

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

CRIMINAL WRIT PETITION NO.851 OF 2016

- 1) M/s.Bayer Crop Science Ltd.,
Bayer House, Hiranandani
Estate Thane, West 400 607.
Represented by Mr.Dattatray V.
Dhavade, Age: Major,
Occu.: Service.
- 2) M/s.Sai Agro Agencies,
Through its Proprietor
Mr.Ghanshyam M.Shinde
Faizpur Road, Yawal,
Tq.Yawal, Dist.Jalgaon. ..Petitioners

VERSUS

- 1) Insecticide Inspector/
Agriculture Officer,
Tal.Yawal, Dist.Jalgaon,
Maharashtra.
- 2) The State of Maharashtra ..Respondents

Advocate for Petitioners : Mr.Ganesh P.Shinde
Advocate for Respondent/State : Mr.K.S.Patil

CORAM : PRAKASH D.NAIK, J.

DATE : 6th NOVEMBER, 2017

JUDGMENT: -

1) Heard both the parties. With the consent of both the parties, the petition was taken up for final hearing and disposal.

2) The petitioners are aggrieved by initiation of proceedings against them vide Regular Criminal Case No.36 of 2015 filed by the respondent No.1 before the Court of learned Judicial Magistrate First Class, Yawal, District Jalgaon. The complaint was filed alleging contravention of Section 3(k)(i), 17(1)(a), 18(1)(c), 18(2) of the Insecticides Act, 1968 (for the sake of brevity, hereinafter referred as 'the Act').

3) The brief facts as alleged in the complaint are as follows:

(a) The complainant is Taluka Agriculture Officer, Yawal and Insecticide Inspector. The accused No.1 is manufacturer of insecticides. The company has valid Insecticide Registration as well as manufacturing

license. Mr.Dattatray V.Dhavade, Manager Formulation Development is responsible person for conduct of business of accused No.1. The accused No.2 is a registered insecticide dealer dealing in stocking and sale of insecticides to dealers/farmers. Mr.Ghanshyam Madukar Shinde is the Proprietor and responsible person for conduct of business of accused No.2.

(b) The Insecticide Inspector visited accused No.2 at M/s.Sai Agro Agencies, Faizpur Road, Yawal, Dist.Jalgaon on 23.10.2014 and drawn the sample of Imidacloprid bearing manufacturing date 23.12.2012 and expiry date 22.12.2014. The product was manufactured by accused No.1. Intimation was served to accused No.2. The complainant took bottle of the said product from the shop of accused No.2. One sample was handed over to the person present at the premises of accused no.2 and second sample was sent to Insecticide Analyst, Pune on 23.10.2014.

(c) The samples sent to the Insecticide Analyst was declared failed to conform to the relevant specification and hence mis-branded. The analysis report dated 15.11.2014 was received on 25.11.2014. The show cause notice was issued to accused Nos.1 and 2 along with analysis report on 4.12.2014. The accused No.1 replied the same, which was not satisfactory. The accused No.2 did not reply the notice. Accused No.1 requested to send the samples for reanalysis to the Central Insecticide Laboratory, Faridabad. However, the expiry date of sample was 22.12.2014. Hence, the referee samples were not sent to the Central Insecticide Laboratory, Faridabad for reanalysis.

(d) The report of the Public Analyst declares the sample as mis-branded and as per Section 17 of the Act, there is prohibition for import and manufacture of any mis-branded insecticide. Section 18 of the

Act prohibits any person, or on his behalf to sale, stock or exhibit for sale, distribute any insecticide, which contravenes any provisions of the Insecticides Act or Rules. The accused No.1 has manufactured, marketed and sold mis-branded product to accused No.2. The accused have thereby violated the provisions of the Act. The accused No.2 has stocked, distributed and sold the mis-branded products to the farmers thereby contravened the provisions of the Act. The accused Nos.1 and 2 are therefore liable for punishment under the provisions of Section 29(1)(a) and Section 29(3) of the Act.

(e) The Trial Court took cognizance of the complaint and issued process against the petitioners/accused. The petitioners have therefore preferred this petition challenging the said proceedings vide Article 227 of the Constitution of India.

4) The learned counsel for the petitioners submits that

the complaint was filed on 31.3.2015, which is pending before the Court of Judicial Magistrate First Class, Yawal. The Insecticide Inspector visited the shop of the accused No.2 on 23.10.2014 and he had drawn the sample, which is subject matter of the complaint. The sample was sent to analysis on 23.10.2014. The said sample was declared failed to conform with the required specification and was declared misbranded. The report of the analysis dated 15.11.2014 was received on 25.11.2014. The shelf life of the insecticide of which the samples were drawn was 22.12.2014. Thus, the prosecution was lodged on 31.3.2015, which had resulted in infringement of right of the accused to seek analysis by the Central Insecticides Laboratory and hence, the prosecution is liable to be quashed.

