

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

CRM-M-19659-2017

Date of Decision: 24.07.2018

PI Industries Ltd and ors

...Petitioners

vs.

State of Punjab

..Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Gaurav Chopra, Advocate
for the petitioners.

Mr. M.S.Nagra, AAG, Punjab.

ARVIND SINGH SANGWAN,J:

Prayer in this petition is for quashing of complaint No. 155-1 dated 02.09.2014 under Sections 3 (k) (i), 17, 18, 29 and 33 of the Insecticides Act, 1968 (hereinafter to be referred as the Act) and Rule 27 (5) of the Insecticides Rules, 1971 (hereinafter to be referred as Rules) and the summoning order dated 02.09.2014 (Annexure P2) passed by the Chief Judicial Magistrate, Ferozepur.

Brief facts of the case are that petitioner No.1 is a company incorporated and registered under the provisions of the Companies Act, 1956, and petitioners No. 2 to 5 are the former Director, Regional Manager, Assistant Manager (Quality Control) and Godown in-charge of petitioner No.1-Company. The petitioner-Company is engaged in the business of manufacturing and trading of different kinds of insecticides and pesticides products, having its two manufacturing plants, in the States of Gujarat and Rajasthan. The company has obtained license to manufacture the

insecticides and pesticides, as required under Section 13 of the Act and has also obtained license to sell, stock or exhibit for sale and distribution in most of the States in the country.

Respondent-State, through its Insecticide Inspector, has filed the aforesaid complaint (Annexure P1) with the allegations that the Insecticide Inspector, Block Mamdot alongwith the A.P.O (R) had inspected the premises of M/s G.S.Kheti Store, Rau Ke Hither, District Ferozepur on 11.07.2012 and had drawn a sample of Phorate 10% CG bearing Batch No. 2011 FG247 having its manufacturing date as 19.03.2011 and expiry date 18.09.2012 from a one kg packet of Phorate 10% CG. Out of the one kg packet, 03 portions weighing of 250 gms each were put in separate cloth bags. One portion of the sample was handed over to Sh. Gurcharan Singh and two portions of the sample were dispatched to CAO Ferozepur and he further handed over to Sh. Reshan Singh ADO (PP) Ferozepur, who sent one sample for analysis to the Punjab Insecticide Quality Control Laboratory, Ludhiana on 13.07.2012 wherein, vide analysis report dated 09.08.2012, the sample of insecticide was declared misbranded.

On receiving the analysis report dated 09.08.2012, a complaint under Section 3 (k) (i), 17, 18, 29 and 33 of the Act read with Rule 27 (5) of the Rules, was instituted against the petitioners on 02.09.2014.

Thereafter, the trial Court, vide order dated 02.09.2014 passed the impugned summoning order (Annexure P2) and present petition has been filed praying for quashing of complaint as well as summoning order.

Counsel for the petitioners has submitted that before filing of the complaint a show cause notice, dated 28.08.2012 (Annexure P3), was issued to the petitioner-company as well as to the dealer giving 15 days time

for filing reply for the alleged violation of the provisions of Sections 3 (k) (i), 17, 18, 29 and 33 of the Act, as the sample drawn on 11.07.2012 was found to be misbranded. Counsel further submitted that on 11.09.2012 i.e. within the period of 28 days from the date of receiving the analysis report dated 09.08.2012, the petitioner-company has filed its reply (Annexure P4) to the said show cause notice and contested the same. It is further submitted that in the reply to the show cause notice, petitioner No.1-company requested that analysis report be supplied to the company and get the referee sample reanalyzed from Central Insecticides Laboratory, Faridabad, in terms of Section 24 (3) of the Act.

Learned counsel for the petitioners further argued that a similar reply dated 11.09.2012 (Annexure P5) was also submitted by the dealer of the company from whose premise sample was drawn and in the reply, it was requested that the report of Insecticide Testing Laboratory, Ludhiana, is not conclusive and the referee sample be got reanalyzed from Central Insecticides Laboratory, Faridabad. Leaned counsel further argued that without adhering to the request of the petitioners as well as the dealer for sending the referee sample for reanalysis, Joint Director, Agriculture, Punjab, on 22.11.2013 granted approval under Section 31 (1) of the Act for the prosecution of the petitioners and the dealer, namely, M/s G.S.Kheti Store, Rau Ke Hithar, Block-Mamdot, District Ferozepur. Counsel further submits that a bare perusal of complaint (Annexure P1) shows that the sample was drawn on 11.07.2012, the date of manufacturing was 19.03.2011 and the date of expiry was 18.09.2012 as per admitted position in the complaint itself.

