

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-M-4458 of 2016
Date of Decision: August 08, 2016**

Indofil Industries Ltd and others

...Petitioners

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Goya Sodhi, Advocate
and Mr, Ashim Aggarwal, Advocate
for the petitioners.

Mr. C.S. Brar, DAG, Punjab.

FATEH DEEP SINGH, J.

This is a petition under Section 482 Cr.P.C. preferred by the petitioners, who are accused before the trial Court and have challenged their prosecution by the respondent-State for having committed offences punishable under Section 3(K)(i) 17,18,29,30 and 33 of the Insecticides Act, 1968 (in short, 'the Act') and Insecticides Rules 1971 (in short, 'the Rules').

The brief contentions of the petitioner's side are that there has been gross violation of the mandatory provisions of the Act, especially, Section 22 of the Act which has caused immense prejudice to the case of the petitioners, who were neither served with the report of the Analyst nor were afforded an opportunity to exercise their powers for reanalysing of the spare sample and that the second sample was analysed without institution of any proceedings and, thus, stood vitiated under

Section 22(6) (ii) of the Act alleging that the second sample was not produced before the Court before sending it for reanalysing and even termed the arraying of respondents-manufacturers to be contrary to the spirit of Section 33(1) of the Act. Respondent-State did not intend to file reply.

Heard, learned counsel for the parties.

The brief facts that deserve to be recapitulated are that on 21.12.2012 Insecticide Inspector, Bhikhi empowered under Rule 27 sub-rule 5 of the Rules inspected the premises of firm M/s Jai Durga Pesticides Store, who are licensed dealers and which is a proprietor concern of Vinod Kumar (hereinafter referred to as dealer). The dealer had displayed for sale insecticides Piroxofop-Propinyl 15% WP under the brand name Gromate bearing batch No. SGR018 manufactured by M/s Indofill Industries Limited/present petitioners of which company R.C. Bishnoi, N.S. Bawa, Uday Kisan Gite, Umesh Dipan Chaudhary and Pawan Kumar are the responsible officers. Insecticide Inspector took sample by randomly sealing one pack out of the 500 units of such insecticides packets with manufacturing date as 30.11.2011 and expiry date as 29.11.2013. It is after undergoing necessary formalities the packet was opened and 60 grams of the content was put into three thick gauge clean and dry polythene bags, each weighing 20 grams. The same were tied with thread and were made air tight and after preparing necessary documents the 03 parcels were duly sealed and signed by the Insecticide Inspector dealer as well as witnesses and, thereafter, in three different cloth bags duly sealed and after necessary formalities one of the sealed sample was handed over to the dealer Vinod Kumar and the remaining two bags of the samples were deposited with the

office of Chief Agriculture officer, Mansa. It was during the course of events, one of the sample parcel was dispatched to the Insecticide Testing Laboratory, Ludhiana and after the necessary test was conducted, report Annexure P/2 was received in the office of Chief Agriculture Officer, Mansa opining the same to be misbranded. Copy of this Analyst report dated 11.1.2013 as well as show cause notice were served upon the dealer as well as manufacturer on 22.1.2013 and 11.2.2013 respectively leading to the filing of the complaint and initiation of prosecution against the dealer as well as manufacturer. It is the admitted stand of the dealer that he had purchased the said insecticides through invoice No.361203060 dated 24.11.2012 and the dealer moved an application before the Court below for reanalysing the spare sample, report of which dated 17.4.2013 was received again opining the content to be misbranded.

Learned counsel for the petitioner has argued at length contending that the complaint has been filed on 18.5.2015 after much delay when it ought to have been made without loss of time and placed reliance on *Nothern Mineral vs. Union of India and another (2010) 7 SCC 728* and *State of Haryana vs. Unique Farmaid Pvt. Ltd and others MANU/SC/0645/1999*. Arguing further that as long as the complaint has not been filed which is a prerequisite the Court cannot exercise its option for reanalysing of the samples and to support his contention has sought to cite ratios laid down in *M/s B.R. Agrotech and another vs. State of Haryana CRM-M-23973 of 2012*; *State of Punjab vs. National Organic Chemical Industries Ltd MANU/SC1779/1996*; *Indofil Chemicals Co. Ltd and others vs. State of Punjab CRM-M-16591 of 2014* and has raked up

