IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1089 OF 2017

1. Shri. Jayant Nag,
Age : years, Occu. Service,
Zonal Sales Manager
M/s. Indofil Industries Ltd.,
Plot No. G 06, MIDC Phase II,
Akola - 444 044.

2. Shri. Uday Kisan Gite
Age 45 years, Occu. Service,
Deputy Manager,
M/s. Indofil Industries Ltd.,
Gat No. 382, Post Urawade,
Tal. Mulashi, Dist. Pune - 412 101. **....Petitioners.**

Versus

The State of Maharashtra
Through the Insecticide Inspector
Under the Insecticides Act 1968,
Distt. Superintending Agriculture
Office, Parbhani, District Parbhani. **....Respondent.**

Mr. N.N. Desale and Mr. G.I. Sodhi, Advocates for petitioners.

Mr. S.B. Pulkundwar, APP for respondent/State.

CORAM : T.V. NALAWADE, J.
RESERVED ON : 16/01/2018.
PRONOUNCED ON : 22/01/2018.

JUDGMENT :

1) The petition is filed by accused Nos. 2 and 3 of R.C.C. No. 479/2015, presently pending in the Court of learned Chief Judicial Magistrate, Parbhani for quashing and setting aside the proceeding. The proceeding is filed by Insecticide Inspector, a public

servant for the offences punishable under sections 3 (k) (i), 17 (1) (a), 18 (1) (c) and 18 (2) of the Insecticides Act, 1968 (hereinafter referred to as 'the Act' for short) and the process is issued for these offences. Both the sides are heard.

2) The learned counsel for petitioners submitted that the petitioners are claiming relief on following two grounds :-

(i) The manufacturing company is not made accused, and

(ii) Due to expiry of shelf life period of sample, the petitioners cannot get third sample tested.

3) The contents of the complaint show that the Insecticide Inspector from Parbhani, who has filed the complaint, visited the shop of accused No. 1 Shri. Dhole, who runs proprietary concern M/s. Sri Adarsha Farm Services at New Mondha, Parbhani. Accused No. 1 is a dealer of insecticides and he sells the insecticides supplied by accused No. 2. Accused No. 2, present petitioner No. 1 Jayant Nag, is Zonal Sales Manager of M/s. Indofil Industries Limited of Akola, Maharashtra State. Accused No. 3 Uday Gite, present petitioner No. 2, is Deputy Manager, Quality Control of this industries (Expert in manufacturer process) and it is contended that as such he is also responsible for manufacturing insecticide.

4) The visit was paid by Insecticide Inspector to the shop of accused No. 1 on 27.5.2014 and he collected three packed container of below mentioned insecticide.

Sr. No.	Name of Insecticide	Batch No.	Mnf. Date	Expiry dt.
1	QUINALPHOS (25% EC) Mfg. by Indofil Industries Ltd. Gut No.382, at post Urawande Tq. Mulsi Dist. Pune - 412101 (Maharashtra) Packing size - 25 Ml	WFL-129	05/07/13	05/06/15

The three identical containers of insecticides were duly packed and sealed with sealing wax by the Inspector and one sealed sample was handed over to accused No. 1. The second sample of insecticide was sent to Insecticide Analyst, Pune by the Inspector and the third sample was retained for court purpose.

5) The report of Insecticide Analyst, Pune was received and it was to the effect that the sample drawn failed to conform to relevant BIS specification in A.I. content test and so, it was mis-branded. This report was received from Pune State Laboratory on 19.6.2014. After that show cause notice was issued to accused Nos. 1, 2 and 3 along with State Analyst's report on 11.7.2014. This

notice was answered by accused Nos. 1, 2 and 3, but the authority felt that the answer was not satisfactory. Then Indofil company by letter dated 16.7.2014 requested to send another sample to Central Insecticide Laboratory, Faridabad. The reanalysis report from Central Laboratory was received on 7.1.2015. This report also showed that the sample did not conform to the relevant specifications and hence, it was mis-branded. As the sample was mis-branded under section 3 (k) (i) of the Act and as the manufacture and import of such insecticide is prohibited under the provision of section 17 of the Act and also the sale of such insecticide is prohibited under the provision of section 18 of the Act, the Insecticide Inspector after following the procedure and after collecting the consent as provided in section 31 (1) of the Act, filed the complaint.

6) The contents of the complaint show that one sample was kept with accused No. 1, the vendor from whom the samples were collected and the company was allowed to exercise the right for getting another sample tested by sending another sample to Central Laboratory. As there is report of Central laboratory, there is no room to dispute that the sample was mis-branded under the aforesaid provision.

