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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Judgment delivered on: 13th August, 2015

+ **CRL.M.C. No.294/2015**

RECKITT BENCKISER INDIA LTD

..... Petitioner

Represented by: Mr.R. Jawhar Lal,
Mr.Siddharth Bawa,
Mr.Shyamal Anand, Advs

versus

GOVT OF NCT OF DELHI AND ANR

..... Respondents

Represented by: Ms.Meenakshi Chauhan,
APP for the State.

WITH

+ **CRL.M.C. No.831/2015**

RECKITT BENCKISER INDIA LTD

..... Petitioner

Represented by: Mr.R. Jawhar Lal,
Mr.Siddharth Bawa,
Mr.Shyamal Anand, Advs

versus

THE GOVT OF NCT OF DELHI AND ANR

..... Respondents

Represented by: Ms.Meenakshi Chauhan,
APP for the State.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. The issues raised in both these petitions are common and as such are being dealt with by this common judgment. The sample was of Mortein Coil in Cri. M.C.No.294/2015 and Morteine Liquid vaporizer is

involved in other Crl.M.C.No.831/2015. The facts of earlier case is being taken for discussion and disposal.

2. By way of the petition filed under Section 482 of the Code of Criminal Procedure, 1973, petitioner seeks quashing of criminal cases filed under the Insecticides Act, 1968 (hereinafter referred as the 'said Act') by the respondent No.2 and pending before learned Trial Court.

3. The facts of the case are that on 16.10.2012, Insecticide Inspector inspected the godown of petitioner and took three packets of Mortein Power Guard Coil (Mortine) with manufacturing month as September 2012 and expiry being September 2014. The active ingredient of mortein is d-trans allethrin with strength of 0.1% w/w. On 17.10.2012, one sample was sent to Directorate of Plant Protection (Q & S) NH-IV, Faridabad, Haryana by the Insecticide Inspector. On 23.11.2012, RPTL observed the active ingredients content (d-trans allethrin) in the same is only 0.06% instead of 0.1%, therefore, it is misbranded. On 14.01.2013, the report of RPTL was received by respondent No.2, which was forwarded to the petitioner vide memo dated 17.01.2013. The respondent No.2 vide memo dated 04.03.2013 called upon the petitioner to offer its response in respect of test report. The petitioner submitted its response on 10.04.2013 wherein it challenged the process of drawing and testing of the samples and objected the report of RPTL.

4. As the petitioner had controverted the report mentioned above, respondent No.2 filed the complaint case under Section 29 (1) (a) of the Act before learned Trial Court. Vide order dated 27.08.2013, cognizance was taken and summons were issued against the petitioner. The petitioner

filed the application in exercise of its right under Section 24(4) of the said Act whereby sought testing of mortein samples by CIL. Learned Trial Court dismissed the said application vide order dated 10.05.2014.

5. Feeling aggrieved, petitioner challenged the same order before this Court which was allowed vide order dated 26.09.2014 in CrI.M.C.No.3087/2014 whereby this Court directed the respondent No.2 to get the samples of seized material respondent-examined by the CIL immediately, because the self life of the material seized would expire in September, 2014.

6. Section 24 (3) of the said Act provides for a presumption that the report of CIL is conclusive evidence, unless the person aggrieved approached the Court in writing within 28 days on receipt of report. Accordingly, the mortein was sent on 13.09.2014 to CIL by respondent No.2 for testing.

7. Learned counsel appearing on behalf of petitioner submits that by the time the mortein sample reached CIL for testing, its self life had expired and was unfit for testing. In the report dated 14.10.2014, CIL observed that active ingredients of d-trans allethrin in mortein sample is 0.03% instead of 0.1%, hence sample is misbranded.

8. Learned counsel further submits that as the mortein sample was tested by CIL after expiry of its self life, same defeated the statutory right of the petitioner as prescribed under Section 24 (4) of the said Act, hence petitioner filed instant petition.

9. It is also argued that sample were taken by the respondent No.2 on

16.10.2012 with date of manufacturing as September 2012, and the date of expiry is two years from the date of manufacturing, thus, the expiry date would be in the month of September, 2014. The respondent No.2 received the testing report from the Regional Testing Authority on 14.01.2013 which was forwarded to the petitioner on 17.01.2013 and complaint case was filed by respondent No.2 on 27.08.2013 after ten months of the sample taken and eight months from testing report received. Learned counsel submitted that if petitioner wants to controvert the report received by respondent No.2, he has a right envisaged under Section 24 (4) of the said Act for retesting, which he has rightly availed and allowed by this Court vide order dated 26.09.2014.

10. The stand of the respondent No.2 is that immediately after the direction of this Court, it had sent the sample on 30.09.2014 and the report was received by respondent No.2 on 14.11.2014 from the Central Inspecting Laboratory, Faridabad, with the report that sample does not confirm to the relevant specifications in the active ingredient content as per requirement and has been misbranded. Be that as it may.

11. The Supreme Court in ***Northern Mineral Limited v. Union of India & Another : (2010) 7 SCC 726*** observed as under:

“24. Section 24(3) of the Act gives right to the accused to rebut the conclusive nature of the evidence of Insecticide Analyst by notifying its intention to adduce evidence in controversion of the report before the Insecticide Inspector or before Court where proceeding in respect of the samples is pending. Further the Court has been given power to send the sample for analysis and test by the Central Insecticides Laboratory of its own motion or at the request of the complainant or the accused.

25. *No proceeding was pending before any Court, when the accused was served with Insecticide Analyst report, the intention was necessarily required to be conveyed to the Insecticide Inspector, which was so done by the appellant and in this background Insecticide Inspector was obliged to institute complaint forthwith and produce sample and request the court to send the sample for analysis and test to the Central Insecticides Laboratory. Appellant did whatever was possible for it. Its right has been defeated by not sending the sample for analysis and report to Central Insecticides Laboratory.*

26. *It may be mentioned herein that shelf life of the insecticides had expired even prior to the filing of the complaint. The position therefore which emerges is that by sheer inaction the shelf life of the sample of insecticides had expired and for that reason no step was possible to be taken for its test and analysis by Central Insecticides Laboratory. Valuable right of the appellant having been defeated, we are of the opinion that allowing this criminal prosecution against the appellant to continue shall be futile and abuse of the process of Court."*

12. It is not in dispute that sample has been proved as misbranded. Thus, the sample does not exist against the petitioner. The sample from the godown were taken on 16.10.2012 and the respondent No.2 was aware about the self life of the samples and the petitioner may controvert the same under Section 24(4) of the said Act and despite that after taking the sample, the petitioner filed the complaint after ten months from the date of the sample and eight months from the date of receipt of report. Thus, there is a complete lapse on the part of the respondent No.2 in taking the appropriate and timely action against the petitioner. As the samples are failed, nothing can be done against the petitioner. Therefore, I am of the considered opinion that allowing criminal prosecutions against the

petitioner to continue shall be futile and abuse of process of law.

13. Consequently, CC No.804/1/13 titled 'Licensing Officer v Reckitt Benckiser (India) Ltd & Ors' as well as CC No.274/1/13 titled 'Licensing Officer v Reliance Fresh Limited & Ors' pending against the petitioners before learned Trial Court and all proceedings emanating therefrom, are hereby quashed.

14. In view of the above, both the petitions are allowed.

Crl.M.A.Nos.1141 and 1142 of 2015 in Crl.M.C.No.294/2015
Crl.M.A.Nos.7240 and 7241 of 2015 in Crl.M.C.No.831/2015

Dismissed as infructuous.

SURESH KAIT
(JUDGE)

AUGUST 13, 2015

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