

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.35508 of 2017

Arising Out of PS. Case No.-31 Year-2014 Thana- BHOJPUR COMPLAINT CASE District-
Bhojpur

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P. I. Industries Ltd through Managing Director, Udaisagar Road, Udaipur, Rajasthan. Through Ravi Srihari, Son of Late Ranbir Kumar aged about 42 Years, Regional Manager, P.I. Industries, Bihar and Jharkhand. Resident of Flat No.301, B- Block, Maa Shanti Vihar Apartment, behind DP School, Priyadarshi Nagar, P.S.- Rupaspur, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Sri Bhushan Prasad, Junior Plant Protection Officer cum Insecticide Inspector Bhojpur Ara.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Mukeshwar Dayal-Advocate
		Mr. Vikas Mohan-Advocate
For the State	:	Mr. Khurshid Anwar-A.P.P.
For the O.P.	:	Mr. Nawal Kishore Prasad-Advocate

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV ORDER

6 17-06-2019 Petitioner has challenged the order dated 07.10.2014 passed by the learned Chief Judicial Magistrate, Bhojpur at Ara, whereby and whereunder petitioner along with others has been summoned to face trial for an offence punishable under Section 29(i)(a), 3k(1) and 33 of the Kitnassi Act (The Insecticides Act, 1968) in connection with C.C. No.31(O) of 2014.

2. Opposite Party No.2 claiming himself to be the Insecticide Inspector as per Government Notification dated 09.11.1987, visited the business premises of M/s Arun and Arun



lying at Babu Bazaar, Arrah (Bhojpur) and took sample of TARAK (Bispyribac Sodium 10% SC) Batch No.PP00049 on 21.09.2013 there from under the guise of Section 21(1)(c) of the Act, which was imported and repacked by accused no.1 (petitioner) and marketed by accused no.2, M/s Rallies India Limited. It has further been disclosed that firstly the sample was sent to the Deputy Director, Quality Control Laboratory, Mithapur vide Letter dated 21.09.2013 for test, but was returned back with an endorsement that facility for testing is not available whereupon the sample in same condition was sent to R.P.T.L., Faridabad vide memo dated 04.10.2013. It has been alleged that after testing, the R.P.T.L., Faridabad reported the insecticide to be substandard vide its report dated 13.11.2013, whereupon show-cause were issued against all the accused, which was properly answered claiming for re-analyzing the sample. Accordingly, the sample was sent to C.I.L., Faridabad through Letter dated 24.04.2014 and after re-examining, the Central Laboratory has informed vide Letter No.04.06.2014, whereupon the accused were communicated. Subsequently thereof, consent has been procured from the Director (Agriculture) followed with submission of the complaint petition as well as the order impugned.



3. While challenging the order impugned, it has been submitted that accused no.3, M/s Arun and Arun was not the dealer of P.I. Industries Limited (petitioner) nor sample named as 'Tarak' is the brand name of P.I. Industries rather it happens to be brand name of Rallies India Private Limited, while the brand name of petitioner's company is Nominee Gold. It has further been submitted that as sample has not been taken from the possession of any authorized dealer or agent of the P.I. Industries Limited, nor the same happens to be brand product of the petitioner. On account thereof, petitioner should not have been dragged under the instant prosecution.

4. It has also been submitted that complainant's identity as Insecticide Inspector could not be legally accepted as being the Junior Plant Protection Officer, which happens to be the parent body. It has further been submitted that whole activity taken up by the opposite party no.2/ complainant happens to be illegal, contrary to the spirit of law as any order purported to be under Section 24 of the Act was/ is to be passed by the Court and not by the Insecticide Inspector. That being so, there happens to be inherent defect/ illegality, whereupon the whole prosecution is liable to be quashed. Furthermore, it has also been submitted that there happens to be two kinds of report



contradictory to each other, Faridabad Laboratory has found 8.10 per cent active ingredients while the Central Laboratory has found 9.07 per cent of active ingredients that too, one year after the manufacturing, whereupon did not justify the prosecution. It has also been submitted that sanction was given by the Director (Agriculture), which he couldn't in the background of Annexure-1, the notification issued by the Agriculture Department dated 09.11.1987 (Annexure of the complaint petition) whereunder the Director (Agriculture), Bihar, Patna has been identified to be Insecticide Inspector (prosecuting agency) for the whole State of Bihar. In the aforesaid background, identification of opposite party no.2, as Inspector could not be recognized in the eye of law and in likewise manner, the Director (Agriculture) could not be considered to be competent to grant sanction being himself to be prosecuting agency and not being the sanctioning authority. As such, the whole prosecution is bad.

