

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

WEDNESDAY THE SEVENTH DAY OF OCTOBER
TWO THOUSAND AND FIFTEEN

PRESENT

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRIMINAL PETITION No.8575 of 2009

Between:

DE-NOCII Crop Protection Pvt.Ltd.

Rep.by its Officer K.Prabhakar Reddy

..... PETITIONERS/A4

AND

State of Andhra Pradesh,

Rep.by its Public Prosecutor,

High Court, Hyderabad and another

.....RESPONDENTS

The Court made the following:

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRIMINAL PETITION No.8575 of 2009

ORDER:

This criminal petition is filed under Section 482 Cr.P.C. to quash the proceedings in C.C.No.255 of 2004 on the file of the Additional Judicial Magistrate of First Class, Yellandu, Khammam District, registered for the offence under Section 29 (1) (a) (2) (3) of Insecticides Act, 1968 (hereinafter referred to as "the Act").

2. Heard the learned counsel appearing for the petitioner/A4 and the learned Additional Public Prosecutor, representing the State.

3. The petitioner is A4 which is a Company said to have manufactured the product. The non-petitioners/A2 and A3 are employees of the Company whereas the non-petitioner/A1 is the retailer. The product is ACETAMIPRID 20% S.P (pride).

4. The admitted facts are that the Insecticide Inspector has inspected the premises of A1 and lifted sample on 30.09.2002. After following the mandatory provisions, the sample was sent for analysis to the Regional Pesticide Testing Laboratory at Kanpur and the analyst report was received on 10.12.2002 stating that the sample is misbranded. A show cause notice was issued to A1 on 20.01.2003. The petitioner/A4 was also served with a show cause notice on 28.01.2003, for which the petitioner/A4 gave reply to the authority on 03.02.2003 requesting that the second sample be referred to the Central Insecticides Laboratory for re-analysis, and for which, the petitioner/A4 deposited requisite fee by way of Demand Draft for Rs.500/- dated 19.02.2004. The petitioner/A4 was informed that he has to file an application before the Jurisdictional Magistrate, which the petitioner died on 10.03.2003 by filing CrI.MP.No.375/2003. By order dated 11.03.2003 the trial Court dismissed the application of the petitioner/A4 on the ground that there was delay in seeking the sample to be sent to Central Insecticides Laboratory for re-analysis. Aggrieved by the same, the petitioner/A4 preferred revision before the learned Principal Sessions Judge, Khammam in CrI.R.P.No.14/2003, and the same was also dismissed vide orders dated 26.09.2003. Questioning the correctness of the said order, the

petitioner/A4 filed Crl.P.No.5266/2004 before this Court and the same was disposed of by order dated 12.04.2006. The relevant portion of the order reads as under;

“Both the Courts below came to the conclusion that the request in terms of sub-section 3 of Section 24 was made beyond 28 days, by taking the date on which the demand draft was furnished to the Court as the date of objection to the report of the analyst. Obviously, both the Courts were in error in coming to such conclusions. As stated hereinabove, in order to challenge the report of the analyst all that has to be said by the petitioner is that he intends to adduce evidence in contravention of the report. Sending another sample to the Central Insecticide Laboratory is the job of the Court under sub-section 4 of Section 24 of the Act. The petitioner may or may not request for sending the report to the Central Insecticide Laboratory, but, if the report is challenged under sub-section 2 by either of the parties, it will be for the Court concerned to exercise powers under Section 24(4) of the Act to send the report. Besides this, the party can also make an application for sending the sample for testing to the Central Insecticides Laboratory. For these reasons, both the orders passed by the Courts below cannot sustain, and, are set aside. However, the learned Magistrate is directed to send the additional sample at the instance of the petitioner to the Central Insecticides Laboratory. The learned senior counsel appearing for the petitioner submitted that the shelf life of the sample has ended on 12.07.2004, therefore, it may not be fit for analysis now. The learned Magistrate shall inform the Central Laboratory about this aspect also and get a report to the effect whether the sample was fit for analysis or not.”

5. What is manifest from the above is that this Court has specifically directed the learned Magistrate to send the second sample of the product lifted on 30.09.2002 to the Central Insecticides Laboratory for which the requisite fee etc., has been paid.

6. During pendency of the present criminal petition, a report has been called for from the Additional Judicial Magistrate of First Class, Yellandu, Khammam District as to what steps have been taken in pursuance of the directions of this court in Crl.P.No.5266/2004, dated 12.04.2006. The learned Magistrate submitted his report vide his letter dated 28.09.20015, which reads as under:

“I have the honour to submit that, this case is coming for examination of accused U/Sec.251 Criminal Procedure Code. Since there is stay by the Hon’ble High Court, it is being adjourned from time to time as “stayed by the Hon’ble High Court”.

On 9.12.2008 Sri P.Karunakar Rao, Advocate for accused filed memo,

with orders passed by Hon'ble High Court in CrI.P.No.5266 of 2004. So, this Court directed the complainant to deposit the 2nd sample (referee sample) before this Court which is available with the Insecticides Inspector.

On 27.1.2009 the complainant filed a memo stating that "the sample expired on 12.07.2004, as per the information furnished in Form-XX". So, the complainant/Insecticides Inspector did not deposit the 2nd sample (referee sample) before this Court. So, the sample could not be sent to Central Insecticides Laboratory."

7. What is evident from the above is that there was a clear violation of the directions of this Court by the Insecticides Inspector. Pursuant to the orders of this Court in CrI.P.No.5266/2004, dated 12.04.2006, the learned Magistrate directed the complainant to deposit the 2nd sample. The Complainant filed memo on 27.01.2009 stating that the sample was expired on 12.07.2004 and hence he could not deposit the 2nd sample for purpose of sending the same for re-analysis by the Central Insecticides laboratory.

8. The petitioner/A4 had indeed made a request to the Inspector for sending the sample for retesting within the prescribed time limit in view of the letter dated 03.02.2003 addressed to the Insecticides Inspector by the petitioner/A4, and as this request had not been accepted an important right given to an accused had been rendered ineffective. 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 the petitioner/A4 has been deprived of that right, thus, prejudicing him in his defence.

9. In these circumstances, it will be an abuse of process of court if the prosecution is continued against the petitioner/A4 as well as other non-petitioners/A1 to A3. In that view of the matter, all further proceedings against the petitioner/A4 along with other accused i.e. A1 to A3, even though they are not parties to the present criminal petition, are liable to be quashed.

10. In view of the above, the Criminal Petition is allowed, the proceedings in C.C.No.255 of 2004 on the file of the Additional Judicial Magistrate of First Class, Yellandu, Khammam District against all accused persons are hereby quashed.

Pending miscellaneous applications, if any, shall stand closed in consequence.

M.S.K.JAISWAL,J

Date:07.10.2015

Dsr