

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

CRIMINAL APPLICATION NO. 6233 OF 2016

1. Rallis India Limited,
(Through It's Senior Officer Legal,
Mr. Surendra Rameshkumar Jangam,
Age : 39 Years, Occu. Service,
A Company registered under the
Companies Act, 1913, having its office
At 156/157, Nariman Bhavan,
15th Floor, 227, Nariman Point,
Mumbai – 400 021.
2. Veeramani Shankar,
Age : 60 Years, Occ. Service,
Managing Director & CEO of Rallis India
Ltd, having his office at 156/157, Nariman
Bhavan, 15th Floor, 227, Nariman Point,
Mumbai – 400 021.

..APPLICANTS
(Orig. Accused Nos.1 &2)

VERSUS

1. The State of Maharashtra
2. Suresh Ramchandra Pote,
Insecticide Inspector and District Quality
Control Inspector, Jalna, C/o. District
Superintending Agriculture Officer,
Jalna. Maharashtra

..RESPONDENTS
(Res. No. 2-Orig. Complainant)

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Mr. Joydeep Chatterji with Mr. Sidharth Sharma Advocate for Applicant.

Mr.G.O.Wattamwar, APP, for Respondent No.1

None present for Respondent No.2, though served.

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CORAM : PRAKASH D.NAIK, J.

DATE : 8th NOVEMBER, 2017

PER COURT :-

The applicants have preferred this application by invoking inherent powers of this Court under Section 482 of Code of Criminal Procedure to challenge the proceedings in Summary Trial Case No. 1137 of 2015 pending before the Court of learned Judicial Magistrate, First Class, Jalna.

2. The relevant facts necessary for considering the relief sought in this application are as follows :-

(a) The applicant No.1 is Company registered under the Companies Act, 1913.

(b) The applicant No.2 was Managing Director and Chief Executive Officer of the applicant No.1 at the relevant time. The Respondent

No.2 is the original complainant, who filed the complaint, which complaint is under challenge in this application.

(c) Respondent No.2 filed a complaint bearing STC No. 1137 of 2015 in the Court of learned Judicial Magistrate, First Class, Jalna, against the applicants and others. The complaint was filed on 21st May 2015, alleging offence under Sections, 3(k)(i), 17(i)(a) and 18(i)(c) of the Insecticide Act, 1968. The learned Magistrate vide order dated 21st May, 2015 issued the process against the accused for the offences punishable under Section 3(k) (I), 7(1), 18(i), 29(1) of Insecticide Act.

(d) The complainant alleges that he is a Public Servant and appointed as Insecticide Inspector in the office of District Superintending Agriculture Officer, Jalna. The accused No.1 is the Insecticide Manufacturing Company ; M/s Rallis India Limited, which is responsible for manufacturing, stock and sales of the mis-branded Insecticide. Accused No.2 is a General Manager of M/s Rallis India Limited, and he is responsible person as per the provisions of Section 33 of the said Act. The accused No.3 is the Dealer for accused No.1 Company and the accused No.4 is the Proprietor of M/s. Parag

Shetkari Kendra, situated at Bus Stand Road, Jalna.

(e) The complainant is bestowed upon the powers of Insecticide Inspector under Section 21 of the said Act and is also assigned with duties under Rule 27 of the Insecticide Rules 1971.

(f). The Insecticide Inspector visited the premises of the accused No.4 on 31st January, 2012 and inspected the selling unit. He found the stock of insecticide of the above said sample of Insecticides Diamethoate 30% E.C. stored, in the premises of accused No.3. The complaint alleges that the Inspector had drawn the samples on 31st January, 2012 of Dimethoate 30% E.C. possessing batch No. AK00234 having Manufacturing date 4.9.2011, and Expiry date as 3rd March, 2013. The Inspector explained the procedure and disclosed his intention to take samples of above Insecticide as per the procedure laid down under Section 22 of the said Act. Three test samples were taken and copy was handed over to accused No.4 with form No. XX. One copy of sample was sent to the Insecticide Testing Laboratory, Aurangabad. The Insecticide Analyst vide his report dated 22nd February, 2012 informed that the sample is not of the

prescribed standard and hence misbranded. The show cause notices were issued to the Dealer and Manufacturer of misbranded insecticides. The accused Nos.1 and 3 replied to the show cause notice, which was not satisfactory. The accused requested to retest the sample. The Inspector forwarded the letter dated 29th March, 2012 and intimated that party should approach the Court to re-test the sample. However, there is no response from the accused. The case of the complainant is that, accused Nos.1 and 3 manufactured the mis-branded Insecticides, contravening the provisions of the said Act, which are punishable under Section 29 of the Insecticides Act. Insecticide Inspector sought the consent order under Section 31 (1) of the Insecticide Act, 1968 from Divisional Joint Director Agriculture of Aurangabad, on 26th March, 2014.

3. The learned Magistrate vide order dated 21st May, 2015, issued the process against the accused for the offences punishable under Sections 3 k (i), 17 (i), 18 (I), 29(i), punishable under Section 29 of the Insecticide Act.