5. The learned Additional Public Prosecutor as well as learned counsel for the opposite party no.2 has submitted that earlier circular of 1987 was before bifurcation of the State of Bihar. After bifurcation, the State Government re-notified the same vide Notification No.3/Upa.Kit-30/2003...../Agriculture



Department, Patna, whereby and whereunder the Director (Agriculture), Bihar, Patna has been entrusted to grant sanction and all the previous notification/ circulars concerning thereto, has accordingly been rescinded/ modified. On account thereof, the earlier notification is found merged with the present one and so, the status of the Director (Agriculture), as a sanctioning authority goes out of question. Furthermore, it has also been submitted that so far status of opposite party no.2 is concerned, that has already been acknowledged. It has further been submitted that from the pleading of the petitioner as well as from the contents of the complaint petition, it is evident that all the legal formality has properly been complied with. As such, there happens to be no infirmity in the order impugned. So, instant petition is fit to be dismissed.

6. As it appears from plain reading of aim, object of the statute is to regulate the impact, manufacture, sale, transport, distribution and use of insecticides with a view to prevent risk to human beings or animals and for matters connected therewith. In order to properly appreciate the rival submissions as well as object and reasons of the Act, it looks desirable to see the definition of the relevant words being frequently used under the Act, so defined under ***Section 3 of the Insecticides Act:-***

“3. Definitions.—In this Act, unless the context



otherwise requires,—

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(d) “Import” means bringing into any place within the territories to which this Act extends from a place outside those territories;

(e) “Insecticide” means—

(i) any substance specified in the Schedule; or

(ii) such other substances (including fungicides and weedicides) as the Central Government may, after consultation with the Board, by notification in the Official Gazette, include in the Schedule from time to time; or

(iii) any preparation containing any one or more of such substances;

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(g) “Insecticide Inspector” means an Insecticide Inspector appointed under section 20;

(h) “label” means any written, printed or graphic matter on the immediate package and on every other covering in which the package is placed or packed and includes any written, printed or graphic matter accompanying the insecticide;

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(k) “misbranded”—an insecticide shall be deemed to be misbranded—

(i) if its label contains any statement, design or graphic representation relating thereto which is false or misleading in any material particular, or if its package is otherwise deceptive in respect of its contents; or

(ii) if it is an imitation of, or is sold under the name of, another insecticide; or

(iii) if its label does not contain a warning or caution which may be necessary and sufficient, if complied with to prevent risk to human beings or animals; or

(iv) if any word, statement or other information required by or under this Act to appear on the label is not displayed thereon in such conspicuous manner as the other words, statements, designs or graphic matter have been displayed on the label and in such terms as to render it likely to be read and understood by any ordinary individual under customary conditions of purchase and use; or

(v) if it is not packed or labelled as required by or under this Act; or

(vi) if it is not registered in the manner required by or under this Act; or

(vii) if the label contains any reference to



registration other than the registration number; or
(viii) if the insecticide has a toxicity which is higher
than the level prescribed or is mixed or packed with
any substance so as to alter its nature or quality or
contains any substance which is not included in the
registration;

(l) “package” means a box, bottle, casket, tin,
barrel, case, receptacle, sack, bag, wrapper or other
thing in which an insecticide is placed or packed;

(m) “premises” means any land, shop, stall or place
where any insecticide is sold or manufactured or
stored or used, and includes any vehicle carrying
insecticides;

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(p) “sale”, with its grammatical variations and
cognate expressions, means the sale of any
insecticide, whether for cash or on credit and
whether by wholesale or retail, and includes an
agreement for sale, an offer for sale, the exposing
for sale or having in possession for sale of any
insecticide and includes also an attempt to sell any
such insecticide;

7. In likewise manner, certain definitions have been
left out under the Act, has been defined under ***Rule-2 of the***
Insecticides Rules, 1971.



“2. Definitions.—In these rules, unless the context otherwise requires—

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(c) “dealer” means a person carrying on the business of selling insecticides, whether wholesale or retail, and includes an agent of a dealer;

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(f) “Laboratory” means the Central Insecticides Laboratory;

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(j) “primary package” means the immediate package containing the insecticides;

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(o) “secondary package” means a package which is neither a primary package nor a transportation package;

8. Proceeding ahead, the other relevant sections are ***Sections 20 and 21 of the Insecticides Act***, which identify the Insecticide Inspector for such area as may be specified in the notification coupled with its power and read as follows:-

“20. Insecticide Inspectors.—

(1) The Central Government or a State Government



may, by notification in the Official Gazette, appoint persons in such number as it thinks fit and possessing such technical and other qualifications as may be prescribed to be Insecticide Inspectors for such areas as may be specified in the notification: Provided that any person who does not possess the required qualifications may be so appointed only for the purposes of clause (a) and clause (d) of sub-section (1) of section 21: Provided further that no person who has any financial interest in the manufacture, import or sale of any insecticide, shall be so appointed.

