

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
CRIMINAL WRIT PETITION NO.1416 OF 2015

Uday Kisan Gite, s/o
Kisan Baburao Gite,
age: years, Occ: service,
with M/s Indofil Industries
Ltd., R/o Krishna Nagar,
1st Floor, Bldg. No.2,
Khadakpada, Kalyan (W),
Thane – 421 301.

Petitioner

Versus

01 The State of Maharashtra,
through Police Inspector,
Sakri Police Station,
Tq. Sakri, District Dhule.

02 The Agriculture Officer (General),
Being Pesticides Inspector,
Under the Insecticides Act, 1968,
Panchayat Committee, Sakri,
District Dhule.

Respondents

Mr.G.I.Sodhi, advocate holding for Mr.N.N.Desale, advocate for the
petitioner.

Mr.V.M.Kagane, A.P.P. for Respondents No.1 & 2.

**CORAM : R.M.BORDE AND
A.M.DHAVALA, JJ.
DATE : 06th July, 2017.**

ORAL JUDGMENT (Per R.M.Borde, J.) :

1 Heard. Rule. Rule made returnable forthwith and
heard finally by consent of learned Counsel for respective parties.

2 The petitioner is praying to quash the proceedings

initiated in pursuance to lodging of First Information Report bearing Crime No.34/14, dated 10.12.2014, registered with Sakri Police Station, District Dhule, in respect of cognizable and non cognizable offences under Sections 3(e), 3(k), 17(1), 18(1)(a), (c) of the Insecticides Act, 1968.

3 After presentation of charge sheet, amendment has been carried out to the petition and petitioner is seeking to quash the charge sheet filed by the Investigating Officer before the learned Judicial Magistrate, First Class, Sakri, for the offences mentioned above.

4 On the basis of information lodged by one Kamlesh Nilkanth Mahajan, Agriculture Officer, Panchayat Samiti, Sakri, offence came to be registered under the various provisions of the Insecticides Act, 1968. So far as petitioner herein is concerned, it is alleged that the petitioner has manufactured and offered to sell the insecticide to the farmers in contravention of the provisions of Insecticides Act, 1968. It is contended that it is mandatory for the manufacturer to secure license for manufacturing and offering for sale the product in question. It is alleged that insecticide "*bronopol*" is allegedly manufactured and offered for sale by the petitioner in contravention of the provisions of the Insecticides Act and that the said product is included in the Insecticides Act.

5 The petitioner contends that penalty for contravention of the provisions of the Act has been provided under Section 29 of the Act and so far as first offence is concerned, punishment prescribed is imprisonment for a term which may extend to two

years or with fine, which shall not be less than ten thousand rupees but which may extend to fifty thousand rupees, or with both. So far as subsequent offence is concerned, the imprisonment provided is for a term, which may extend to three years, or with fine which shall not be less than fifteen thousand rupees but which may extend to seventy-five thousand rupees, or with both.

6 In the instant matter, it has not been specifically contended that the offence allegedly committed by the petitioner is not the first offence and as such provisions of Section 29(1)(i) are attracted, which imposes imprisonment for a term which may extend to two years.

7 The petitioner contends that the Insecticides Act does not provide that the offences under the Insecticides Act are cognizable or non cognizable and, therefore, recourse shall have to be taken to the provisions of the Code of Criminal Procedure. In view of Schedule I (ii), the offence punishable for imprisonment less than three years or with fine, shall be non cognizable and bailable and triable by a Magistrate. Section 155(2) Cr.P.C., provides that no police officer shall investigate a non cognizable case without the order of the Magistrate or commit the case for trial. In the instant case, cognizance has been taken by the police in respect of non cognizable case and matter has been investigated and charge sheet has been presented to the Court. The investigation by the police, without order of the Magistrate, having power to try such case or commit such case for trial, is violative of provisions of sub-section (2) of Section 155 of the Cr.P.C.

8 The contention raised by the petitioner that it was not open for the police to investigate the matter and tender charge sheet without obtaining order from the Magistrate and, therefore, bad in law, deserves to be accepted.

