

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

Criminal Appeal No. S-1030-SB of 2005

Date of decision : September 25, 2017

State of Punjab

..... Appellant

VERSUS

Sarabjit Singh & ors.

..... Respondents

CORAM : HON'BLE MR. JUSTICE A.B. CHAUDHARI

PRESENT: Mr. Dhruv Dayal, Senior Deputy Advocate General, Punjab,
for the appellant.
Mr. Gaurav Chopra and Ms. Kashika Kaur, Advocates,
for the respondents.

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1. Whether Reporters of local newspapers may be allowed to see the judgment? YES/NO
2. To be referred to the Reporter or not? YES/NO
3. Whether the judgment should be reported in the digest? YES/NO

Per A.B. Chaudhari, J.

Being aggrieved by judgment dated 23.09.2004, passed by Sub Divisional Judicial Magistrate, Jagraon in Criminal Complaint case No.48 of 02.04.1994, by which the learned trial Court acquitted the respondents-accused persons of the charge, the present appeal was filed by the State of Punjab.

In support of the appeal, learned State counsel while assailing the judgment and order of acquittal recorded by the trial Court, submitted

that the trial Court fell in error in holding that it was necessary to furnish the copy of the report of Insecticide Analyst to accused No.2 to 3B. According to him, Sub Section (2) of Section 24 of the Insecticides Act, 1968 (for short 'the Act') contemplates delivery of such copy of the report only to the person from whom the sample was taken and not to accused No.2 to 3B, who were distributors and manufacturer of the insecticide in question. He, therefore, submitted that Sub-section (2) of Section 24 of the Act cannot be stretched to mean supply of copy of report to any other person. He further submitted that the prosecution had proved its case beyond reasonable doubt and there was no reason to acquit the respondents. Finally, he prayed for reversal of acquittal into order of conviction.

Per contra, learned counsel for the respondents-accused persons opposed the appeal and supported the impugned judgment and order of acquittal. The counsel for the accused submitted that the Insecticide Inspector did not even deposit the second sample, as provided under Sub Section 6(ii) of Section 22 of the Act. He, then, submitted that if the prosecution wanted accused No.2 to 3B also to face trial before the Court and also wanted that they should be convicted, they were also entitled to challenge the report made by the Insecticide Analyst by asking the trial Court to send the second sample to the Central Insecticides Laboratory. Apart from the above, the second sample itself was not deposited in the Court. Therefore, there was no occasion for any of the accused much less accused No.1 to request for testing of the second sample by the Central Insecticides Laboratory in terms of Sub-section (3)

of Section 24 of the Act, within 28 days of the receipt of copy of the report. He, therefore, submitted that the trial Court was fully justified in recording order of acquittal of the respondents-accused.

I have heard learned counsel for the rival parties at length. I have seen the reasons recorded by the learned trial Judge. I have also seen the record and proceedings of the trial Court.

The trial Court has referred to third sample in para-10 of the impugned judgment. In my opinion, Section 22(6)(ii) of the Act speaks of only second sample to be deposited with the Court and there is no third sample as such anywhere. The trial Court recorded the following finding in para-10 of its judgment:-

“10. Although the samples were taken as per provisions enshrined in the Act but third sample was never deposited in the court as per mandatory provisions. No sample was ever handed over to accused No.2 to 3B for getting the sample re-analysed from Central Laboratory. No evidence has been led on file, so as to show that sample was kept intact till its analysis and it was kept away from sun light which destroys the active ingredients of the Pesticides. The sample was reanalyzed only on the request of accused No.1 who has now expired but no such opportunity has been afforded to accused No.2 to 3B. In the report of Chemical Analysed percentage of Monocrotophos it was found to be less by 3.33% and there is every likelihood that this shortage might have occurred during the process of taking sample and its sending to the Chemical Analyst. Report of the Chemical Analyst was never conveyed to the accused No.2 to 3B. No document has been proved on record, showing that

accused No.2 was Prop. of M/s Shiv Shakti Sewa Kendar. Similarly, no document has been placed on file showing that accused No.3 and 3B were the responsible persons of manufacturing company.”

Upon perusal of the above finding in para-10, I find that the said finding is correct on facts as well as in law.

Section 24 sub-sections (1) to (4) of the Act read, thus :-

“24. *Report of Insecticide Analyst.* - (1) The Insecticide Analyst to whom a sample of any insecticide has been submitted for test or analysis under sub-section (6) of section 22, shall, within a period of thirty days, deliver to the Insecticide Inspector submitting it a signed report in duplicate in the prescribed form.