(2) Every Insecticide Inspector shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860) and shall be officially subordinate to such authority as the Government appointing him, may specify in this behalf.

21. Powers of Insecticide Inspectors.—

(1) An Insecticide Inspector shall have power—

(a) to enter and search, at all reasonable time and with such assistance, if any, as he considers necessary, any premises in which he has reason to believe that an offence under this Act or the rules made thereunder has been or is being or is about to be committed, or for the purpose of satisfying



himself that the provisions of this Act or the rules made thereunder or the conditions of any certificate of registration or licence issued thereunder are being complied with;

(b) to require the production of, and to inspect, examine and make copies of, or take extracts from, registers, records or other documents kept by a manufacturer, distributor, carrier, dealer or any other person in pursuance of the provisions of this Act or the rules made thereunder and seize the same, if he has reason to believe that all or any of them, may furnish evidence of the commission of an offence punishable under this Act or the rules made thereunder;

(c) to make such examination and inquiry as he thinks fit in order to ascertain whether the provisions of this Act or the rules made thereunder are being complied with and for that purpose stop any vehicle;

(d) to stop the distribution, sale or use of an insecticide which he has reason to believe is being distributed, sold or used in contravention of the provisions of this Act or the rules made thereunder, for a specified period not exceeding¹⁸ [thirty] days, or unless the alleged contravention is such that the defect may be removed by the possessor of the



insecticide, seize the stock of such insecticide;

(e) to take samples of any insecticide and send such samples for analysis to the Insecticide Analyst for test in the prescribed manner; and

(f) to exercise such other powers as may be necessary for carrying out the purposes of this Act or the rules made thereunder.

[(2) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall, as far as may be, apply to any search or seizure under this Act as they apply to any search or seizure made under the authority of a warrant issued under section 94 of the said Code.]

(3) An Insecticide Inspector may exercise the powers of a police officer under 3[section 42 of the Code of Criminal Procedure, 1973 (2 of 1974)] for the purpose of ascertaining the true name and residence of the person from whom a sample is taken or an insecticide is seized.

9. The same scale has also been prescribed under ***Rules-26 and 27 of the Insecticides Rules, 1971***, and for ready reference, the same is quoted below:-

*“**26. Qualifications of Insecticide Inspector.**—A person shall be eligible for appointment as an Insecticide Inspector under the Act only if he possesses the following qualifications, namely:—*



(a) graduate in Agriculture, or graduate in Science with Chemistry as one of the subjects;

(b) adequate field experience.

THE INSECTICIDES RULES, 1971

***27. Duties of Insecticide Inspector.**—The Insecticide Inspector shall have the following duties, namely:—*

(1) to inspect not less than three times in a year all establishments selling insecticides within the areas of his jurisdiction;

(2) to satisfy himself that the conditions of licence are being complied with;

(3) to procure and send for test and analysis, samples of insecticide which he has reason to suspect are being sold, stocked or accepted for sale in contravention of the provisions of the Act or rules made thereunder;

(4) to investigate any complaint in writing which may be made to him;

(5) to institute prosecutions in respect of breaches of the Act and the rules made thereunder;

(6) to maintain a record of all inspections made and action taken by him in the performance of his duties including the taking of samples and the seizure of stocks and to submit copies of such record to the licensing officer;



[\(7\)](#) to make such inquiries and inspections as may be necessary to detect the sale and use of insecticides in contravention of the Act.

10. Now, the activities of the Inspector has to be seen just after taking of sample and for that, **Section 22 of the Insecticides Act, 1968** is quoted below:-

“22. Procedure to be followed by Insecticide Inspectors.—

[\(1\)](#) Where an Insecticide Inspector seizes any record, register or document under clause (b) of sub-section (1) of section 21, he shall, as soon as may be, inform a Magistrate and take his orders as to the custody thereof.