7) To deal with the aforesaid grounds, this Court has

carefully gone through the scheme of the Act. For dealing with the second ground, the provision of section 22 of the Act needs to be considered. Section 22 (6) shows that the Insecticide Inspector is expected to hand over one sample to the person from whom he has collected the three samples and that procedure was followed. The provision of section 24 runs as under :-

> "**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.
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> (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.
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> (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.
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> (4) Unless 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 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.
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> (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."

8) The provision of section 24 shows that copy of report given by Analyst is required to be supplied to the person from whom the sample was taken. The contention of the complainant that show cause notice was issued, copy was supplied and after that the company exercised the right to sent sample show that there was compliance of provision of section 24 (2). The provision of section 24 (3) shows that if the person from whom the sample was collected wants to dispute the report of State Analyst, he is required to notify his intention in writing to the Insecticide Inspector or to the Court

that he intends to adduce evidence in controversion to the report. As already observed, such step was taken and accused Nos. 2 and 3 cannot say that this step was not taken for them. Every accused is not entitled to take such step and the provision shows that only person mentioned in provision of section 24 (3) was having such right.

9) The learned counsel for petitioners tried to use the provision of section 24 (3) of the Act, but this provision shows that it becomes applicable if the sample is not analysed in the Central Insecticides Laboratory. Only in that case, the person mentioned in sub-section (3) of section 24 can apply to the Court to send other sample to Central Insecticide Laboratory. No such right is in existence in view of the facts and circumstances of the present matter in favour of accused Nos. 2 and 3. Thus, the contention made about such right is on the basis of some misconception. Thus, there is no force in this ground taken by the petitioners.

10) So far as the second ground is concerned i.e. the necessity of company as accused in the proceeding, one needs to keep in mind the provision of section 29 which gives list of persons who can be made accused. This list shows that any person like importer, manufacturer, vendor or stockist who contravenes the

provisions mentioned in this section is liable for punishment mentioned in this section. Present petitioners are from the category of manufacturer and distributor as it is the contention that they were involved in manufacturing activity and then supplying the insecticides to accused No. 1, vendor for sale. The provisions of section 30 (1) and 30 (3) of the Act show that such persons cannot take the defences which are mentioned in this section. Accused Nos. 2 and 3 can be treated as officers of the manufacturer and they cannot have the defences mentioned in section 30 (3) (a) to (c). These provisions show that the persons involved in manufacturing and distribution activity like accused Nos. 2 and 3 can be dealt with under the provision of section 29 of the Act read with section 33 (2) of the Act.

11) The learned counsel for petitioners placed much stress on the provision of section 33 of the Act, which runs as under :-

> "**33. Offences by companies.-** (1) Whenever an offence under this Act has been committed by a company, every person who at the time of offence was committed, was in charge of, or was responsible to the company for the conduct of the business of, the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.
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> Provided that nothing contained in this sub-

section shall render any such person liable to any punishment under this act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any Director, Manager, Secretary or other officer of the company, such Director, Manager, Secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.- For the purpose of this section,-

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm."

The learned counsel submitted that in view of this provision, unless company is made accused, the persons like accused Nos. 2 and 3 cannot be made accused in such a case. This proposition is not at all acceptable. This provision is adding other persons who may not be covered by section 29 of the Act, but who are responsible to the company for conduct of the business of the company and also persons mentioned in section 33 (2) of the Act. The provision of section 33 (2) of the Act quoted above shows that the persons like Director, Manager, Secretary or other officer can also be made accused and can be convicted if it is proved that the offences have been committed with the consent or connivance of such persons (officers) or it is attributable to any neglect on the part of such persons. In that case also, prosecution can be launched separately against them and so, opportunity needs to be given to prove the requirement mentioned in section 33 (2) of the Act during trial.

12) In the Act and the Insecticides Rules, 1971 (hereinafter referred to as 'the Rules' for short), the procedure for obtaining license to manufacture insecticide is given. Similarly, the procedure is given for obtaining license by the persons, who want to sell insecticide. For each insecticide, different permission needs to be obtained. Rule 9 (2) provides that if manufacturer wants to manufacture insecticide at more than one place, separate application needs to be given and separate licenses are required to be obtained in respect of every such place. The provision of Rule 9 (3) shows that license shall be issued in form No. V and it shall be subject to conditions mentioned in Rule 9 (3). Rule 9 (3) (ii) runs as under :-

"**9. License to manufacture insecticides.-**

(1) ....

(2) ….....

(3) A license to manufacture insecticides shall be

issued in Form V and shall be subject to the following conditions, namely :-

(i) A license and any certificate of renewal shall be kept on the approved premises and shall be produced for inspection at the request of an Insecticide Inspector appointed under the Act or any other officer or authority authorised by the licensing officer.

(ii) Any change in the expert staff named in the license shall forthwith be reported to the licensing officer.

(iii) If the licensee wants to undertake during the currency of the license to manufacture for sale additional insecticides, he shall apply to the licensing officer for the necessary endorsement in the license on payment of the prescribed fee for every category of insecticides.

