

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2976 OF 2005

1. M/s. Maharashtra Insecticides Ltd.,
C-4, MIDC Area, Shivani, Akola,
Through its authorized signatory.
2. Shri. Kamalkishor maliwal (died)
(deleted).
3. The Maharashtra Agro Industries
Development Corporation Ltd.,
Through its Sub Regional Office,
Nava Mondha, Parbhani.
4. Dhairyasheel A. Jadhav,
Age. 60 years, Occ. Nil [retired],
C/o. Petitioner No. 3 herein.Petitioners

Versus

1. The State of Maharashtra,
Through Department of Agriculture,
Maharashtra State, Mantralaya,
Mumbai.
2. Dist. Quality Control Inspector,
C/o. Agril. Development Officer,
Zilla Parishad, Parbhani.Respondents

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Advocate for Applicant : Mr. Swapnil S Rathi
APP for Respondent No.1: Mr. A.R. Kale
Advocate for respondent No.2: Mr. P.P. Dama
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CORAM : V. K. JADHAV, J.
DATED : 24th NOVEMBER, 2016

ORAL JUDGMENT:-

1. Learned counsel for the applicants submits that during pendency of this application, applicant No.2 died. Learned counsel

therefore, seeks leave to delete the name of applicant No.2. Leave granted. Deletion be carried out forthwith.

2. By this criminal application, the applicants seek quashing and setting aside the proceeding of S.C.C. No. 1761 of 1997 pending in the file of J.M.F.C. Parbhani.

3. Brief facts giving rise to the present criminal application are as follows:-

a) On 15.11.1996, respondent No.2 complainant visited the M/s. Maharashtra Agro Industries Development Corporation, Sub Regional Office, Parbhani and during the inspection, found stock of insecticide viz. Quinalphos 25%E.C. with brand name Quinalphos 25%EC, bearing batch No. 27/96 with manufacturing date, October 1996 and expiry date March, 1998 manufactured by applicant No.1 for sale. Respondent No.2 complainant suspected the quality of said insecticides and thus for testing purpose, obtained samples in three intact tin packing of one liter each, by purchasing it on credit. One portion of such sample was given to dealer and acknowledgment was obtained on the office copy of the sample. Second portion of the sample was sent to the Government Analyst, Insecticides Testing Laboratory, Aurangabad, who vide its report dated 29.1.1997,

received on 5.2.1997, reported that the insecticides Quinalphos 25% as aforesaid, has failed in content percentage and it was found to have only 21.7% content as against 25% claimed on the label. Therefore, said insecticides is treated as misbranded under the provisions of Section 3(k) (1) of the Insecticides Act 1968 (for short "the said Act").

b) The said copy of report was served on 5.2.1997 on the dealer and acknowledgment was obtained. Show cause notices were also served on the manufacturer and dealer. The complainant has thereafter obtained sanction from the Additional Director of Agriculture, (Input Quality Control), Maharashtra State, Pune and accordingly filed complaint against the applicants. The applicant No.1 is the company, which is manufacturing and supplying the said insecticides to accused No.2, who is the person responsible with accused No.1. Applicant No.3 is the firm involved in supply and sale of insecticide. Applicant No.4 is the person responsible for the firm of applicant No.3. It has alleged in the complaint that the applicants accused have contravened the provisions of Section 33 of the said Act and committed offences punishable under Sections 29(1) (a) and 29 (3) r.w. Sections 17, 18 and 33 of the said Act. Learned Magistrate, by order dated 21.12.1998, was pleased to issue process against the applicants for the above mentioned offences. In

response to the order of issue of process, the applicants appeared before the court by filing an application for discharge. However, the court has not considered the application on the ground that the proceedings being summary proceedings, there is no provisions for discharging the accused. Hence, this Criminal application.

4. Learned counsel for the applicants submits that on 5.2.1997, respondent No.2 original complainant delivered one copy of the report of Government analyst, Aurangabad to applicant No.3 herein, from whom sample was taken. On 26.2.1997, on receipt of the report dated 5.2.1997, applicant No.1 through its Plant Manager, notified to respondent No.2 original complainant its intention to adduce evidence in controversion of the report. Learned counsel has pointed out the acknowledgment given by respondent No.2 original complainant of the said communication in writing and acknowledgment is also of the same date i.e. 26.2.1997. Learned counsel submits that on 16.3.1997, 6.5.1997, 24/25.10.1997, the applicants notified to respondent No.2 complainant about their intention to adduce evidence in controversion of report of the Government analyst, Aurangabad. Learned counsel submits that despite the said notification, disclosing the intention as aforesaid, respondent No.2 original complainant has not taken any action to re-test the sample, as requested through Central Insecticides

Laboratory. Non compliance of mandatory provisions of Section 24 of the said Act has caused substantial prejudice to the rights of the applicants original accused and the complaint is thus liable to be quashed on this ground alone.

5. Learned counsel for the applicants further submits that even respondent No.2 original complainant has not bothered to produce the sample before the Court alongwith the complaint and consequently, there is non compliance of sub-section (4) of Section 24 of the said Act. Furthermore, sending of sample to the Central Insecticides Laboratory at the stage when the applicants original accused put their appearances in complaint before the Court, shelf life of the product was expired and thus, the applicants accused also deprived of their valuable rights, as provided under Section 24(4) of the said Act.