[\(2\)](#) Where an Insecticide Inspector takes any action under clause (d) of sub-section (1) of section 21—

[\(a\)](#) he shall use all despatch in ascertaining whether or not the insecticide or its sale, distribution or use contravenes any of the provisions of section 18 and if it is ascertained that the insecticide or its sale, distribution or use does not so contravene, forthwith revoke the order passed under the said clause or as the case may be, take such action as may be necessary for the return of the stock seized;

[\(b\)](#) if he seizes the stock of the insecticide he shall, as soon as may be, inform a Magistrate and take his orders as to the custody thereof;



(c) without prejudice to the institution of any prosecution, if the alleged contravention be such that the defect may be remedied by the possessor of the insecticide, he shall, on being satisfied that the defect has been so remedied, forthwith revoke his order and in case where the Insecticide Inspector has seized the stock of insecticide, he shall as soon as may be, inform a Magistrate and obtain his orders as to the release thereof.

[3] Where an Insecticide Inspector takes any sample of an insecticide, he shall issue a receipt therefor stating therein that the fair price of such sample shall be tendered if the sample, after test or analysis is not found to be misbranded and the Insecticide Analyst has reported to that effect and on such price having been tendered may require a written acknowledgement therefor.]

*(4) [***] where the Insecticide Inspector seizes the stock of any insecticide under clause (d) of sub-section (1) of section 21, he shall tender a receipt in the prescribed form.*

(5) Where an Insecticide Inspector takes a sample of an insecticide for the purpose of test or analysis, he shall intimate such purpose in writing in the prescribed form to the person from whom he takes it and, in the presence of such person unless he



wilfully absents himself, shall divide the sample into three portions and effectively seal and suitably mark the same and permit such person to add his own seal and mark to all or any of the portions so sealed and marked: Provided that where the insecticide is made up in containers of small volume, instead of dividing a sample as aforesaid, the Insecticide Inspector may, and if the insecticide be such that it is likely to deteriorate or be otherwise damaged by exposure shall take three of the said containers after suitably marking the same and, where necessary, sealing them.

(6) The Insecticide Inspector shall restore one portion of a sample so divided or one container as the case may be, to the person from whom he takes it and shall retain the remainder and dispose of the same as follows:—

(i) one portion or container, he shall forthwith send to the Insecticide Analyst test or analysis; and

(ii) the second, he shall produce to the court before which proceedings, if any, are instituted in respect of the insecticide.

11. The privilege so allowed in favour of manufacturer/ agent/ dealer has properly been identified under ***Section 24 of the Insecticides Act*** and for better appreciation, the same is quoted below:-



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 1[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, 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.

(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.

12. So, in terms of Section 21 of the Act, it is evident that there happens to be within the dominance of the Insecticide Inspector to take sample and get it examined by the Insecticides Analyst. The activity having taken under Section 21 of the Act at the end of the Insecticide Inspector, has to be intimated to the Magistrate, more particularly, in terms of Sub-section 21(1)(b), 21(1)(d). If the sample of the insecticide has been taken for the purpose of test or analysis, the same be intimated to the person from whom, it has been taken in



prescribed performa and then, seal it, will put specific mark having that of person also from whose custody sample has been taken. The aforesaid exercise should be completed relating to preparation of three sets of example. Then one has to be given to the person from whose custody, it has been procured. Secondly, should be sent to Public Analyst for test/ analysis and the third to be produced before the Court before, which proceeding, if any, going to be instituted.

13. Proceeding further, it is evident from Section 24(3) of the Act, that even before institution of prosecution, the aggrieved (from whom sample has been taken) may ask for examination of sample by the Central Laboratory within 28 days of receiving of the Insecticide Analyst report, a copy of which should be transmitted to the aggrieved. The report must be within 30 days from the receipt of samples. In case of pendency of prosecution, the Court has also been empowered to direct so under Section 24(4) of the Act. As submitted, there happens to be no grievance on that very score. However, there happens to be consistency over the same, as held by the Apex Court in ***Indofil Industries Limited and others v. State of Punjab reported in (2017) 8 SCC 656***, it has been held:-

“17. On a bare reading of sub-section (3), it is seen that the first part declares that the report signed by the Insecticide