(2) The Insecticide Inspector on receipt thereof shall deliver one copy of the report to the person from whom the sample was taken and shall retain the other copy for use in any prosecution in respect of the sample.

(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, 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.”

Section 29 of the Act reads, thus :-

“29. *Offences and punishment.* - (1) Whoever, -

- (a) imports, manufactures, sells, stocks or exhibits for sale or distributes any insecticide deemed to be misbranded under sub-clause (i) or sub-clause (iii) or sub-clause (viii) of clause (k) of section 3; or**
- (b) imports or manufactures any insecticide without a certificate of registration; or**
- (c) manufactures, sells, stocks or exhibits for sale or distributes an insecticide without a licence; or**
- (d) sells or distributes an insecticide, in contravention of section 27; or**
- (e) causes an insecticide, the use of which has been prohibited under section 27, to be used by any worker; or**
- (f) obstructs an Insecticide Inspector in the exercise of his powers or discharge of his duties under this Act or the rules made thereunder, shall be punishable -**
 - (i) for the first offence, with 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;
- (ii) for the second and a subsequent offence, with imprisonment 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.

(2) Whoever uses an insecticide in contravention of any provision of this Act or any rule made thereunder shall be punishable with fine which shall not be less than five hundred rupees but which may extend to five thousand rupees, or imprisonment for a term which may extend to six months, or with both.

(3) Whoever contravenes any of the other provisions of this Act or any rule made thereunder or any condition of a certificate of registration or licence granted thereunder, shall be punishable -

- (i) for the first offence, with imprisonment for a term which may extend to one year, or with fine which shall not be less than five thousand rupees but which may extend to twenty-five thousand rupees, or with both;
- (ii) for the second and a subsequent offence, with 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.

(4) If any person convicted of an offence under this Act commits a like offence afterwards it shall be lawful for the court before which the second or subsequent conviction takes place to cause the offender's name and place of residence, the offence and the penalty imposed to be published in such newspapers or in such other manner as the court may direct."

From a reading of Section 29 of the Act, it is clear that there can be more than one person who could be the accused before the trial

Court in a criminal complaint contemplated by the Act, filed by the Insecticide Inspector and there could be only one person from whom the sample was collected by the Insecticide Inspector. In the present case, as is seen, the person/dealer from whom the sample was collected by the Insecticide Inspector, had exercised his right to get the sample tested from the Central Insecticides Laboratory but, then, he (accused No.2) expired after commencement of trial. Hypothetically, if such a person from whom the sample is obtained by the Inspector does not request for re-analysis by the Central Insecticides Laboratory, and if the interpretation sought to be canvassed by the State Counsel is accepted, the other accused persons i.e. the distributor, wholesale distributor and the manufacturer, though being prosecuted for obtaining conviction, would be deprived of the opportunity to have the sample re-analysed. In other words, the interpretation would be that all other accused persons except the person from whom the sample was taken could be deprived of a valuable right to have the sample re-analysed/retested from the Central Insecticides Laboratory. In my opinion, that would be clearly in breach of the principles of natural justice qua the accused persons from whom the sample was not taken. They cannot be convicted without they being given an opportunity contemplated by Sub-sections (2) and (3) of Section 24 of the Act, to have the second sample retested. In my opinion, therefore, the harmonious construction of Sub-section (2) of Section 24 of the Act will be to hold that all persons who are proposed to be made accused in the criminal complaint case will have to be supplied the copies of report of the Insecticide Analyst so that within a period of 28 days, they also would be

able to approach the Court requesting for re-analysis/retesting from the Central Insecticides Laboratory. PW-2 Darshan Singh stated in his evidence that copies of report of Insecticide Analyst were not supplied to accused No.2 to 3B.

Apart from the above, it is seen that the difference was only of 3.33% less than the required ratio in the Monocrotophos; and the sample was retested about four days before its expiry date.

I am, therefore, of the considered view that non-supply of copy of report of Insecticide Analyst to the accused No.2 to 3B by the Inspector would be violative of the principles of natural justice. Consequently, the prosecution against them must fail.

To sum up, the present appeal against acquittal will have to be dismissed. Ordered accordingly.

September 25, 2017
Kang

(A.B. Chaudhari)
Judge