5) It is submitted that Section 24(3) of the Act gives right to the accused to rebut the conclusive nature of the evidence of insecticide analysed by notifying its intention to adduce evidence in contravention of the

report before the Insecticide Inspector or before the Court where proceedings are pending. The Court is empowered to send the sample for analysis and tests to Central Insecticide Laboratory on its own motion or at the request of the complainant or the accused. When the report of the analysis was served to the accused, no proceedings were pending before any Court. Hence, request could not be made before the competent Court. However, the petitioners made a request to the Insecticide Inspector to forward the sample to the Central Insecticide Laboratory. It was the request to institute the complaint forthwith and produce the sample before the Court and request the Court to send it for analysis to the Central Insecticide Laboratory. The shelf life of insecticide had expired prior to filing of the complaint. In the circumstances, right of the petitioner u/s 24(3) of the Act is defeated. Admittedly, the shelf life of the sample had expired on 22.12.2014. In the complaint itself it is stated that the manufacturing date of the product was 23.12.2012 and the

expiry date was 22.12.2014. The said fact is also evident from the documents, which are part of the complaint in the form of Form XXI issued under Rule 34 and also in the report of the analysis. In the complaint, it is stated that show cause notice was issued to the accused and the accused No.1 had replied the same. It is further stated that as per Section 24(3) of the Act, accused No.1 requested to refer the sample for reanalysis to the Central Insecticide Laboratory, however, on account of expiry date of the samples been 22.12.2014, the same were not sent to Central Insecticide Laboratory for reanalysis. It is therefore, submitted that the prosecution should stand vitiated on account of violation of the right of the accused u/s 24(3) of the Act.

6) The learned counsel placed reliance on the decisions of the Supreme Court in the following cases:-

(a) *Gupta Chemicals Private Limited Vs. State of Rajasthan [(2010) 3 SCC (Cri) 521]*.

(b) Northern Mineral Ltd. Vs. Union of India & Anr. [(2010) 3 SCC (Cri) 513].

(c) United Phosphorus Ltd. and others Vs. State of Maharashtra and others [2009(1) Mh.L.J.(Cri.) 531].

(d) State of Punjab Vs. National Organic Chemical Industries Limited [(1996) 8 Supreme 83].

(e) State of Haryana Vs. Unique Farmaid (P) Ltd. and Others [(1999) 8 Supreme Court Cases, 190].

7) Learned APP submitted that the points raised by the petitioners can be considered during the trial. The product was analysed by the Insecticide Analyst and it was not found to be in conformity with the provisions of the Act and the same was declared as mis-branded. Show cause notice was issued to both the accused. The accused No.1 replied the notice, but the same was not satisfactory and the accused No.2 did not choose to reply the notice. It is submitted that the issue relating to violation of right u/s 24(3) of the Act will have to be

considered at the time of recording evidence and not at this stage while entertaining Writ under Article 227 of the Constitution of India. It is therefore, submitted that the petition may be dismissed.

8) The submissions advanced by learned counsel for the petitioners deserves to be accepted. It is undisputed that the date of manufacturing was 23.12.2012 and its expiry date was 22.12.2014. The complaint was filed on 31.3.2015. It is also admitted that on receipt of the Insecticide Analyst's report by the authorities, the same was forwarded to the accused and the accused No.1 made a request for forwarding it to the Central Insecticide Laboratory. It would be relevant to note that at the time when the report was forwarded to the accused, the complaint was not filed in the Court of law. The accused therefore, could not make any request to the Court. However, a prompt request was made to the Insecticide Inspector that the sample be forwarded for reanalysis. The complainant has categorically stated that in view of

the expiry date of the sample been 22.12.2014, the sample was not sent for reanalysis. It is therefore, ample clear that on expiry of shelf life of the sample, the same could not have been sent for reanalysis and for that reason itself it was not sent to the Central Insecticide Laboratory inspite of request. Analysing the purport of Section 24(3) of the Act and its effect, the valuable right of the accused u/s 24(3) of the Act stands violated and therefore, the proceedings are not maintainable in law. This aspect has been considered by the Apex Court and this Court in several decisions and time and again it has been held that violation of the right u/s 24(3) vitiates the proceedings.

9) The decisions relied upon by the petitioners, which are referred to herein above supports the submissions of the petitioners. It is not necessary to reproduce the observations made by the Court in the aforesaid decisions. It is settled law that Section 24(3) of the Act gives the right to the accused to call upon the

authorities to send the samples for reanalysis by Central Insecticide Laboratory. The Court in the aforesaid decisions have observed that it is manifest that ordinarily in the absence of any material to the contrary, the report of the Insecticide Analyst will be accepted as final and conclusive on the material contended therewith. This however, subject to the right of the accused to have the sample examined by Central Insecticide Laboratory provided he communicates his intention for reanalysis. It is also observed that on account of expiry of shelf life and in the absence of steps been not taken for reanalysis, the valuable right of the accused stands defeated and allowing the criminal prosecution to continue shall be futile and abuse of process of Court.

10) In the circumstances, applying the ratio laid down in the aforesaid decisions, it will have to be concluded that continuation of the prosecution against the petitioners would amount to abuse of process of law and

the same is required to be quashed and set aside. Hence,
I pass the following order:-

ORDER

(I) Criminal Writ Petition No.851 of 2016 is allowed.

(II) The impugned proceedings in Regular Criminal Case No.36 of 2015, pending before the Court of Judicial Magistrate First Class, Yawal, Dist.Jalgaon, are quashed and set aside.

(III) Petition stands disposed of.

[PRAKASH D.NAIK, J.]