

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 15 OF 2010

1. The United Phosphorous Ltd.,
167, Dr. AB Road, Worli
Mumbai 18
2. Shri R.K. Mathur
Manager,
C/o The united Phosphorous Ltd.,
167, Dr. AB Road, Worli
Mumbai 18.

Applicants

Versus

1. The State of Maharashtra
Through the Secretary
Home Department, Mantralaya
Mumbai 32.
2. Dilip Madhavrao Wadkute
Insecticide Inspector,
& District Quality Control Inspector
C/o District SAO, Zilla Parishad,
Aurangabad.
3. M/s Raviraj Agro Agencies
Khandalal, Tq. Vaijapur
Dist. Aurangabad.
4. Shri Sanjay Subhashappa Patne
M/s Raviraj Agro Agencies,
Khandala, Tq. Vaijapur
Dist. Aurangabad

Respondents

Mr. R.R. Mantri, advocate for the applicants.
Mr. A.R. Kale, APP for respondent No.1.

CORAM : N.B. SURYAWANSHI, J.
DATE : 6th December, 2019.

JUDGMENT :

1. Applicants have filed this application praying for quashing and setting aside the proceeding of Criminal Case No.36/2002 pending on the file of Judicial Magistrate First Class, Vaijapur, Dist. Aurangabad.

2. Facts in nutshell are as follows :

Applicant No. 1 is the insecticide manufacturing company having ISO 9000 and 14000 certification. Applicant No. 1 claims to be the only company in the world manufacturing insecticide formulations from rock phosphate ore.

3. On 14.01.1999, respondent No. 2 inspected the premises of the dealer and took samples of the insecticide. The samples were manufactured on 20.02.1998 and expiry date of the samples was February 2000.

4. On 17.03.1999, respondent No. 2 issued a show cause notice to the applicants and forwarded the report of the analyst. Show cause notice was replied by the applicants on 07.04.1999

stating that the notice dated 17.03.1999 was received by them on 05.04.1999. It is further mentioned that on analysis of the sample from the applicants own R & D Scientist, the sample was found in conformity with the specifications in all respects. It is further stated that applicant No. 1. intends to adduce evidence to counter the evidence of Insecticides Testing Laboratory, Aurangabad and request is also made, to send the sample to the Laboratory of Government of India, at the cost of applicant No. 1, with intimation.

5. The proposal for sanction to lodge complaint was forwarded by the complainant on 13.09.2001 and sanction was accorded on 21.09.2001. Impugned complaint was thereafter lodged on 04.10.2001.

6. Applicants filed application Exhibit 11 seeking discharge before the learned trial Court. However, the learned trial Court was pleased to reject the application on the ground that the case being summary criminal case, there is no provision of discharge of accused. Hence, the present application.

7. Heard learned counsel for the applicants and learned

APP for the State. With the able assistance of both the learned counsel, gone through the application memo, annexures thereto and reply filed by Respondent No.2.

8. Learned counsel for the applicants assailed the initiation of prosecution / complaint only on the ground that initiation of prosecution was after expiry of shelf-life of sample. Even, sanction was accorded almost one year after the expiry date of the sample. The complaint since was lodged beyond the date of expiry of the sample, a valuable right of applicants to get the sample analysed from the Central Laboratory is taken away. Hence, the complaint is liable to be quashed and set aside. Learned counsel for applicants placed reliance on various authorities including judgment of the learned Single Judge of this Court (Coram : V.R. Kingaonkar, J.) in Criminal Writ Petition No. 145/2007 which, according to the learned counsel was rendered in the identical facts. Learned counsel for the applicants further relied upon judgments of the Honourable Apex Court in the matter of **Medicamen Biotech Ltd. and another Vs. Rubina Bose, Drug Inspector** reported in 2008 DGLS(SC) 410, **State of Hariyana Vs. Unique Farmaid (P) Ltd. And others** reported in (1999)8 Supreme Court Cases 190, **Gupta Chemicals Pvt. Ltd. and others Vs. State**

of Rajasthan and another reported in 2002(Suppl1) SC 516 and Venkaiah Chowdary Nannapaneni and others Vs. State of Maharashtra reported in 2003 ALL MR (Cri) 758 to support his case.

