

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Criminal Application No. 623/2010

M/s. Indofil Chemicals Company Ltd.,
Nirlon House, Dr. Annie Beasant Road,
P. O. Box. No. 9112, Mumbai 400 035
through its Authorised Signatory. **...APPLICANT**

...V E R S U S...

State of Maharashtra at the instance of
Shri Bandhu Piraji Thakre, aged 56 years,
District Quality Control Inspector and
Insecticides Inspector, C/o District
Superintending Agriculture Officer,
Yavatmal, Dist. Yavatmal. **...NON APPLICANT**

Mr. A. A. Naik, Advocate for applicants.
Mrs. T. H. Udeshi, A.P.P. for non applicant.

CORAM:- A. B. CHAUDHARI & P. N. DESHMUKH, JJ.
DATED :- JANUARY 15, 2015

J U D G M E N T (Per : A. B. Chaudhari, J.)

1. The applicant has put to challenge Criminal Complaint No.1273/1999 pending on the file of Judicial Magistrate First Class, Digras, that was filed under the various provisions of the Insecticides Act, 1968 by the Insecticides Inspector.

2. In support of the application, learned counsel for the applicant submitted that there is a serious violation of the mandatory provisions of Section 24 (3) and 24 (4) of the

Insecticides Act, committed by the prosecuting agency and, therefore, the prosecution in the said complaint cannot be continued as it would be totally useless. He submitted that the sample of the insecticide; Mancozeb, was drawn on 25.10.1997 and was sent for analysis on 03.11.1997. The report of the analysis was despatched on 17.12.1997 and was received by the Insecticides Inspector on 04.01.1998. He filed complaint before Magistrate on 21.12.1999, which was obviously filed after one and half years from the date of report of analysis dated 17.12.1997 and, therefore, the complaint was clearly barred by limitation. He then submitted that the provisions of Section 24(3) and 24 (4) provides for valuable right in the accused to send second sample to the Central Insecticides Laboratory, Faridabad. The accused was served with a report and, thereafter, the accused vide letter dated 30.01.1998, requested the Inspector to send the second sample for reanalysis to the Central Insecticides Laboratory, Faridabad. However, the non-applicant vide letters dated 11.02.1998, 16.02.1998, 26.02.1998, kept on informing the applicant that it has not filed application for retesting of the sample within 28 days from the date of receipt of the analysis report and thus not sent the second sample of Mancozeb for reanalysis to the Central

Insecticides Laboratory, Faridabad and the complaint was filed only on the basis of the consent letter dated 22.05.1998. The sample was never sent for re-analysis to the Central Insecticides Laboratory and, therefore, in the absence of any report from the Central Insecticides Laboratory and looking to the date of expiry of the product, which was up to January, 1999, the question of any offence being committed by the applicant does not arise. He relied on the various decisions for quashing of the proceedings. They are; **Shivkumar @ Shiwalamal Narumal Chugwani & ors..vs.State of Maharashtra; 2010(3)Bom.C.R.(Cri) 103** and **Northern Mineral Limited.vs.Union of India & anr; 2010 (7) SCC 726.**

3. *Per contra*, Mrs. Trupti Udeshi, learned A.P.P. for non applicant-State, supported the criminal complaint filed against the applicant and submitted that the applicant can always defend its case on trial and there is no need to quash this complaint. She, therefore, prayed for dismissal of the application.

4. We have heard learned counsel for the rival parties. We have perused the entire record and noted the relevant dates in the matter. A single Judge of this court (Coram: A.B.Chaudhari,J.)

in Shivkumar @ Shiwalmaal Narumal Chugwani & ors. (*supra*) had considered the issue arising in the present case as a larger question and the said judgment has been confirmed by the apex Court in Special Leave Petition (Criminal) Nos. 6332/2010, 6514/2010, 6518/2010, 6521/2010, 6537/2010, 6570/2010, 6598/2010 and 6615/2010. The apex Court, while considering the issue, made the following order:

“We have heard learned senior counsel appearing for the petitioner.

In our view, the stand taken by the High Court on the breach of Section 13 (2) of the Prevention of Food Adulteration Act is absolutely correct. Insofar as the direction of the High Court for taking action against the erring officials is concerned, the State of Maharashtra cannot have any locus standi.

These Special Leave Petitions being devoid of any merits are, accordingly, dismissed.”

5. The issue about the Insecticides Act was also considered in the said judgment by this Court since the provisions are *pari materia*. In the present case, however, it is seen that the officers from the Agriculture Department of State of Maharashtra

are nominated as Insecticides Inspector under the Insecticides Act, 1968 and again it is clearly appears to us that for want of appropriate and legal training and seriousness about the mandatory provisions regarding time limit for each and every stage, the prosecution is bound to fail. The provisions, which have been violated by the Insecticides Inspectors themselves are mandatory and it is the matter of great concern that the Insecticides Inspectors have not handled the matter seriously and on the contrary, have been responsible for violating the provisions of the Insecticides Act. As such they are liable to be prosecuted having not performed their duty ordained by law.

6. In the instant case, it is seen that the report of the analysis was sent to the applicant along with show cause notice dated 07.01.1998. The applicant received it on 12.01.1998 and on 30.01.1998, the applicant requested the authority to send second sample for reanalysis to the Central Insecticides Laboratory, Faridabad. However, the Inspector filed complaint as late as on 21.12.1999 on the basis of analyst's report dated 17.12.1997 even without waiting for the report of the Central Insecticides Laboratory, Faridabad, which could not have been

done since under Section 24 (3) of the Act, only the report of the Central Insecticides Laboratory, Faridabad creates a conclusive evidence. Therefore, the applicant lost valuable right of getting the sample analysed from the Central Insecticides Laboratory under section 24 (3) of the Act, which is a mandatory provision. That apart, we further find that the product in question or sample was manufactured in February-1997 and its expiry was in January-1999. The complaint was filed before the Court on 21.12.1999 i.e. after 1 ½ years from the receipt of the report and more than two year years from the date of taking of the sample i.e. beyond the expiry date mentioned in the sample test. Now, we quote the tate-telling facts mentioned in the report of the Insecticide Analyst, from para 6, which is as under:

6: Condition of the seals on the package, state whether:	
a) Sample was properly sealed and fastened.	No
b) The seal was intact & unbroken.	No
c) The seal fixed on the container & outer cover of sample tallied with specimen impression of the seal separately sent by the Insecticides Inspector, and	No
d) Sample was in condition fit for analysis.	No

Thus, the entire exercise was useless in the light of the judgment in the case of **Northern Mineral Limited** supra. It is, thus, clear t us that no useful purpose could be served by allowing

the prosecution to continue. The criminal application, therefore, will have to be allowed.

7. To sum up, the following order is inevitable.

ORDER

(i) Criminal Application No.623/2010 is allowed.

(ii) Proceedings in Criminal Complaint No.1273/1999, pending on the file of Judicial Magistrate First Class, Digra is quashed and set aside.

Rule made absolute in the above terms.

JUDGE

JUDGE

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