

*** THE HIGH COURT OF DELHI AT NEW DELHI**

+ Crl.M.C. No.4391/2006

Date of Decision : July 16, 2008

Northern Minerals Limited

.....Petitioner

Through : Mr. Arun Mehra &
Mr. Vinayak Mahna,
Advocates

Versus

Plant Protection Officer & Anr.

.....Respondents

Through : Mr. Pawan Bahl,
Advocate for the State

CORAM :

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

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| 1. | Whether Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the Reporter or not ? | Yes |
| 3. | Whether the judgment should be reported in the Digest ? | Yes |

SUDERSHAN KUMAR MISRA, J

1. This petition under Section 482 of the Criminal Procedure Code has been instituted by Northern Minerals Ltd. praying that complaint No.30/01/91 dated 19th January, 1991 filed against it under Section 200 Cr.PC read with Section 29(1)(a) of the Insecticides Act, 1968, be quashed.

2. The petitioner is a manufacturer of insecticides. Amongst others, it manufactures the insecticide, Malathion 50% EC. The petitioner claims that the said product is being manufactured in accordance with the IS Specifications and is thereafter put on the market through its various distributors and retailers. One batch of insecticide Malathion 50% EC, bearing batch No.447,

was manufactured by the petitioner in February, 1990. The expiry date of this product was July, 1991. On 22nd March, 1990, it was purchased by an Insecticide Inspector from a retailer called 'M/s Garg Khad & Seed Bhandar', Bawana at Delhi. On 29th March, 2006, one sample of the product purchased was sent by the Insecticide Inspector to the Regional Pesticide Testing Laboratory at Chandigarh for testing and analysis in terms of Rule 34 of the Insecticides Rules, 1971. In the memorandum that accompanied the sample, the Inspector had clearly stated that the date of manufacture was February, 1990 whilst, the date of expiry was July, 1991. It appears that this sample was analysed by the said laboratory. It concluded that, "the sample does not conform to the IS Specification in active ingredient test requirement and misbranded." According to the report of the laboratory, this sample was tested on 24th July, 1990. Significantly, in paragraph 6 of this report also, it is again categorically noted that the date of manufacture is February, 1990 and that its date of expiry is July, 1991.

3. According to the petitioner, it thereafter received a letter dated 29th June, 1990 from the Insecticide Inspector, Delhi Administration, informing it that one sample of insecticide Malathion 50% EC, batch No.447, was taken from the petitioner's dealer, which was found substandard after laboratory testing. The dealer had informed the Inspector that this product was purchased by him from the petitioner on 7th February, 1990, and that, therefore, it was the petitioner

company that was responsible for the deficiency in standard. By this letter, a clarification was sought from the petitioner as to why substandard products were supplied by the petitioner for sale, failing which, proceedings under the Insecticides Act, 1968, would be initiated against the petitioner.

4. On 2nd July, 1990, the petitioner acknowledged the said letter and informed the Inspector that the requisite test report has not been received with that letter and, in the absence of the same, they are not in a position to comment upon the allegations contained therein. It also asked for a copy of the report to enable it to give a meaningful reply to the said letter. In response, the petitioner received another letter dated 9th July, 1990 from the Insecticide Inspector enclosing the test report. Thereafter, 24th July, 1990, the petitioner gave its response. There, it disputed the conclusions arrived at in the aforesaid test report. It reiterated that its samples conform to IS 2567, and that as a matter of practice, a sample of each batch manufactured by it is always kept, and on receipt of communication from the Inspector; the petitioner had reanalyzed the lab counter retention sample of the said batch and found that the same conforms to the requisite standard. It also enclosed this analysis report of the counter retention sample for ready reference and categorically stated that it does not accept the test report of the Regional Pesticide Testing Laboratory, Chandigarh, relied upon by the Inspector. In conclusion, it requested the Insecticide Inspector to send the counter samples available at his end to any Central laboratory

as per provisions of Section 24(2) of the Insecticides Act, 1968 read with Section 24(3) thereof. However, the Insecticide inspector did not bother to respond to this communication.