Analyst shall be evidence of the facts stated therein and it shall be conclusive, unless the “person from whom” the sample was taken exercises his right by notifying in writing within the specified time that he intends to adduce evidence in controversion of that report. Thus, the second part of this provision gives a right to the person from whom the sample was collected to raise an objection. Once the person from whom the sample was taken exercises that right in terms of sub-section (4), the conclusiveness of the report of the Insecticide Analyst (State Analyst) referred to in the first part of the same provision cannot be used against such person. These provisions are in the nature of rules of evidence. Further, if the criminal complaint is launched and the person is named as an accused, he can request the concerned Magistrate before whom the proceedings are pending to send the third sample produced before the Court to the CIL for testing or analysis. That right can be exercised only if the complaint is founded on the report of the State Insecticide Analyst. However, if the complaint is filed also on the basis of the report of the CIL, then the question of exercising the right under [Section 24](#) (4) does not endure to the accused. For, the purport of [Section 24\(4\)](#) is that the report of the CIL shall be conclusive evidence of the facts stated therein. It is pertinent to bear in mind that the opening part of sub-section (4) of [Section 24](#) opens with the words, “Unless the sample has already been tested or



analysed in the CIL”. Therefore, in cases where such report is already obtained or available, the criminal prosecution must proceed on that basis. In other words, only if the analysis report of the CIL is not available or filed along with complaint or placed on record in the criminal prosecution, would the accused get a right to request the concerned Magistrate to direct testing or analysis of the third sample produced before that Court by the prosecution from the CIL and not otherwise. Any other view would entail in rewriting of the provisions, which are otherwise plain and unambiguous. Thus, if the report of the CIL has been obtained before filing of the complaint or pursuant to the direction given by the concerned Magistrate and made part of record of the criminal prosecution, as in this case, the accused named in the complaint cannot ask for analysis of the sample already used at the instance of the person from whom it was taken and is named as co-accused.

18. To put it differently, the provisions of the Act predicate that the Insecticide Inspector has ample power to send the sample for testing or analysis to the CIL on his own. Rather, it is his duty to do so if such an express request is made by the person from whom the sample was taken. The argument of the appellants that the Insecticide Analyst cannot do so unless a formal complaint is filed and the concerned Magistrate so directs, is in the teeth of the dictum of this Court in the case of State of Haryana Vs. Unique Pvt. Ltd.



(supra) and Gupta Chemicals Pvt. Ltd. (supra). This Court has expressly rejected that stand taken by the State and has held that the Insecticide Inspector must take prompt steps to send the sample to the CIL immediately after the protest is notified about the report given by the State Insecticide Analyst. The Insecticide Inspector has the option either to send the third sample on the request made by the person from whom it was collected to the CIL for testing or analysis or to launch a criminal prosecution and submit the third sample in the concerned Court well before the expiry of shelf life of the Insecticide to enable the accused named in the complaint to ask for testing or analysis thereof in the CIL. We, therefore, conclude that the High Court was right in dismissing the petition to quash the criminal proceedings pending against the appellants in respect of misbranded insecticide, for the additional reasons indicated in this judgment.”

14. The next important Section is **Section 31 of the Act**, which prescribes the mode of taking of cognizance and trial of offences. For better appreciation, the same is quoted below:-

“31. Cognizance and trial of offences.—

(1) *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.*



(2) No court inferior to that of a I[Metropolitan Magistrate or a Judicial Magistrate of the first class] shall try any offence under this Act."

15. So, from plain reading of Section, it is evident that without sanction having accorded at the end of Central or State Government, or the authority so entrusted, no prosecution will lie. As is evident, neither under Act nor under Rule any kind of scholism has been laid down.

16. However, serious objection has been raised on behalf of petitioner regarding status of sanctioning authority on the basis of notification so annexed with the complaint petition wherein the Director has been identified to be Insecticide Inspector, that means to say, prosecuting agency, whereupon could not be sanctioning authority.

17. Adjudging over the issue, from the Annexure-B, a notification of the Year 2003, whereby the Director (Agriculture) has been nominated to be the Competent Authority to grant sanction. From the aforesaid notification itself, it is evident that earlier notification so issued connecting therewith is to be considered in terms thereof. The notification, Annexure-1 of the petition, is of the Year 1987 and as per notification, the Director (Agriculture) has also been identified to be as Insecticide Inspector through out Bihar wherein the other



officials including that of informant has also been identified as an Insecticide Inspector. That means to say, by way of annexing the aforesaid circular, there happens to be an admission with regard to the aforesaid circular still under operation. Neither in the complaint petition nor in the counter-affidavit, nomination of the Director (Agriculture) as an Insecticide Inspector as per circular has been controverted. However, the crucial factor is absence of proper authority as sanctioning officer. That means to say, in terms of Section 31(1) of the Act, it remained with State Government. When Annexure-B has properly been scrutinized, it is evident that not only the State Government delegated/ vested the power to Director to grant sanction rather tamed the earlier notification, accordingly, status of Annexure-B is out of controversy.

18. Accordingly, instant prosecution did not require any kind of infringement, whereupon the prayer made on behalf of petitioner lacks merit and is accordingly, dismissed.

(Aditya Kumar Trivedi, J)

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