4. The learned counsel for the applicants advanced the following

submissions :-

(I) The applicant No.1 Company enjoys the reputation for its quality products and has tremendous goodwill in India and abroad. The manufacturing units of Applicant No.1 Company are equipped with highly sophisticated analytical instruments and the Company adopted the quality control.

(II) The accused No.1 Company has in its employment a qualified Manager who looks after the Quality Control of the products from time to time. At the relevant time, the applicant No.2 was the Managing Director and Chief Executive Officer of the applicant No.1 Company. He was not responsible person under Section 33 of the Insecticide Act.

(III) The complainant was aware of the name of the person who was the responsible person under Section 33 of the said Act and despite that, prosecution is launched against the applicant No.2.

(IV) Vide letter dated 16th March, 2012, the Insecticide Inspector and District Quality Control Inspector, Jalna was informed about the true facts and that the product was in conformity with the specification mentioned on the label of the products. The said letter was forwarded

in response to the letter dated 27th February, 2012 sent by Respondent No.2 about the report of the analysis submitted by Insecticide Testing Laboratory in respect to the Insecticide found at the premises of M/s Parag Shetkkari Kendra, Dealer of the applicant No.1 Company. It was pointed out to the aforesaid Inspector that applicant No.1 Company does not agree with the report and they intend to adduce evidence *qua* the said report in accordance with Section 24(3) of the Insecticide Act. Respondent No.2 was to get the said sample re-analyzed at the Central Insecticide Laboratory, Faridabad, before any action is taken.

(V) The applicant No.1 received letter dated 29th March, 2012 from the District Quality Control Inspector, acknowledging the letter dated 16th March, 2012 wherein it was informed that in case the applicant No.1 intend to get the sample re-analyzed under Section 24 of the Insecticide Act, the applicant No.1 should approach the Court for sending the sample for re-analysis. It is submitted that it was incumbent upon the Insecticide Inspector to get the sample analyzed by Central Laboratory. It is submitted that, there is violation of Section 24(3) of the said Act.

(VI) Respondent No.2 by letter dated 29th March, 2012 asked the applicants to approach the Chief Judicial Magistrate, for sending the sample for re-analysis. Thereafter letter dated 15th March, 2014 was received by the applicant No.1 stating that the sample was not sent for re-analysis by the Court and therefore, Respondent No.2 would file a complaint within eight days. The complaint thereafter was filed in May 2015 after about one year from the date of the said letter dated 15th March, 2014.

(VII) The complaint has been filed after more than three years from the date of report despite having knowledge that the expiry date of the sample was 3rd March, 2013. It is submitted that there is complete violation of the right under Section 24(3) of the Insecticides Act. Form No.11 relating to memorandum of Government analysis mentioned expiry date of the sample as 3rd March, 2013. The reliance is also placed on Testing report of the Insecticide analysis dated 22 February, 2012, which referred to the expiry date of the sample as 3rd March, 2013. Both these documents are annexed to the petition at Page Nos. 34 and 35. The applicant No.1 had notified its intention to adduce evidence. Respondent No.2 did not comply the provisions of the

Insecticide Act. There was failure to send the sample to the Central Laboratory for re-analysis, which infringes the right of the accused under Section 24(3) of the said Act. The intimation was given by the respondent No.2 to approach the Court for exercise of the right under Section 24(3) of the said Act. The complaint was filed belatedly and at the time of filing of the complaint, the life of the sample had already expired and therefore, the applicants could not exercise their right, under Section 24(3) of the said Act. The learned counsel placed reliance on the decision of Supreme Court in the case of ***Northern Minerals Limited Vs. Union of India and Another (AIR 2010 Supreme Court 2829)*** and ***Northern Minerals Limited Vs. Rajasthan Government and Another (2016 (5) Scale 617)***.

(viii) Learned APP submitted that there is no error in the order issuing process passed by the Trial Court. Process was issued on the basis of material on record. The product, which was seized, was not of the prescribed standard and mis-branded. The accused were given opportunity to tender the explanation. The accused were intimated that they can approach Court for re-testing the sample. The

submissions advanced by the applicants can be considered at the stage of trial and therefore, the petition may be dismissed.

5. The Inspection was carried out on 31st January, 2012, in the premises of accused No.3. The sample was sent for analysis to Insecticide Testing Laboratory, Aurangabad on 1st February, 2012. The report was received by Respondent No.2 on 22nd February, 2012 stating that the Insecticide is mis-branded. Show cause notice was issued to applicant No.1 and the dealer on 27th February, 2012. The reply was forwarded by applicant No.1 on 16th March, 2012. In the said reply, contention of the applicants with regard to report of Analyst was controverted and the request was made that the sample was re-analyzed at the Central Insecticide Laboratory, Faridabad, before any action is initiated against the applicants. Respondent No.2 forwarded letter 29th March, 2012 and intimated the applicants to approach the Chief Judicial Magistrate at Jalna for sending the sample for re-analysis to the Central Laboratory. After long gap of time i.e. about two years, letter dated 15th March, 2014 was received by the applicant No.1 wherein it was stated that the sample was not

sent for re-analysis by the Court and Respondent No.2 would file complaint within stipulated time. Thereafter, complaint was filed in May 2015, which is after a period of about one year from the date of letter dated 15th March, 2014. On analyzing the aforesaid factual matrix, it is clear that, there is complete violation of Section 24(3) of the Insecticide Act.