5. Thereafter, it appears that a complaint was filed by the Plant Protection Officer, Delhi Administration in the Court of ACMM, Delhi on 19th January, 1991. By an order dated 21st January, 1991, the learned MM summoned the accused, including the petitioner herein, who was arrayed as accused No.3 in that complaint, for 11th March, 1991. On 11th March, 1991 itself, an application under Section 24(4) of the Insecticides Act was filed by the petitioner and the other co-accused for reanalysis of the samples by the Central Insecticides Laboratory. Notice on this application was issued for 12th April, 1991. On 12th April, 1991, it appears that the complainant sought more time to reply to that application. Significantly, the adjournment sought by the complainant was opposed by the petitioner, who also prayed for costs. The Court, however, granted the adjournment without imposing any costs on the ground that this was the first date fixed in the case after issuance of summons, and the matter stood adjourned to 22nd July, 1991. On 22nd July, 1991 also, no reply was filed. Thereafter, repeated adjournments were sought and were granted by the Court to the complainant for this purpose. Ultimately, a reply came to be filed by the complainant to the application of the petitioner under Section 24(4) of the Insecticides Act only on 21st April, 2003, i.e. nearly 12 years

later. By this time, however, the shelf life of the product, which was seized by the Inspector, had expired long ago in July, 1991.

6. Before this Court, the counsel for the petitioner has based his case on the sole ground that by this inordinate delay in disposing of his client's application under Section 24(4) of the Insecticides Act, 1968, its vested right, to seek retest and reanalysis of the insecticide sample produced before the Magistrate under Section 6 and Section 22 of the said Act, has been frustrated, and therefore the complaint was liable to be quashed. The petitioner averred that his application had still not been decided by the MM and he was, therefore, deprived of his right to get the sample reanalyzed from the Central Insecticides Laboratory. Section 24 of the Insecticides Act is as follows :

“(1) The Insecticide Analyst to whom a sample of any insecticide has been submitted for test or analysis under sub-section (6) of Section 22, shall, within a period of sixty days, deliver to the Insecticide Inspector submitting it a signed report in duplicate in the prescribed form.

(2) The Insecticide Inspector on receipt thereof shall deliver one copy of the report to the person from whom the sample was taken and shall retain the other copy for use in any prosecution in respect of the sample.

(3) Any document purporting to be a report signed by an Insecticide Analyst shall be evidence of facts stated therein, and such evidence shall be conclusive unless the person from whom the sample was taken has within twenty eight days of the receipt of a copy of the report notified in writing the Insecticide Inspector or the Court before which the proceeding in respect of the sample are pending that he intends to

adduce evidence in controverting of the report.

(4) Unless the sample has already been tested or analysed in the Central Insecticides Laboratory, where a person has under sub-section (3) notified his intention of adducing evidence in controversion of the Insecticide Analyst's report the Court may, on its own motion or on its discretion at the request either of the complainant or of the accused, cause the sample of the insecticide produced before the Magistrate under sub-section (6) of Section 22 to be sent for test or analysis to the laboratory, which shall make the test or analysis and report in writing signed by, or under the authority of, the Director of Central Insecticides Laboratory the result thereof, and such report shall be conclusive evidence of the facts stated therein.

(5) The cost of a test or analysis made by the Central Insecticides Laboratory under sub-section (4) shall be paid by the complainant or the accused as the Court shall direct."

7. A reading of Section 24(3) quoted above shows that a report signed by the Insecticide Analyst shall be conclusive evidence of the contents thereof unless the person from whom the sample was taken, notifies the Insecticide Inspector or the Court before whom any proceeding in respect of the sample is pending, that he intends to adduce evidence controverting the report, within 28 days of the receipt of a copy of such report. According to the petitioner, even before filing of the complaint, the petitioner had requested the Insecticide Inspector for reanalysis on 24th July, 1990 itself. According to the counsel for the petitioner, this request for reanalysis was made well within the period of 28 days as prescribed under Section 24(3) of the Insecticides Act, 1968. In addition, it is also contended that on the very first appearance before the Court on 11th March, 1991,

an application was moved by the petitioner seeking reanalysis. Even on that day, the shelf life of the sample, that had been seized, had not yet expired. However, since the complainant kept seeking repeated adjournments, which was also opposed by the petitioner on 12th April, 1991 itself, the shelf life of the product ultimately expired in July, 1991; and for that reason, petitioner's right granted to him under Section 24 of the Insecticides Act, 1968 was rendered illusory.

8. In reply, counsel for the State has stated that although admittedly, the application for reanalysis was moved by the petitioner on 11th March, 1991, i.e., on the very first day itself, when it was posted for 12th April, 1991 for reply and arguments, it was the duty of the petitioner to have informed the Court that the shelf life of the product was expiring on July, 1991, when he opposed the grant of adjournment sought by the complainant on 12.4.1991. He, however, does not controvert the fact that on receipt of the test report on 9th July, 1990, the petitioner had duly sought reanalysis on 24th July, 1990, i.e. well within the period of 28 days prescribed by Section 24(3) of the Insecticides Act, and that no action was taken in this behalf also by the Insecticides Inspector. Nor does he controvert the fact that the expiry date of the sample was mentioned not only on the product itself; but also in the report of the analyst; as well as in paragraph 5 of the complaint filed in Court seeking initiation of proceedings against the petitioner.