Learned counsel for the petitioners further argued that on

receiving the analysis report dated 09.08.2012, when show cause notice was issued on 28.08.2012 and within 28 days, as per the provisions of Section 24 (3) of the Act, the reply was filed on behalf of the petitioners, on 11.09.2012 i.e. within the time when the shelf life of the sample was yet to expire, requesting reanalysis of the same. However, instead of granting the aforesaid right to the petitioners by promptly sending the referee sample for reanalysis or immediately filing the complaint before the Court of law to enable the petitioners to make such request to the Court for reanalysis, the complaint was filed almost after a gap of 02 years i.e. on 24.09.2014. It is further argued that even the consent to launch prosecution was granted on 22.11.2013 i.e. much after the expiry of shelf life of the referee sample. Counsel further submitted that in the reply, filed by Insecticide Inspector, all the above said facts have neither been denied nor disputed and without there being any such provision, the only explanation given is that it was open for the petitioners themselves, to obtain one sample from complainant for getting the same reanalyzed from Central Insecticide Laboratory, Faridabad.

Counsel for the petitioners has relied upon **2010 (7) SCC 735**, titled as **M/s Gupta Chemicals Pvt. Ltd. And others vs. State of Rajasthan and another,,** wherein Hon'ble the Supreme Court dealing with a similar proposition of law has held as under:-

11. Section 24 which deals with the reports of the insecticides analyst so far as material for the purpose of the case is quoted hereunder:

"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 60 days be deliver to the insecticide inspector submitting

with it a signed report in duplicate in the prescribed form.

(2) Any document purporting to be a report signed by an insecticide analyst shall be the evidence of the facts stated therein, and such evidence shall be conclusive unless the person from whom the sample was taken has within 28 days of a receipt of a copy of the report notified, in writing, the insecticide inspector or the court before which any proceedings in respect of the samples are pending that he intends to adduce evidence in controversion of the report.

(3) Unless the sample has already been tested or analysed in the central insecticide laboratory where a person has under subsection (3) notified his intention of adducing evidence in controversion of the insecticides 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 make the test or analysis and report in writing signed by or under the authority of the director of the central insecticides laboratory the results thereof. And such report shall be conclusive evidence of the facts stated therein."

12. From our perusal of the aforequoted provisions it is manifest that ordinarily in the absence of any material to the contrary, the report of the insecticides analyst will be accepted as final and conclusive of the material contained therewith. This is however subject to the right of the accused to have the sample examined by the central insecticides laboratory provided he communicates his intentions for the purpose within 28 days of the receipt of the copy of the report. It needs no emphasis that this right vested under the statutes

valuable for the defence, particularly in a case where the allegations are that the material does not conform to the prescribed standard. As noted earlier in the present case the appellants had intimated the insecticide inspector their intention to have the sample tested in the central insecticides laboratory within the prescribed period of 28 days of receipt of the copy of the state analyst report, yet no step was taken by the inspector either to send the sample to the central insecticides laboratory or to file the complaint in the court with promptitude in which case the appellants would have moved the magistrate for appropriate order for the purpose. The resultant position is that due to sheer inaction on the part of the inspector, it has not been possible for the appellants to have the sample examined by the central insecticides laboratory and in the meantime, the shelf-life of the sample of insecticide seized had expired and for that reason no further step could be taken for its examination. In the circumstances, we are of the view that continuing this criminal prosecution against the appellant will be a futile exercise and abuse of the process of court. The High Court was not right in dismissing the petition filed under [Section 482](#) of Cr.P.C.

13. Accordingly, the appeals are allowed, the orders passed by the High Court are set aside and the prosecution alleged against the appellants are quashed.

Learned counsel for the petitioners has further relied upon **(2010) 7 SCC, 726**, titled as **Northern Mineral Limited vs. Union of India and another**, wherein, Hon'ble the Supreme Court has held as under:-

“11. From a plain reading of [Section 24\(3\)](#) of the Act, it is evident that an accused within 28 days of the receipt of the copy of the report of the Insecticide Analyst to avoid its evidentiary value is required to notify in writing to the

Insecticide Inspector or the Court before which the proceeding is pending that it intends to adduce evidence in controversion of the report. Section 24(4) of the Act provides that when an accused had notified its intention of adducing evidence in controversion of the Insecticide Analyst report under Section 24(3) of the Act, the court may of its own motion or in its discretion at the request either of the complainant or the accused cause the sample to be sent for analysis to the Central Insecticides Laboratory. Under the scheme of the Act when the accused had notified its intention to adduce evidence in controversion of the report of the Insecticide Analyst, the legal fiction that the report of the Insecticide Analyst shall be conclusive evidence of the facts stated in its report loses its conclusive character. The Legislature has used similar expression i.e. the "intention to adduce evidence in controversion of the report" in both sub-section (3) and sub-section (4) of Section 24 of the Act, hence both the expression has to be given one and the same meaning. Notification of an intention to adduce evidence in controversion of the report takes out the report of the Insecticide Analyst from the class of "conclusive evidence" contemplated under sub-section (3) of Section 24 of the Act. Further intention of adducing evidence in controversion of the Insecticide Analyst report clothes the Magistrate the power to send the sample for analysis to the Central Insecticides Laboratory either on its own motion or at the request of the complainant or the accused. In face of the language employed in Section 24(4) of the Act, the act of the accused notifying in writing its intention to adduce evidence in controversion of the report in our opinion shall give right to the accused and would be sufficient to clothe the Magistrate the jurisdiction to send the sample

