

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Criminal Application No. 1145 of 2005

1) M/s. Rallis India Limited,
Appejay House,
Dinshaw Vachha Road,
Churchgate Bombay - 400 001.

2) L. Shankar Raman,
Factory Manager,
Rallis India Ltd.
Rallis House, 21 D.S. Marg,
Mumbai - 400 001.

.. Applicants.

Versus

1) The State of Maharashtra,
Through P.S.I.,
Police Station Sillod,
District Aurangabad.

2) Insecticide Inspector,
(Quality Control)
State Department of Aurangabad,
Office of Agriculture Development
Zilla Parishad, Aurangabad.

.. Respondents.

Shri. B.S. Bawiskar, Advocate, holding for Shri. V.D.
Sonawane, Advocate, for applicants.

Shri. R.V. Dasalkar, Additional Public Prosecutor, for
respondent No.1.

Coram: T.V. NALAWADE, J.

Date: 10 April 2017

JUDGMENT:

1) The proceeding is filed under Section 482 of the Code of Criminal Procedure and also under Articles 226 and 227 of the Constitution of India to challenge the order made by the learned Judicial Magistrate, First Class, Sillod dated 28-6-2002 by which the Judicial Magistrate has refused to drop the proceeding of Criminal Case No.479/1993 pending before him. This proceeding is filed under sections 29(1)(a), 18(1)(c) of the Insecticides Act, 1966 (hereinafter referred to as "the Act"). The order of the Judicial Magistrate was challenged by filing Criminal Revision No.151/2002 and the revision is dismissed. The said decision is also under challenge and further relief of quashing of the proceeding itself is claimed. Only one ground is raised that in view of late filing of the complaint in the Court, the petitioner accused has lost the right given under section 24(3) of the Act to get second sample tested through the Central Insecticides Laboratory. Both the sides are heard.

2) The complaint is filed for offence punishable under sections 29(1)(a), 18(1)(c) of the Act. Accused No.1 is the manufacturer of insecticide (Dimethyl 30% H.C.) (Rogar 30). In this area ordinarily ladies who commit suicide use this insecticide as poison.

3) On 12-3-1992 the Insecticide Inspector collected sample of this insecticide from retailer, accused No.3 and sent it for analysis on 13-3-1992. The Insecticide Analyst gave report on 8-5-1992 to the effect that the sample failed and it was misbranded having higher percentage than the prescribed percentage (misbranded under section 3(k)(i) of the Act).

4) In the application filed before the Judicial Magistrate present applicants had contended that the expiry date of the insecticide was October 1992 and as the complaint was filed on 8-2-1993 after the expiry date, there was no opportunity to the accused to get second sample tested as provided under section 24(3) of the Act. On this ground prayer was made to drop the proceeding. It appears that first time during argument before the

Magistrate it was submitted that along with the letter dated 24-7-1992 report of the Analyst was supplied and they had informed the Inspector their intention to adduce evidence in controversion of the report of the Insecticide Analyst. The learned Judicial Magistrate and the learned Judge of the Sessions Court have considered this defence and it is observed that the right ought to have been exercised within 28 days as mentioned in section 24(3) of the Act and the period needs to be counted from the date of receipt of the report and as the right was not exercised within the prescribed period, no relief can be granted to the present petitioners. It is observed that opportunity needs to be given to lead evidence to show that the report was handed over on 24-7-1992 to the complainant side. As per the record, the reply was sent by the accused, present petitioners, after 31 days and in that reply intention was expressed that they wanted to controvert the report of the Insecticide Analyst.

5) The record and the submission show that no other ground was raised before the Courts below. This Court has carefully gone through the scheme of the Act.

The provisions of the Act do not show that there is prohibition to file complaint after the expiry period of the insecticide. On the other hand, provision of section 24(3), (4) and (5) of the Act shows that right given to the accused is subject to these provisions and they are as under :-

"24. Report of Insecticide Analyst.-- (1)

(2)

(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."

6) Wording of the provision of section 24(3) shows that step for sending second sample needs to be taken by the accused and that step needs to be taken within 28 days of the receipt of copy of report of Insecticide Analyst. Rule 25 of the Rules framed under the Act is also relevant in that regard. Provisions of section 24 (3) of the Act and the rules from Chapter VI of the Insecticides Rules, 1971 (with Schedule) show that fees for testing are fixed when sample is required be sent to Central Insecticides Laboratory and the fees need to be paid by accused in such a case. Thus, it is necessary for the accused to give written application or intimation to the Inspector and the fees also need to be paid by the accused to show that he really wants to exercise such right. If such procedure is not followed, accused cannot say that he has lost the right to get tested second sample through the Central Insecticides Laboratory. The record and the submissions made in the present matter do not show that the aforesaid procedure was followed by the accused. The

Statement of Objects and Reasons of the Act show that percentage of the substance which acts as poison cannot be allowed to be increased to protect the life. These provisions in that regard are mandatory in nature. The Courts cannot take such matters lightly. If right to get second sample tested through Central Insecticides Laboratory is not exercised, in view of the aforesaid provisions, the report of the Insecticide Analyst can be used as evidence. In the present matter, this Court has no hesitation to hold that right was not exercised by the accused within 28 days from the date of receipt of the report of Government Analyst and so it is not open to the accused to contend that the accused has lost the right to get second sample tested through the Central Insecticides Laboratory. In view of these circumstances this Court holds that the Courts below have not committed any error in not giving the relief of dropping the proceed or setting aside the proceedings. In the result, the application is dismissed. Rule is discharged. Interim relief is vacated.

Sd/-
(T.V. NALAWADE, J.)

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