9. In support of his contentions, counsel for the petitioner has relied upon a decision of the Supreme Court of India in

State of Punjab Vs. National Organic Chemical Industries Ltd. Reported as (1996) 11 SCC 613 where it has been held that since one portion of the sample was not delivered to the person from whom the insecticide was taken, the accused had been deprived of a statutory opportunity to have the sample tested by the Central Insecticides Laboratory and, therefore, the accused in that case had been deprived of a valuable defence statutorily available to him. In this connection, the Supreme Court held as follows :

“After the receipt of the report, the accused would be notified of the result of the report. Thereafter, the complaint is required to be lodged in the Court. At that stage, two options are open to the accused. The accused is entitled to have one copy of the sample entrusted to him to have it notified to the Court for proving to be contrary to the conclusive evidence of the report of the analyst; after such a notification having been given to the Court, he is entitled to have it tested by Central Insecticide Laboratory and adduce evidence of the report so given. That such certificate by the Director of the CIL has a proof of his defence to dislodge the conclusiveness attached to the report of the Insecticide Analyst under Sub-section (3) of Section 24. The other option is, after the complaint is laid in the Court, the copy of the sample that is lodged with the Court by the Insecticides Inspector, would be requested to be sent by the Court to the CIL and the report thus given by the Director of CIL shall be conclusive evidence as to the quality, consent and facts stated therein. The cost thereof is to be borne either by the complainant or by the accused, as may be directed by this Court.”

10. In another case decided by the Supreme Court in ***State of Haryana Vs. Unique Farmaid (P) Ltd. & Ors. reported as (1999) 8 SCC 190***, also, the relevant facts were similar

inasmuch as the shelf life of the insecticide sample expired after the complaint had been filed in the Court, which would render the sending of the sample to the CIL at that stage, purposeless. There also, the Supreme Court had held that in such circumstances, the accused was deprived of a right to get the sample tested by the CIL and was thereby prejudiced in his defence and consequently, the High Court had correctly quashed the complaint. It felt that continuance of proceedings would, under the circumstances, amount to an abuse of the process of Court. In that case, the Insecticide Inspector had visited the shop premises of the proprietor and drew the samples. He gave one sample to the proprietor of the firm and sent the second sample for testing. Since the quality control laboratory found the sample to be misbranded, a notice, along with the analysis report of the sample, was sent to the firm and the manufacturer. In reply, the manufacturer denied the allegations and notified its intention to adduce evidence to support its contention and requested that the sample be tested by the CIL at the manufacturer's cost. There also, without responding to the manufacturer's request, the Insecticide Inspector filed a criminal complaint against number of parties including the manufacturer. Thereafter, the manufacturer approached the High Court under Section 482 Cr.PC and Article 227 of the Constitution with the contention that on the one hand, its request for retesting of the sample was ignored by the Inspector, and on the other, by the time it was asked to appear in the Court to stand trial, the shelf life of the insecticides, of

which the sample was taken, had already expired, and that it was thus deprived of a valuable right of defence. In that case, the State had contended, inter alia, that the request for retesting of the sample ought to have been made to the Court and not to the Insecticide Inspector, and that the shelf life of the sample was not relevant as the Act did not prescribe any expiry date. Both these contentions were repelled by the Supreme Court thus;

“12. It cannot be gainsaid, therefore, that the respondents in these appeals have been deprived of their valuable right to have the sample tested from the Central Insecticides Laboratory under Sub-section (4) of Section 24 of the Act. Under Sub-section (3) of Section 24 report signed by the Insecticide analyst shall be evidence of the facts stated therein and shall be conclusive evidence against the accused only if the accused do not, within 28 days of the receipt of the report, notify in writing to the Insecticides Inspector or the Court before which proceedings are pending that they intend to adduce evidence to controvert the report. In the present cases Insecticide Inspector was notified that the accused intended to adduce evidence to controvert the report. By the time the matter reached the court, shelf life of the sample had already expired and no purpose would have been served informing the court of such an intention. The report of the Insecticide Analyst was, therefore, not conclusive. A valuable right had been conferred on the accused to have the sample tested from the Central Insecticides Laboratory and in the circumstances of the case accused have been deprived of that right, thus, prejudicing them in their defence.”

