

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

Date of decision: 1<sup>st</sup> December, 2014

+ CRL. M.C. 4512/2014 & CRL.M.A. 15439/2014

RECKITT BENCKISER (INDIA) LTD. .... Petitioner

Through: Mr. R Jawaharlal with Mr.  
Siddharth Bawa, Advocates.

versus

THE GOVERNMENT OF NCT OF DELHI & ANR. ....Respondents

Through: Mr. Vinod Diwakar, APP for the  
State.

Insecticide Inspector Somvir Arya

**CORAM:**

**HON'BLE MR. JUSTICE VED PRAKASH VAISH**

**VED PRAKASH VAISH, J. (ORAL)**

1. By way of this petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') the petitioner has assailed the order dated 20.09.2014 passed by learned Metropolitan Magistrate-03, North-West, District Court, Rohini Courts, Delhi in Criminal Complaint No.274/01/13 whereby the application for retesting of the sample by Central Insecticides Laboratory (hereinafter referred to as 'CIL') was dismissed.

2. Brief facts as stated in the complaint of respondent No.2 are that on 30.01.2013 the notified Insecticide Inspector, Development Department, Govt. of Delhi, Shri Somvir Arya, inspected the retail outlet of M/s. Reliance Fresh Limited (Accused no. 1) at B-2/2, Ashok Vihar, Phase II, Delhi-110052 and purchased Transfluthrin 1.6% ww liquid batch no. SNV/024 Insecticide/pesticide sold under the trade name Mortein with

manufacturing date November 2012 and Expiry Date – two years from the date of manufacturing vide Bill No. 272 dated 30.01.2013 which was manufactured and supplied by the petitioner. Out of the three samples taken, one sample was handed over to Accused No. 1 (Reliance Fresh Ltd.), one sample was sent to Joint Director (Chem) Regional Pesticides Testing Laboratory C/o Plant Protection Adviser, Govt. Of India, Directorate of Plant Protection (Q & S), NH IV, Faridabad (Haryana) ('DPP', for short) vide Memo dated 31.01.2013 and the third sample was retained at the office of respondent No.2. On 31.01.2013, DPP sent the Mortein Sample for testing to the State Laboratory. The active ingredient of Mortein is transfluthrin with strength 1.6% w/w. On 16.05.2013, respondent No. 2 received a report from the coding officer, Office of DPP along with the report from Regional Pesticides Testing Laboratory, Kanpur ('RPTL', for short). After analyzing the sample with its report dated 22.02.2013, RPTL observed that the "the sample does not conform to the relevant Specification in the active ingredient test requirement, hence misbranded". Thereafter, respondent No.2 forwarded the report to the petitioner and Reliance Fresh Retail Shop vide memo dated 20.05.2013 with the directions to furnish the reply within 28 days from the date of receipt of Memo and the same was received by the petitioner on 28.05.2013. The petitioner sent its reply on 22.06.2013 and raised various doubts regarding the processes involved in testing of samples. Since the respondent No. 2 was not satisfied with the reply, vide memorandum dated 19.07.2013, respondent No. 2 advised the petitioner to get the sample re-tested by submitting the counter sample and requisite fee of Rs. 500/- (Rupees Five Hundred) to which none of the accused replied.

3. Consequently, respondent No.2 filed a complaint before the trial court under Section 200 Cr.PC for the offence under Section 29 (1) (a) of the Insecticides Act 1968 (hereinafter referred to as 'the Act') on 21.10.2013 on the basis of which the trial court took cognizance and issued summons to the petitioner on 16.08.2014, which were received by the petitioner on 02.09.2014. The petitioner filed an application on 09.09.2014 seeking re-testing of the Mortein Sample, by CIL under Section 22(6)(ii) of the Act.

4. Vide order dated 20.09.2014, the trial court dismissed the application filed by the petitioner on the ground that after the report of State Laboratory was controverted by the petitioner, respondent No.2 had called upon the Petitioner to get the sample tested through CIL which it failed to do and such failure disentitles it from discretionary relief vested with the trial court under Section 24(4) of the Act. Aggrieved by the said order the petitioner has filed the present petition.