(iv) An application for the renewal of a license shall be made as laid down in rule 11.

(v) The licensee shall comply with the provisions of the Act and the rules made thereunder for the time being in force.

(vi) The licensee shall obtain ISI Mark Certificate from Bureau of Indian Standard within three months of the commencement of the manufacture.

(vii) No insecticides shall be sold or distributed without ISI Mark Certification."

Form No. II shows that details of expert staff to be appointed for particular insecticide needs to be given by the manufacturer to get license to manufacture that insecticide. Form No. V shows that the names of expert staff involved in the manufacture needs to be informed as soon as the change in that staff is made by the manufacturer. The licensee is expected to sell insecticide by way of wholesale dealings and only for that purpose, it can store the insecticide.

13) The provision of Rule 10 (4-A) (i) runs as under :-

> "(4-A) (i) Every person shall along with his application for grant or renewal of a license to undertake operation or sell, stock or exhibit for sale or distribute insecticides, file a certificate from the principal whom he represents or desires to represent in Form VI-D."

The other relevant portion of Rule 10 (4-A) (ii) runs as under :-

> "(4-A) (ii) The certificate to be issued by the principal shall be addressed to the licensing officer of the concerned area and shall contain full particulars of the principal including their registration and manufacturing license numbers, full name and address of the person proposed to be authorised and also the type of formulations to be used in commercial pest control operations, sold, stocked or exhibited for sale or distribution."

14) Form VI-D is titled as 'Principal Certificate' and it shows

that the employee of the manufacturer, the person authorised by the manufacturer needs to sign on the certificate and specimen signature needs to be supplied to licensing authority by the manufacturer. Thus, the person who is involved in the process of sale as to wholeseller needs to be made known to the licensing authority by manufacturer.

15) The provision of section 30 (3) shows that some defences mentioned in section 30 (3) available to the retailer, vendor are not available to the manufacturer/importer or the agent of manufacturer. Thus, the employees of the manufacturer who are required to be made known to the licensing authority and who are mentioned above cannot get the defences mentioned in section 30 (3) of the Act. This provision needs to be read with section 33 (2) of the Act which is already quoted. It also needs to be mentioned that the provision of section 33 (2) involves different category of persons than the persons mentioned in section 33 (1) of the Act. In section 33 (1), the persons who are responsible to the company for conduct of the business are mentioned and for that, it can be said that they become liable if the offence is committed. However, the persons involved under section 33 (2) of the Act may not be involved in conduct of the business of the company, but they become responsible for the offence if the offence can be attributed to their

consent, connivance or neglect. These persons can be employees, officers of the company like the expert involved in the manufacture process and the person who is responsible for distribution of the insecticide.

16) The aforesaid provisions are special provisions made with particular purpose and that can be found in Statements of Object of the Act.

17) The learned counsel for petitioners placed reliance on the observations made by the Apex Court in the case reported as **2012 CRI.L.J. 2525 (SUPREME COURT) [Aneeta Hada Vs. M/s. Godfather Travels & Tours Pvt. Ltd. and other matters]**. In this reported case, the Apex Court has discussed the provision of section 141 of Negotiable Instruments Act (hereinafter referred to as 'N.I. Act' for short) and in context of those provision, it is held that the liability of a person other than company mentioned in section 141 of N.I. Act is vicarious liability and so, the company needs to be made accused for initiating prosecution against the persons who are vicariously liable. Thus, the persons mentioned in section 141 of N.I. Act, who can be held vicariously liable can be prosecuted only when the company can be prosecuted and so, the company also needs to be made accused in a case which may be filed under section 138 of

N.I. Act. These observations cannot be used in the present matter as different kinds of offences can be committed under the present Act and the persons responsible directly in manufacturing activity and distribution activity can be made accused under the Act and they fall under section 33 (2) of the Act.

18) The learned counsel for petitioners placed reliance on some observations made by the Punjab and Haryana High Court in **Criminal Revision No. 631 of 2003 decided on 1.8.2012 [N.S. Bawa Vs. State of Punjab].** By placing reliance on the observations made by the Apex Court, the learned Single Judge of Punjab and Haryana High Court quashed the proceeding which was filed against the Sales Manager of one company which was filed under the Act. With due respect to the learned Judge of that High Court, this Court holds that the decision of Supreme Court cannot be used in favour of sales Manager or expert involved in manufacturing activity. Further there were no allegations against the petitioner in that case which are required to be made in view of the provisions of the Act. In the present matter, there are such allegations which are already quoted. Thus, on the second ground also, the relief cannot be granted. In the result, the petition stands dismissed.

19) After pronouncement of the judgment, the learned

counsel for the petitioner requests for continuation of interim relief. It is refused.

[T.V. NALAWADE, J.]

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