11. In the case at hand, not only did the petitioner apply well within the prescribed period to the Insecticide Inspector in terms of Section 24(3) to have the sample retested at its own

cost on 24th July, 1990, which was ignored by the Inspector; on the first date after the accused was summoned by the Trial Court on 11th March, 1991, when the shelf life of the sample drawn by the Inspector had not yet expired, the petitioner also moved an application under Section 24(4) of the Insecticides Act seeking reanalysis. There is no gainsaying the fact that both the dates of manufacture as also the date of expiry were writ large on the product. The expiry date was also duly noted in the Analysis Report. It was also specifically mentioned in paragraph 5 of the complaint filed by the Plant Protection Officer before the MM. In addition, on 12th April, 1991, the petitioner/ accused also objected to the grant of any adjournment to the complainant for replying to, and addressing arguments on his application under Section 24(4) of the Insecticides Act. To my mind, there was hardly anything more that the petitioner could have done in the matter; and there is no force in the contention of the respondent that the accused was nevertheless duty bound to draw the attention of the Court and the prosecution once again to the fact that the shelf life of the sample was due to expire in another three months or so in July, 1991. This fact was already well within the knowledge of the complainant and no law or practice has been brought to my notice that enjoins the accused to once again reiterate this fact before the Court. If the Inspector chose to ignore the request for retesting at the petitioner's cost in the first instance, even before the complaint was filed, and thereafter has chosen not to argue the application under Section 24(4) moved by the

accused on the very first hearing of the case, whilst the shelf life of the product had not yet expired, the prosecution has only itself to blame.

12. Counsel for the petitioner has also cited a decision of the Supreme Court in the case of ***M/s Gupta Chemicals Pvt. Ltd. & Ors. Vs. State of Rajasthan & Anr. reported as 2002 (Supplementary 1) JT 516*** where the sample of the insecticide was lifted on 31st October, 1991. The expiry date was February, 1993. The report of the analyst was also received by the Inspector in January, 1992 and intimation of the report was sent to the manufacturer on 16th January, 1992. On receipt of the intimation, the manufacturer informed the Inspector of its intention to lead evidence against the report within the period prescribed under the Act. Thereafter, the Inspector sought permission to launch criminal proceedings. However, permission was granted to do so only two years thereafter, in July, 1994. By that time, the shelf life of the insecticide in question had expired. The prosecution launched was sought to be quashed on the ground that the two years taken to file the complaint had deprived the manufacturer of a valuable right to get the sample of the seized material examined by the Central Insecticides Laboratory because, by that time, the shelf life of the material seized had expired. In that case, the Supreme Court held as follows :

“12. This is however subject to the right of the accused to have the sample examined by the central insecticides laboratory provided he communicates his intentions for the purpose within 28 days of the receipt of the copy of the report. It

needs no emphasis that this right vested under the statutes valuable for the defence, particularly in a case where the allegations are that the material does not conform to the prescribed standard. As noted earlier in the present case the appellants had intimated the insecticide inspector their intention to have the sample tested in the central insecticides laboratory within the prescribed period of 28 days of receipt of the copy of the state analyst report, yet no step was taken by the inspector either to send the sample to the central insecticides laboratory or to file the complaint in the court with promptitude in which case the appellants would have moved the magistrate for appropriate order for the purpose. The resultant position is that due to sheer inaction on the part of the inspector, it has not been possible for the appellants to have the sample examined by the central insecticides laboratory and in the meantime, the shelf-life of the sample of insecticide seized had expired and for that reason no further step could be taken for its examination.”

13. In the instant case also, as already discussed, the petitioner/ manufacturer had clearly informed the Insecticide Inspector of its intention to have the sample tested in the Central Insecticides Laboratory within the prescribed period of 28 days, but Inspector took no step in that direction. Even after the prosecution came to be launched, no action was taken on the petitioner’s application under Section 24(2) of the Insecticides Act seeking reanalysis of the sample and ultimately, the shelf life of the sample expired. Clearly, a valuable right that inured to the accused manufacturer under Section 24 of the Insecticides Act has been defeated.

14. Under the circumstances, and as held by the aforesaid decisions of the Supreme Court, I am of the view that continuing this criminal prosecution against the petitioner will

be a futile exercise and an abuse on the process of the Court. Consequently, complaint No.30/01/91 dated 19.01.1991 under Section 200 Cr.PC read with Section 29(1)(a) of the Insecticides Act, 1968 and the prosecution launched against the petitioner in that behalf, are quashed.

15. The petition is disposed of.

Crl. M.A.No.7488/2006

16. Since the petition has been disposed of, this application does not survive and is also disposed of accordingly.

Sudershan Kumar Misra, J.

July 16, 2008
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