the pleas by citing *M/s Indofil Chemical Co. Vs. State of Haryana CRM-M-6518 of 2011*; *State of Punjab Vs. Raman Kumar P&H High Court (FB) 1998 Cri. L.J.737* and *PD Garg and others vs. State of Punjab CRM-M-932 of 2014 and State of NCT of Delhi vs. Rajiv Khurana (2010) 11 SCC 469* to hammer home the point that the sample has not been sent forthwith within a 24 hours and that too when admittedly sample has been taken in polythene bag which is not suitable container and, thus, the very mandate of Section 33 of the Act having been violated necessitates quashment of the criminal complaint and subsequent proceedings arising out of it.

On behalf of the State it has sought to be contended with much force that the present petition is barred by the own negligent conduct and laches of the petitioners who were duly served with show cause notice on 11.2.2013 but did not move the Court concerned for reanalysing the sample when their dealer had done it so on 30.1.2013 and on 20.2.2013 the petitioners-manufacturer have raised objections rather than making prayer for reanalysing. Thus, it was on their conduct the insecticide in question which was having expiry date as 29.11.2013, the right of the petitioners had been foreclosed and has sought to refute each and every contentions of the learned counsel for the petitioners.

Appreciating the submissions, it is duly admitted by the learned counsel that Section 29 of the Act lays down the offences and punishment for the violation of the provisions of this Act and Rules and under which for that very first offence imprisonment for a term which may extend to 2 years with fine has been provided under Section 29(1) (f) (i) and

sub-section (ii) of this for the second and subsequent offence imprisonment for a term which may extend to 03 years or with fine has been prescribed. By virtue of Section 468 of the Cr.P.C. which provides under Chapter XXXVI limitation for taking cognizance of certain offences whereby, a bar to take cognizance after the period of limitation has been laid down and by virtue of sub-section (2) of Section 468 Cr.P.C. the period of limitation is six months where offence is punishable with fine only, 01 year if the offence is punishable with imprisonment for a term not exceeding one year and 03 years if the offence is punishable with imprisonment for a term exceeding one year but not exceeding 03 years and, thus, in the light of the maximum prescribed sentence of such offence under the Act being 03 years the present complaint could be filed under Section 468 (2c). By virtue of Section 469 Cr.P.C period of limitation in relation to an offender shall commence on the date of the offence. In the present case consequent upon inspection on 21.12.2012 analysis report dated 11.1.2013 of misbranding was received is the initial time of occurrence and consequent upon issuing of show cause notice to the dealer on 22.1.2013 and to the manufacturer on 11.2.2013 and application of the dealer for reanalysing dated 30.1.2013 report of which was received on 17.4.2013 from Central Insecticides Laboratory, therefore, the complaint having been filed on 18.5.2015 is certainly within a prescribed period of limitation.

The foremost argument of the petitioner's counsel that they had been denied their legitimate right of reanalysing for which refuge has been taken from the ratios M/s B.R. Agrotech and another vs. State of Haryana CRM-M-23973 of 2012; State of Punjab vs. National Organic

Chemical Industries Ltd MANU/SC1779/1996; Indofil Chemicals Co. Ltd and others vs. State of Punjab CRM-M-16591 of 2014 and **M/s Indofil Chemical Co. Vs. State of Haryana CRM-M-6518 of 2011** though, appears to be highly impressive, however, a close look at the provisions bears out that by virtue of Section 24(3) of the Act period of 28 days has been prescribed from the receipt of copy of the report to enable the party to challenge it and unless it is done so a report of the insecticides Analyst shall become conclusive proof. Though, with much vehemence reliance has sought to be placed on **M/s B.R. Agrotech case *ibid***, however, the licenced dealer of the petitioner's side had moved an application for reanalysing on 30.1.2013, as a consequence of which, the second sample was despatched to the Central Insecticide Laboratory, whose report was received on 17.04.2013. The manufacturer on the basis of show cause notice dated 11.2.2013 was fully aware of the outcome of the analysis but did not choose to avail of this remedy throughout and has chosen to wait till the filing of the complaint, though, aware of the fate of the reanalysis as well and the fact that the expiry of the article was to take place w.e.f. 29.11.2013, now at this belated stage the manufacturer cannot be allowed to rake up these pleas when by his own volition he has sought to keep mum over it and with the efflux of time has forfeited his own right and to his own disadvantage for which he cannot derive any such benefit. More so, when the dealer had already availed of this opportunity apparently reflects what is at the back of the mind of the petitioner-manufacturer. The ratios laid down in **M/s B.R. Agrotech and another vs. State of Haryana CRM-M-23973 of 2012; State of Punjab vs. National Organic Chemical Industries Ltd**