6. Learned counsel for the applicants, in order to substantiate his submissions, placed reliance on the following two judgments:-

- i) *State of Haryana vs. Unique Farmaid P. Ltd. and Others reported in 2000 Cri.L.J. 2962,*
- ii) *Northern Mineral Ltd. vs. Union of India and another reported in AIR 2010 SC 2829;*

7. Learned counsel for respondent No.2 original complainant submits that as per the report submitted by the Insecticides Analyst, Aurangabad, dated 29.1.1997, received on 5.2.1997, the sample fails to confirm the relevant specifications, it was found below standard and therefore, the said insecticides is to be treated misbranded under the provisions of the said Act. Copy of said report was immediately served on applicant No.3 and acknowledgment to that effect was also obtained. Even show cause notice was also issued to applicant Nos. 1 and 2, being manufacturer and dealer, respectively. However, their explanation was not found satisfactory and thus, the complainant after obtaining the consent from the competent authority, filed complaint before the court for violation of provision of the said Act. Learned counsel submits that there is no substance in the criminal application and the criminal application is liable to be dismissed.

8. I have also heard learned A.P.P. for respondent No.1-State.

9. Learned counsel for the applicants, vehemently submitted about non compliance of Section 24 of the said Act. Section 24 of the said Act, 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."

10. It is matter of record and the same is also not denied by the respondent original complainant that the applicants in terms of provisions of sub-section (3) of Section 24 of the said Act, notified their intention in writing to adduce evidence in controversion of the Government analyst's report, within 28 days, as contemplated under sub-section (3) of Section 24 of the said Act. The applicant No.1 has

notified in writing to respondent No.2 complainant on 26.2.1997 about its intention to adduce evidence in controversion of the Government analyst report, Aurangabad vide acknowledgment Exh.C page 18. Respondent No.2 original complainant has issued acknowledgment about receipt of said communication on 26.2.1997 itself. Thus, in terms of provisions of sub-section (3) of Section 24, respondent No.2 original complainant ought to have taken action and in absence of such action, evidence in the form of first Government analyst report shall not be treated as conclusive evidence. The applicants accused deprived of their valuable rights and the complaint is thus liable to be quashed on this count alone. Furthermore, the respondent complainant has not produced the samples before the court alongwith the complaint and thus, there is non compliance of provisions of sub-section (4) of Section 24 of the said Act.

11. In the case of ***State of Haryana vs. Unique Farmaid P. Ltd. and Others (supra)***, relied upon by learned counsel for the applicants, in para 12 of the judgment, the Supreme Court has made following observations:-

"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.”

12. In the case of ***Northern Mineral Ltd. vs. Union of India and Another (supra)*** relied upon by learned counsel for the applicants, in para 11 and 12 of the judgment, the Supreme Court has made following observations:-

“11. *From a plain reading of Section 24(3) of the Act, 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 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. Under the scheme of the Act when the accused had notified its intention to adduce 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 expression 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 expression has 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 intention of adducing evidence in Insecticide Analyst report clothes the Magistrate 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. In 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 clothes the Magistrate the jurisdiction to send the sample to Central Insecticide Laboratory for analysis and it is not required to state that it intends to get sample analyzed from the Central Insecticides Laboratory. True it is that report of the Insecticides Analyst can be challenged on various grounds but 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 conclusive evidentiary value of the report gets denuded and the statutory right to get the sample tested and analyzed by the Central Insecticides Laboratory gets fructified."

“12. *The decisions of this Court in the cases of National Organic Chemical Industries Ltd.(supra), Unique Farmaid (P) Ltd. and Others (2000 AIR SCW 1985) (supra) and M/s Gupta Chemicals Pvt Ltd. (supra), in our opinion do support Mr. Nehra's contention. True it is that in first two cases, the accused, besides sending intimation that they intend to adduce evidence in controversion of the report accused persons have specifically demanded for sending the sample for analysis by the Central Insecticides Laboratory. However, the ratio of the decision does not rest on this fact. While laying down the law, this Court only took into consideration that accused had intimated its intention to adduce evidence in controversion of the report and that conferred him the right to get sample tested by Central Insecticides Laboratory. The decision of this Court in the case of M/s. Gupta Chemicals (supra) is very close to the facts of the present case. In the said case “on receipt of the information about the State Analyst report the appellants sent intimation to the Inspector expressing their intention to lead evidence against the report” and this intimation was read to mean “their intention to have the sample tested in the Central Insecticides Laboratory”. From the language and the underlying object behind Section 24(3) and (4) of the Act as also from the ratio of the decisions aforesaid of this Court, we are of the opinion that mere notifying intention to adduce evidence in controversion of the report of the Insecticide Analyst confers on the accused the right and clothes the court jurisdiction to send the sample for analysis by the Central Insecticides Laboratory and an accused is not required to demand in specific terms that sample be sent for analysis to Central Insecticides Laboratory. In our opinion, the mere intention to adduce evidence in controversion of the report, implies demand to send the sample to Central Insecticides Laboratory for test and analysis.”*

13. In the light of above discussion, and ratio laid down by the Supreme Court, the complaint is liable to be quashed and set aside. Furthermore, no purpose would be served since the respondent original complainant has not produced the samples before the court and sending sample to the Central Insecticides Laboratory belatedly, was of no consequence. Moreover, the applicants accused put their appearances in the case, the shelf life of the samples expired till that time. In view of this also continuation of the prosecution by way of complaint bearing S.C.C. No. 1761 of 1997 would be abuse of court process. Hence, I proceed to pass the following order:-

O R D E R

- I. Criminal application is allowed in terms of prayer clause "C".
- II. Rule is made absolute in the above terms.
- III. Criminal writ petition is disposed of accordingly.

(V. K. JADHAV, J.)

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