to Central Insecticide Laboratory for analysis and it is not required to state that it intends to get sample analysed from the Central Insecticides Laboratory. True it is that report of the Insecticides Analyst can be challenged on various grounds but accused can not be compelled to disclose those grounds and expose his defence and he is required only to notify in writing his intention to adduce evidence in controversion. The moment it is done conclusive evidentiary value of the report gets denuded and the statutory right to get the sample tested and analysed by the Central Insecticides Laboratory gets fructified.

12. The decisions of this Court in the cases of National Organic Chemical Industries Ltd. (Supra), Unique Farmaid (P) Ltd. & Ors. (Supra) and M/s. Gupta Chemicals Pvt. Ltd. (Supra), in our opinion do support Mr. Nehra's contention. True it is that in first two cases, the accused, besides sending intimation that they intend to adduce evidence in controversion of the report accused persons have specifically demanded for sending the sample for analysis by the Central Insecticides Laboratory. However, the ratio of the decision does not rest on this fact. While laying down the law, this Court only took into consideration that accused had intimated its intention to adduce evidence in controversion of the report and that conferred him the right to get sample tested by Central Insecticides Laboratory. The decision of this Court in the case of M/s Gupta Chemicals (supra) is very close to the facts of the present case. In the said case "on receipt of the information about the State Analyst report the appellants sent intimation to the Inspector expressing their intention to lead evidence against the report" and this intimation was read to mean "their intention to have the sample tested in the Central

Insecticides Laboratory". From the language and the underlying object behind [Section 24\(3\)](#) and (4) of the Act as also from the ratio of the decisions aforesaid of this Court, we are of the opinion that mere notifying intention to adduce evidence in controversion of the report of the Insecticide Analyst confers on the accused the right and clothes the court jurisdiction to send the sample for analysis by the Central Insecticides Laboratory and an accused is not required to demand in specific terms that sample be sent for analysis to Central Insecticides Laboratory. In our opinion the mere intention to adduce evidence in controversion of the report, implies demand to send the sample to Central Insecticides Laboratory for test and analysis.

13. [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 Court where proceeding in respect of the samples is pending. Further the Court has been given power to send the sample for analysis and test by the Central Insecticides Laboratory of its own motion or at the request of the complainant or the accused. 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 appellant and in this background Insecticide Inspector 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. Appellant did whatever was possible for it. Its right has been defeated by not sending the sample for analysis and report to Central Insecticides Laboratory. It may be mentioned herein that shelf life of the insecticides had

expired even prior to the filing of the complaint. The position therefore which emerges is that by sheer inaction the shelf life of the sample of insecticides had expired and for that reason no step was possible to be taken for its test and analysis by Central Insecticides Laboratory. Valuable right of the appellant having been defeated, we are of the opinion that allowing this criminal prosecution against the appellant to continue shall be futile and abuse of the process of Court.

14. We are distressed to note the casual manner in which the whole exercise has been done. Insecticide Inspector had collected the sample on 10th September, 1993 and sent it to the Insecticide Analyst for analysis and report. Insecticide Analyst submitted its report dated 13th October, 1993. Notice of the report was sent to the appellant on 1st November, 1993, in reply whereof by letter dated 17th November, 1993 it intimated its intention to adduce evidence in controversion of the report. The shelf-life of the pesticide had not expired by that time but expired in February 1994. However, permission to file complaint was given on 23rd February, 1994 and the complaint was actually filed on 16th March, 1994. Had the authority competent to grant consent, given consent and complaint lodged immediately after the receipt of intimation of the accused, sample could have very well sent for analysis and report, before the expiry of shelf-life. It is interesting to note that [Section 24\(3\)](#) and (4) of the Act obliges the Insecticide Analyst and Central Insecticides Laboratory to make the test and analysis and report within thirty days. When 30 days is good enough for report, there does not seem any justification not to lodge complaint within 30 days from the receipt of the intimation from the accused and getting order for sending the sample for test and analysis to the Central Insecticides Laboratory. All

who are entrusted with the implementation of the provisions of the Act, would be well advised to act with promptitude and adhere to the time-schedule, so that innocent persons are not prosecuted and real culprits not left out.

15. In the result, the appeal is allowed, the impugned judgments of the High Court as also that of the Chief Judicial Magistrate refusing to discharge the appellant are set aside and the appellant is discharged of its criminal liability.”