MANU/SC1779/1996; Indofil Chemicals Co. Ltd and others vs. State of Punjab CRM-M-16591 of 2014 are factually at much variance from the case in hand and so is the fate of M/s Indofil Chemical Co. Vs. State of Haryana CRM-M-6518 of 2011 so relied upon by the petitioners.

The other line of contention based on the ratio M/s Indofil Chemical Co. ibid that sample ought to be sent within 24 hours and has to be sent by the District Agriculture Officer with whom the present samples have been deposited without loss of time and the learned counsel for the petitioners could not pinpoint how there has been violation of any provisions of the Act and the Rules and that a polythene bag is not a suitable container. The plea based on ratios PD Garg and others vs. State of Punjab CRM-M-932 of 2014 and State of NCT of Delhi vs. Rajiv Khurana (2010) 11 SCC 469 that the petitioners cannot be held responsible and have no knowledge nor consented or connived in such a process of manufacturing and whether any role is attributable to them or not is a matter of evidence which cannot be gone into at this juncture and, therefore, this argument certainly is brushed aside. This Court taking support from Narinder Kumar Gupta vs. State of Haryana 2006(1) RCR Criminal 862 where similar question of law was taken note of, since the sample in the present case was drawn from the dealer who has duly exercised his right of reanalysis, thus, even otherwise the manufacturer at this juncture cannot have any grouse over denial of such a right when he was fully aware of the outcome of the test so conducted on his product and, thus, manufacturer in the light of Narinder Kumar Gupta case ibid having failed to exercise his option when show cause notice has been sent to him is certainly conclusive

evidence against him to this effect. From another angle the plea that the complaint has been filed after the shelf life of the product has expired needs to be relooked from the angle that in the present case the report of the insecticides Analyst was sent to the dealer as well as manufacturer on 22.1.2013 and 11.1.2013 respectively and thus were having opportunity to exercise their option which the dealer has exercised and on his written request on 30.1.2013 spare sample was sent for this regarding which report was received on 17.4.2013 and, therefore, was sufficient opportunity to rebut the evidence to this effect and since the petitioner did not exercise such option as has been laid down in *Narinder Kumar Gupta case ibid* in that situation filing of the complaint after the expiry of the shelf life of the sample is of no consequence as the right provided under sub-Section (4) of Section 24 of the Act is not available to the petitioners and qua the petitioners-manufacturer the same has become conclusive evidence in terms of Section 24(3) of the Act.

Thus, in the light of what has been detailed and discussed above, the present petition is only an attempt to further delay the proceedings before the Court below and has no merits and, therefore, stands dismissed with exemplary costs of ` 20,000/- which shall go to High Court Legal Aid Clinic.

In the present case, though after having received report of Insecticides Analyst and subsequent report of reanalysis which were accomplished in January 2013 what has prompted the State Authorities to have failed to move and file the present complaint which has come about on 18.5.2015 after about two and a half years is nothing but apparently a device

to stifle prosecution and to attain a sinister design to obliterate the very purpose of the provisions of law for which the State Authorities cannot come up with any explanation. The learned State counsel has readily accepted that there is a serious lapse on the part of the department and it is not a first instance that such a recourse appears to have been adopted and it is but rampant in the department and which certainly needs to be deprecated. The concerned Director of Agriculture Department, Punjab as well as Secretary Department of Agriculture, Punjab be intimated of this with directions to take necessary and appropriate steps to prevent further abuse of such a process and meanwhile to initiate administrative action for such a conduct against the concerned officials.

Copy of this order be sent to the Director Agriculture Department Punjab and Secretary Department of Agriculture, Punjab for compliance.

(FATEH DEEP SINGH)
JUDGE

August 08, 2016
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Whether speaking/seasoned : Yes/No

Whether reportable : Yes/No