9. Learned APP on the other hand would support the complaint stating that the ground raised by the applicants is not sufficient to quash the case. He further submits that show cause notice dated 17.03.1999 was replied by applicant No. 1 on 19.04.1999. Thus it was beyond the period of 28 days and the delay was on the part of the applicant and not on the part of the authorities. He would further urge that the authorities relied upon by the applicants are not of any help to the applicants and the application being meritless needs to be rejected.

10. Perusal of record reveals that the sample of insecticide, manufactured on 20.02.1998 was taken on 16.01.1999. Its expiry date was 19.02.2000. On the same day, sample was forwarded to the Regional Laboratory at Aurangabad. Report of the Regional laboratory was received by the inspector on 01.08.1999. Thus, the report of the laboratory was not forwarded to the inspector within 60 days period. On 17.03.1999, show cause notice was issued to

the applicants. Same was replied on 07.04.1999. Reply was received by the Insecticide Inspector on 19.04.1999. The proposal for sanction to lodge prosecution was forwarded by the Insecticide Inspector on 13.09.2000 and sanction was accorded vide order dated 21.09.2001.

11. It is also a matter of record that applicant No. 1, by giving reply to the show cause notice, disputed the report of the Public Analyst and requested to forward the sample to the Central Laboratory, which is not done by the Insecticide Inspector. Thus, the valuable right of applicant No. 1 of getting the sample analysed through the Central Insecticide Laboratory was taken away and on this ground alone, the proceedings are liable to be quashed.

12. At the cost of repetition, it is to be noted that the expiry date of the insecticide was 19.02.2000 and the Insecticide Inspector has forwarded the proposal for sanction almost one year after the date of expiry of shelf life of the sample. Similarly, complaint was lodged on 04.10.2001 which was also after expiry of the shelf-life.

13. The point argued by the learned counsel for the

applicants is no more res integra in view of decision of this Court in Criminal Writ Petition no. 144/2007 (Coram : V.R. Kingaonkar, J.) That judgment was rendered in the identical facts and, by relying upon the ratio laid down by the Honourable Apex Court in the matter of **Rambhai B. Patel and others Vs. S.R. sharma, Drug Inspector and another**, reported in **1997(2) Mh.L.J. 629** and two judgments of this Court, it was held that

“The provision of Section 24 of the Insecticides Act, 1968 and Section 24 of the Drugs and Cosmetics Act, are substantially *pari materia*. The right of the petitioners to challenge the report of the Insecticide Laboratory is frustrated due to filing of the complaint after the shelf life of the insecticide was over. The continuation of the Criminal proceeding in such a case would be wastage of judicial time and would amount to abuse of the process of Court. There is no point in continuing the Criminal proceeding when the outcome thereof would be of no avail to the prosecution. The right of the petitioners was made nugatory due to the delay in filing of the complaint. The complaint ought to have been filed before the shelf life of the insecticide was over. The present case is, therefore, fit in which the criminal proceedings need be quashed. “

14. The second judgment relied upon by the applicants is in Criminal Writ Petition No. 144/2007 (Coram : B.R. Gavai, J.), wherein reliance is placed in the Apex Court judgment in the matter of Gupta Chemicals (Supra) wherein it is held as under :

“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.”

This Court therefore came to the conclusion that the facts are almost identical with the facts of the Honourable Apex

Court judgment and as sanction was granted belatedly in that case and prosecution was also lodged belatedly when the shelf life of the sample had expired, this Court held that, the petitioners were deprived of their right under Section 24(4) of the act, hence allowed petition and quashed the criminal prosecution.

15. In view of the above discussion, the facts of the present case are similar to the above referred both the decisions of this Court. Admittedly, after the shelf life of the sample was over, sanction to lodge complaint was granted and the complaint was filed, because of which, the applicants are deprived of their valuable right under Section 24(4) of the said Act. Hence, the present application deserves to be allowed. Hence the following order :-

ORDER

Rule is made absolute in terms of prayer clause 'B'.

There shall be no order as to costs.

(N.B. SURYAWANSHI, J.)

dyb/