5. Learned counsel for the petitioner urges that the petitioner submitted its detailed response on 22.06.2013 i.e. within 28 days of the receipt of report wherein it challenged the process of testing the samples and objected to the Report of State Laboratory. He further submits that as no proceeding was pending before the trial court when the report was served on the petitioner, the Insecticide Inspector ought to have filed the complaint and request the trial court to send the sample for testing by CIL. The respondent No. 2 had also not opposed the request made by the Petitioner for sending the sample for testing hence no prejudice would have been caused to anyone if the samples were sent for testing and

thereby the trial court ought to have allowed petitioner's application and sent the same for testing by CIL.

6. Learned counsel for the petitioner also contends that the trial court failed to appreciate that once the report of State Laboratory is controverted by the accused, the accused gets a right of testing by CIL, therefore, the petitioner was under no obligation to reply to the memo dated 19.07.2013 of the respondent No. 2. He also urges that if the report of CIL is in favour of the petitioner then in that case in accordance with Section 24(4) of the Act, it supersedes the report of the State Laboratory and in such an eventuality the entire proceedings/criminal prosecution has to be dropped and the accused have to be discharged.

7. *Per Contra*, learned APP for the state submits that none of the accused persons including the petitioners gave any response to the said Memorandum dated 19.07.2013. He, also submits that state has no objection to samples being retested, however an immediate order is required by this court as sample in question expires in November 2014.

8. I have carefully considered the submissions made by the counsel for the petitioner and learned APP for the State.

9. Section 22 of the Act prescribes the procedure to be followed by Insecticide Inspector when he takes any sample of insecticide. The relevant sub-section (6) of Section 22 of the Insecticides Act, 1968 is as under: -

“22. Procedure to be followed by Insecticide Inspectors –  
(1) Where an Insecticide Inspector seizes any record, register or document under clause (b) sub-section (1) of section 21, he shall, as soon as may be, inform a Magistrate and take his orders as to the custody thereof.

(2) Where an Insecticide Inspector takes any action under clause (d) of sub-section (1) of section 21 -

- (a) he shall use all despatch in ascertaining whether or not the insecticide or its sale, distribution or use contravenes any of the provisions of section 18 and if it is ascertained that the insecticide or its sale, distribution or use does not so contravene, forthwith revoke the order passed under the said clause or as the case may be, take such action as may be necessary for the return of the stock seized;
- (b) if he seizes the stock of the insecticide he shall, as soon as may be, inform a Magistrate and take his orders as to the custody thereof;
- (c) without prejudice to the institution of any prosecution, if the alleged contravention be such that the defect may be remedied by the possessor of the insecticide, he shall, on being satisfied that the defect has been so remedied, forthwith revoke his order and in case where the Insecticide Inspector has seized the stock of insecticide, he shall as soon as may be, inform a Magistrate and obtain his order as the release thereof.

(3) Where an Insecticide Inspector takes any sample of an insecticide, he shall issue a receipt therefore stating therein that the fair price of such sample shall be tendered if the sample, after test or analysis is not found to be misbranded and the Insecticide Analyst has reported to that effect and on such price having been tendered may require a written acknowledgement therefore.

(4) Where the Insecticide Inspector seizes the stock of any insecticide under clause (d) of sub-section (1) of section 21, he shall tender a receipt in the prescribed form.

(5) Where an Insecticide Inspector takes a sample of any insecticide for the purpose of test or analysis, he shall intimate such purpose in writing in the prescribed form to

the person from whom he takes it and, in the presence of such person unless he wilfully absents himself, shall divide the sample into three portions and effectively seal and suitably mark the same and permit such person to add his own seal and mark to all or any of the portions so sealed and marked.

Provided that where the insecticide is made up in containers of small volume, instead of dividing a sample as aforesaid, the Insecticide Inspector may, and if the insecticide be such, that it is likely to deteriorate or be otherwise damaged by exposure shall take three of the said containers after suitably marking the same and, where necessary, sealing them.

6. The insecticide inspector shall restore one portion of a sample so divided or more one container, as the case may be, to the person from whom he takes it and shall retain the remainder and dispose of the same as follows:

- (i) one portion or container, he shall forthwith send to the Insecticide Analyst for test or analysis; and
- (ii) the second, he shall produce to the Court before which proceedings, if any, are instituted in respect of the insecticide.

10. Section 24 of the Insecticides Act, 1968 reads as under: -

“24. Report of Insecticide Analyst.— (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 thirty 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 the 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 any proceedings in respect of the sample are pending that he intends to adduce evidence in controversion 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, of its own motion or in 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 said laboratory, which shall, within a period of thirty days, which shall make the test or analysis and report in writing signed by, or under the authority of, the Director of the 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."