It is thus submitted on behalf of the petitioners that when a request was made in the reply to the show cause notice, which was admittedly filed within a period of 28 days of receiving it, as per provisions of Section 24 (3) of the Act, showing intention of adducing evidence contrary to the analysis report, it was the duty of the Insecticide Inspector/prosecution agency to act immediately and to send the referee sample for reanalysis to the Central Insecticide Laboratory, Faridabad. However, an indefeasible right of the petitioners provided under the Act has been taken away because as per the said provisions, the Court may of its own motion or on the request of the complainant or the accused can send the sample for reanalysis to the Central Insecticide Laboratory, Faridabad and complaint having been filed after 02 years of expiry of shelf life, the prosecution is bad in eyes of law.

In reply, learned State counsel has submitted that it was open for the petitioner-company to take the referee sample from the Insecticide Inspector and get it reanalyzed at its own.

In reply, learned counsel for the petitioners has submitted that once the reply to the show cause notice was received by the Insecticide Inspector, neither any such option was given to the petitioners at that time

nor there is any specific provision under the Act that the accused at its own level can get the sample reanalyzed.

After hearing learned counsel for the parties, I find merit in the present petition for the following reasons:-

a. Admitted position in the case is that the sample was drawn on 11.07.2012 and date of expiry of the shelf life was 18.09.2012. It is not disputed by the State that the analysis report was received on 09.08.2012 and show cause notice was issued on 28.08.2012 to the petitioners as well as the dealer. A perusal of the reply, filed by the Insecticide Inspector in Court, shows that the reply submitted by the petitioners was received by him in which both by the manufacturer and the dealer requested that the referee sample be sent for reanalysis to the Central Insecticide Laboratory, Faridabad. However, the petitioners were not allowed to exercise such right despite the fact that the reply to the show cause notice was received within 28 days and before expiry of the shelf life of the sample.

b. As per provision of Section 24 (3) of the Act, the petitioners have exercised their right for reanalysis within 28 days. This fact is neither disputed nor denied in the reply of the Insecticide Inspector and, thereafter, inaction on his part by not sending the sample to the Central Insecticide Laboratory, Faridabad, for reanalysis or immediately filing the complaint before the Court to enable the petitioners to apply for reanalysis before the Court, has debarred the petitioners from exercising their right under Section 24 (4) of the Act which reads as under:-

Report of Insecticide Analyst:

(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, 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.”

c. That there is no explanation given in the reply filed by the Insecticide Inspector for delay of 02 years in filing the complaint, especially when the reply to the show cause notice was received well before expiration of the shelf life of the sample. Even there is no explanation why the sanction was granted on 22.11.2013 and, thereafter, another 10 months time was taken in filing the complaint which resulted in denying the legal right to the petitioners for reanalysis under terms of Section 24 (4) of the Act.

d. It has been held by Hon'ble the Supreme Court in **M/s Gupta Chemical Pvt. Ltd's** case (supra) that the report of Insecticide Analyst will be accepted as final and conclusive proof by the Court, however, subject to the right of the accused to have the sample reanalyzed by Central Insecticides Laboratory, Faridabad, whereas in the instant case, the petitioners have been denied such right.

e. In view of the judgment of Hon'ble Supreme Court in

Northern Mineral Limited's case (supra), the complaint which has been filed on 24.09.2014 i.e. after 02 years of expiry of shelf-life has a serious consequence as in the case insecticides are tested or analysis after expiry of the shelf-life, it will lose its efficacy and may not conform to standard specification. It is also held by Hon'ble Supreme Court that when the petitioners were served with the insecticides analysis report, the petitioners have their intention for reanalysis and insecticides Inspector was obliged to institute the complaint forthwith and produce the referee sample and request the Court to send it for reanalysis to the Central Insecticides Laboratory, Faridabad and, therefore, the stand taken by the Insecticide Inspector that the petitioners themselves could have taken the sample for reanalysis to the Central Insecticides Laboratory, Faridabad, is not sustainable.

f. A perusal of impugned summoning order also shows that notice to the accused was issued without there being any reference to the allegations in the complaint, especially date of analysis report, date of expiry of sample and date of institution of the complaint, after 02 years of the expiry of shelf-life of the sample, and, therefore, while issuing summoning order, the trial Court has not applied its judicial mind to this aspect in the light of the provisions of the Act.

In view of the above, the present petition is allowed. The impugned complaint No. 155-1 dated 02.09.2014 (Annexure P1) and summoning order dated 02.09.2014 (Annexure P2) and subsequent proceedings in pursuance therefore pending before the trial Court are, hereby, quashed.

24.07.2018.
smriti

(**ARVIND SINGH SANGWAN**)
JUDGE

Whether speaking/reasoned : Yes/No.

Whether Reportable : Yes/No