9 Reliance is placed by the petitioner on the judgment delivered by the Division Bench of this Court in the matter of **Rajendra s/o Madhav Pate Vs. State of Maharashtra & another**, (Criminal Writ Petition No.846 of 2016, decided on 10th October, 2016). In paragraphs no.11 to 13 of the judgment, the Division Bench has observed thus:

“11 Here, it would be necessary to refer to the material portion of the provisions of Section 36-AC (1) (a) of the Act, enumerating the offences punishable under certain sections of the Act, which have been made cognizable, which read thus:-

“Offences to be cognizable and non-bailable in certain cases -

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973-

(a) every offence, relating to adulterated or spurious drug and punishable under clauses (a) and (c) of sub-section (1) of section 13, clause (a) of sub-section (2) of section 13, sub-section (3) of section 22, clauses (a) and (c) of section 27, section 28, section 28-A, section 28-B and sub-sections (1) and (2) of section 30 and other offences relating to adulterated drugs or spurious drugs,

shall be cognizable.”

The offence punishable under section 27(b) (ii) of the Act has not been included in clause (a) of sub-section (1) of section 36-AC of the Act. In view of the settled legal position that special enactment will prevail over general law, as has been reiterated in the case of **Suresh Nanda Vs. C.B.I. (2008) 3 SCC 174** cited by the learned Counsel for the petitioner, the provisions of section 36-AC of the Act would prevail over the general provisions of the Code of Criminal Procedure, classifying the offences as cognizable or non-cognizable, and the offences those have been enumerated in section 36-AC only would be treated as cognizable. As such, the offence under section 27(b) (ii) of the Act being non-cognizable, the police machinery was not empowered to take cognizance thereof and conduct investigation, without the order of the Magistrate vide section 155(2) of the Code of Criminal Procedure. It is not the case of the respondents that the investigation into the present case was carried out after obtaining order from the Magistrate vide section 155(2) of the Code. Thus, the investigation conducted by the police officer in this case is illegal.

12 Section 32 of the Act reads as follows:-
“Cognizance of offences -

(1) No prosecution under this Chapter shall be instituted except by -

(a) an Inspector; or

(b) any Gazetted Officer of the Central Government or a State Government authorised in writing in this behalf by the Central Government or a State Government by a general or special order made in this behalf by that Government; or

- (c) the person aggrieved; or
 - (d) a recognised consumer association whether such person is a member of that association or not.
- (2) Save as otherwise provided in this Act, no Court inferior to that of a Court of Session shall try an offence punishable under this Chapter.
- (3) Nothing contained in this Chapter shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this chapter.

From the above provisions, it is clear that the cognizance of the offences punishable under Chapter IV of the Act, which includes the offence under Section 27 (b) (ii), cannot be taken on the basis of the chargesheet filed by the police under section 173 of the Code of Criminal Procedure.

13 Indisputably, the cognizance of the offence punishable under section 27(b)(ii) of the Act alleged to have been committed by the petitioner has not been taken by the learned Judicial Magistrate, First Class on the basis of the complaint as defined under section 2(d) of the Code of Criminal Procedure, 1973, filed by respondent No.2 – the Drugs Inspector. Consequently, the cognizance of the said offence taken on the basis of the charge sheet filed by the police officer cannot be said to be legal. The learned Judicial Magistrate First Class had no jurisdiction to take cognizance of the said offence against the petitioner on the basis of the chargesheet filed by the police officer ignoring the provisions of section 32 of the Act.”

10 In view of the legal position as enumerated above as well as considering the decision of the Division Bench in the matter of **Rajendra** (cited *supra*), we are of the opinion that cognizance of the case cannot be taken by the Magistrate on the basis of the charge sheet tendered by the police who have investigated the crime in violation of provisions of sub-section (2) of Section 155 of the Criminal Procedure Code.

11 Our attention is invited to Section 31 of the Insecticides Act, 1960, which provides that no prosecution for an offence under this Act shall be instituted except by, or with the written consent of the State Government or a person authorised in this behalf by the State Government; and as such, there is no prohibition for continuance of the trial. The said contention deserves consideration because scope of Section 31 is different and the prescription thereunder is not attracted to the case in hand.

12 For the reasons recorded above, writ petition deserves to be allowed and same is accordingly allowed. Criminal Proceedings in the form of charge sheet presented by the investigating agency in Crime No.34/14 before the learned Judicial Magistrate, First Class, Sakri, District Dhule, being R.C.C. No.150/2015, shall stand quashed.

13 Rule is made absolute to the extent above.

A.M.DHAVALÉ
JUDGE

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R.M.BORDE
JUDGE