11. From the bare perusal of Section 24(3) of the Act a report sent by 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 sample is pending, that he intends to adduce evidence controverting the report within 28 days of the receipt of a copy of such report.

12. According to the petitioner, it requested the Insecticide Inspector for re-analysis on 22.06.2013. Learned counsel for the petitioner has also pointed out that the petitioner moved an application before the Court for re-testing of the sample by CIL on 09.09.2014 i.e. immediately after receiving the summons.

13. The Apex Court in '**Northern Mineral Limited v. Union of India and Another**' (2010) 7 SCC 726, observed as under: -

“18. ....It is evident that an accused within 28 days of the receipt of the copy of the report of the Insecticide Analyst to avoid its evidentiary value is required to notify in writing to the Insecticide Inspector or the court before which the proceeding is pending that it intends to adduce evidence in controversion of the report. Section 24(4) of the Act provides that when an accused had notified its intention of adducing evidence in controversion of the Insecticide Analyst's report under Section 24(3) of the Act, the court may of its own motion or in its discretion at the request either of the complainant or the accused cause the sample to be sent for analysis to the Central Insecticides Laboratory.

19. Under the scheme of the Act when the accused had notified its intention to adduce the evidence in controversion of the report of the Insecticide Analyst, the legal fiction that the report of the Insecticide Analyst shall be conclusive evidence of the facts stated in its report loses its conclusive character. The legislature has used similar expressions i.e. the “intention to adduce evidence in controversion of the report” in both sub-section (3) and sub-section (4) of Section 24 of the Act, hence both the expressions have to be given one and the same meaning. Notification of an intention to adduce evidence in controversion of the report takes out the report of the Insecticide Analyst from the class of “conclusive evidence” contemplated under sub-section (3) of Section

24 of the Act. Further, the intention of adducing evidence in controversion of the Insecticide Analyst's report clothes the Magistrate with the power to send the sample for analysis to the Central Insecticides Laboratory either on its own motion or at the request of the complainant or the accused.

20. In the face of the language employed in Section 24(4) of the Act, the act of the accused notifying in writing its intention to adduce evidence in controversion of the report in our opinion shall give right to the accused and would be sufficient to clothe the Magistrate with the jurisdiction to send the sample to the Central Insecticides Laboratory for analysis and it is not required to state that it intends to get the sample analysed from the Central Insecticides Laboratory. True it is that report of the Insecticide Analyst can be challenged on various grounds but the accused cannot be compelled to disclose those grounds and expose his defence and he is required only to notify in writing his intention to adduce evidence in controversion. The moment it is done, the conclusive evidentiary value of the report gets denuded and the statutory right to get the sample tested and analysed by the Central Insecticides Laboratory gets fructified.

27. It is interesting to note that Sections 24(3) and (4) of the Act oblige the Insecticide Analyst and the Central Insecticides Laboratory to make the test and analysis and report within thirty days. When 30 days is good enough for report, there does not seem any justification not to lodge complaint within 30 days from the receipt of the intimation from the accused and getting order for sending the sample for test and analysis to the Central Insecticides Laboratory. All who are entrusted with the implementation of the provisions of this Act, would be well advised to act with promptitude and adhere to the time schedule, so that innocent persons are not prosecuted and real culprits are not left out."

14. In the instant case, the petitioner expressed his intention of getting the sample retested within the statutory period of 28 days. A valuable right has been conferred on the petitioner/ accused to have the sample retested from the CIL and in the circumstances of the case the petitioner has been deprived of that right, thus prejudicing them in their defence.

15. In view of the aforesaid discussion, the petition is allowed and respondent No.2 is directed to get the sample of the seized material re-examined by the Central Insecticide Laboratory immediately. Learned APP for the State submits that Inspector Somvir Arya is present and he will deposit sample today itself. Learned counsel for the petitioner has handed over banker's cheque No.161999 dated 17.09.2014 for Rs.500/- issued by HDFC Bank Ltd, Greater Kailash-2, New Delhi-110048 towards the requisite fee.

16. A copy of this order be handed over to respondent No.2 for necessary compliance.

**Crl. M.A. No.15439/2014**

The application is dismissed as infructuous.

Dasti.

**(VED PRAKASH VAISH)  
JUDGE**

**DECEMBER 1, 2014**  
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