheng and Jin Guomiao stored the above sodium cyanide in the locked warehouses of their respectively contracted workshops at Zhejiang Shaoxing Nanyang Hardware Co., Ltd., for use in electroplating production. Of the total, Wang Zhaocheng used one-third and Jin Guomiao used two-thirds. In May 2008 and July 2009, the defendant Sun Yongfa purchased one barrel and one bag of sodium cyanide from Wang Zhaocheng for a total of RMB 2,000. In July and August 2008, the defendant Zhong Weidong purchased five bags of sodium cyanide from Wang

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Zhaocheng at RMB 1,000 per bag. In September 2009, the defendant Zhou Zhiming purchased three bags of sodium cyanide from Wang Zhaocheng at RMB 1,000 per bag. After purchasing the sodium cyanide, Sun Yongfa, Zhong Weidong, and Zhou Zhiming all stored it in the locked warehouses or water tanks of their respective workshops for use in electroplating production.

Judgment

On March 31, 2012, the Yuecheng District People's Court of Shaoxing, Zhejiang Province rendered Criminal Judgment (2011) Shao Yue Xing Chu Zi No. 205, finding the defendants guilty of the crime of illegal purchase, sale, and storage of hazardous substances and sentencing the defendant Wang Zhaocheng to three years of fixed-term imprisonment with a five-year suspended sentence; the defendant Jin Guomiao to three years of fixed-term imprisonment with a suspended sentence of four years and six months; the defendant Zhong Weidong to three years of fixed-term imprisonment with a four-year suspended sentence; the defendant Zhou Zhiming to three years of fixed-term imprisonment with a suspended sentence of three years and six months; and the defendant Sun Yongfa to three years of fixed-term imprisonment with a three-year suspended sentence. After the judgment was pronounced, none of the five defendants appealed, and the judgment became legally effective.

Reasoning

The effective judgment of the court held as follows. The defendants Wang Zhaocheng, Jin Guomiao, Sun Yongfa, Zhong Weidong, and Zhou Zhiming, without obtaining a permit to use highly toxic chemicals, violated the State Council's Regulations on the Safety Administration of Hazardous Chemicals and other provisions, and, knowing that sodium cyanide is a highly toxic chemical, still illegally purchased, sold, and stored it, endangering public safety. Their conduct all constituted the crime of illegal purchase, sale, and storage of hazardous substances, and this was a joint crime. Regarding the defense opinion raised by Wang Zhaocheng's defender: Upon examination, although sodium cyanide is not a prohibited highly toxic chemical, it is a restricted-use highly toxic chemical listed in the catalogue of hazardous chemicals and subject to strict supervision and administration; it can easily cause human poisoning or death, poses great toxicity and extreme danger to the human body and the environment, and can readily cause major threats and hazards to the environment and to human life and health, and therefore falls within the "toxic" substances prescribed in Article 125, paragraph 2 of the Criminal Law. "Illegal purchase and sale" of toxic substances means the act of purchasing or selling toxic substances on one's own initiative without the approval or permission of the relevant competent department, in violation of the provisions of law and the competent state departments; it does not require the concurrent existence of both purchase and sale conduct. Wang Zhaocheng and others did not have the qualifications and conditions to purchase and store sodium cyanide, violated the relevant state supervision provisions, illegally purchased, sold, and stored large quantities of highly toxic chemicals, evaded the safety supervision and administration of the relevant competent departments, and disrupted the order of hazardous chemicals administration. This had already created a realistic threat to the safety of the people's lives, health, and property and was sufficient to endanger public safety. Therefore, the conduct of Wang Zhaocheng and others constituted the crime of illegal purchase, sale, and storage of hazardous substances, and the above defense opinion was not adopted. Wang Zhaocheng, Jin Guomiao, Sun Yongfa, Zhong Weidong, and Zhou Zhiming all truthfully confessed their crimes after being brought to justice, and purchased the sodium cyanide for electroplating production without any accident or discovery of serious environmental pollution, and without causing serious consequences, and could be given lighter punishment in accordance with the law. In light of the criminal circumstances and expressions of repentance of the five defendants, suspended sentences could be lawfully announced. The sentencing recommendation of the public prosecution organ and the request of Wang Zhaocheng, Zhong Weidong, and Zhou Zhiming for lighter punishment were adopted, and the above judgment was rendered in accordance with the law.

Relevant Legal Provisions

Article 125, paragraph 2 of the Criminal Law of the People's Republic of China.

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