6. On the basis of the documents, which are on record, it is crystal clear that shelf life of the sample was 3rd March, 2013, respondent No.2 was aware about the same. Surprisingly, authorities were not prompt in initiating the action. Despite request being made that the sample be forwarded to the Central Laboratory, respondents directed the applicants to approach the Court for sending the sample. There was no occasion to approach the Court as there was no proceeding pending in the Court at the relevant time. If the respondents were serious in prosecuting the accused, they ought not to have waited for a period of two years after the letter dated 29th March, 2012 forwarded by them. Surprisingly, even after the letter dated 15th March, 2014, wherein the warning of the action was spelt out, respondent No.2 had

waited for another year to file the complaint. Since it was to the knowledge of the respondents that shelf life of the sample expired on 3rd March, 2013, they ought not to have proceeded at the snail speed in forwarding the prosecution. The approach of the respondents have resulted in violation of the valuable right of the applicants embodied under Section 24(3) of the said Act. The complaint was filed, as stated above, on 21st May, 2015. The right to approach the Court vide Section 24(3) of the Insecticide Act has become inchoate on account of belated filing of the complaint by Respondent No.2 It would be useful to refer to Section 24(3) of the said Act, which reads thus :-

"Section 24(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. "

7. The Supreme Court in the case of **Northern Minerals Limited**.

Versus Rajasthan Government and Another (supra) has considered the relevance of the right under Section 24(3) of the Insecticide Act. In the said case, by the time the matter was taken up by the Court, the sample had already expired. In view of that, it was asserted that, only right vested in the accused to controvert the report of Analyst of the sample filed by the Insecticide Inspector stood frustrated and the right of defence available to the accused in terms of Section 24 of the Act having been lost. It was imperative for the Court to quash the proceedings initiated against the accused by order of cognizance. The Court, referred to the observations of the Supreme Court in earlier decision in the case of **Northern Mineral Ltd. Vs. Union of India and Anr (supra)** and after quoting the relevant paragraphs of the earlier decision, the Court observed that the Judgment rendered by the Court in the **M/s Northern Minerals Ltd** (supra) case applies to the said case and the prayers are required to be accepted on the basis of legal position declared by the said Court in the said decision. It was further observed that vital right vested in the accused to get the sample re-tested to controvert the report of the Analyst of the sample obtained by the Insecticide Inspector stood frustrated and accused

have lost right to disprove their guilt. It was further observed that under Section 24(4), the accused other than the person from whom the sample is taken, has also right to adduce the evidence in contravention of Insecticide Analyst report. In the above referred earlier decision of the Northern Minerals Limited (*supra*) it was observed that, Section 24(3) of the Act gives right to the accused to rebut the conclusive nature of the evidence of Insecticide Analyst by notifying its intention to adduce evidence in controversion of the report before the Insecticide Inspector or before the Court where proceeding in respect of the samples is pending. The Court has been given power to send the sample for analysis and test by the Central Insecticides Laboratory on its own motion or at the request of the complainant or the accused. The Court further observed that no proceeding was pending before any Court, when the accused was served with Insecticide Analyst report. The intention was necessarily required to be conveyed to the Insecticide Inspector, which was so done by the Insecticide Inspector, who was obliged to institute complaint forthwith and produce sample and request the Court to send the sample for analysis and test to the Central Insecticides

Laboratory. The appellants therein did whatever was possible for them. Their right has been defeated by not sending the sample for analysis and report to Central Insecticides Laboratory. The shelf life of the Insecticides had expired even prior to the filing of the complaint. The position, therefore, emerges that by sheer inaction, the shelf life of the sample of insecticides had expired and for that reasons, no step was possible to be taken for its test and analysis by Central Insecticides Laboratory. The said observations of the Apex Court are wholly applicable in the present case.

8. In view of the spirit of Section 24(3) of the Insecticide Act and in the light of ratio laid down by the Apex Court in the aforesaid decision, I am of the opinion that the valuable right of the applicants having been defeated, allowing this Criminal prosecution against them to continue shall be abuse of process of law. Proceedings are liable to be quashed by invoking the inherent powers under Section 482 of the Code of Criminal Procedure. Hence I pass the following order.

ORDER

- (i). Criminal Application No. 6233 of 2016 is allowed.
- (ii) The order dated 21st May, 2015 passed by learned Judicial Magistrate, First Class, Jalna, and the proceedings in Summary Trial Case No. 1137 of 2015 pending before the said Court are quashed and set-aside.

[PRAKASH D.NAIK, J.]