

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

253 CRIMINAL APPLICATION NO. 4895 OF 2011

1. Anand Mohan Dubey,
Age : 59 years, Occu.: Business,
Partner Arpan Tek Associates,
R/o.: G-3/403, Gulmohar Colony,
Bhopal, District : Bhopal.
2. Sanjay Jain,
Age : 45 years, Occu.: Business,
Chemist Arpan Tek Associates,
R/o.: 191-B, Manas Parisar, Zone-1,
M. P. Nagar, Bhopal.
3. Arpan Yek Associaties,
R/o.: 191-B, Manas Parisar, Zone-1,
M. P. Nagar, Bhopal. ... APPLICANTS

VERSUS

The State of Maharashtra,
Through Shri. D. B. Sisodiya,
Age : 45 years,
Insecticide Inspector &
District Quality Control Inspector,
Dhule. ... RESPONDENT

...
Mr. B. R. Warmaa, Advocate for Applicants
Mr. A. R. Kale, APP for Respondent-State
...

CORAM : N. B. SURYAWANSHI, J.

DATE : 10th DECEMBER, 2019

ORAL JUDGMENT :-

1. At the out set, learned counsel for the applicants, seeks permission to delete respondent Nos. 2 to 5. Permission is granted. Amendment to be carried out forthwith.

2. The applicants by this application pray for quashing the proceedings of S.C.C. No. 312 of 2004 pending on the file of learned Judicial Magistrate First Class, Sindhkhedra.

3. Few facts necessary for the decision of the present application are as follows :

The first respondent, complainant Insecticide Inspector, lodged a private complaint against seven accused. Accused No.3 is insecticide manufacturing firm. Accused No.1 is partner and responsible person of third respondent. Accused is No.2 is chemist and appointed by accused No.3 being responsible person for quality testing. Accused Nos. 4 to 7 are the retailer and dealer.

4. Complainant, Insecticide Inspector and District Quality Control Inspector, Dhule, visited the dealer on 06.10.2003 and seized insecticide Endosulphan, Batch No. A/ES/26 dated 16.06.02 from M/s Badgujar Krushi Seva Kendra, Shindkheda. Expiry date of the same was 15.06.2004. A sample was drawn and sent to the Regional Laboratory, Pune for analysis and the report declared that the sample was failed to confirm the active ingredients content i.e. instead of 35% EC it was found 0.000% EC only as per the analysis report no. 610A dated 08.04.2003. A show cause notice was given to accused Nos. 3, 5 and 7 along with analysis report. The reply by accused was not satisfactory according to the Inspector. He, therefore, proceeded to lodge Criminal case STCC No. 312 of 2004 in the Court of learned Judicial Magistrate, First Class, Shindkheda under Section 3(k)(i), 17-(1)(a), 18(1)(c) punishable under Section 29 of the Insecticide Act, 1968.

5. Upon filing of the complaint, the learned trial Court issued summons to the applicants on 29.07.2004 and on receipt of the summons, the applicants caused appearance on 13.09.2004.

6. The applicants filed application Exhibit-14 praying for dismissal of the complaint on the ground of non-compliance of Section 22(6) (II) of Insecticide Act and prayed for discharge. The learned trial Court vide order dated 04.10.2011, rejected the application mainly on the ground that since the trial being summary, it has no power to discharge the applicants. Hence, the present criminal application.

7. Heard the learned counsel for the applicants and learned APP for the State. Perused the criminal application and annextures thereto.

8. The learned counsel for the applicants urged that since the applicants herein requested the Insecticide Inspector, complainant to send one sample to the Central Lab, which was not done, the applicants have lost their valuable right. The complaint is lodged almost at the fag end of expiry date of shelf life of the sample and by the time the applicants received summons and appeared before the trial Court, the shelf life of

the sample had already expired. The applicants were not in a position therefore to exercise their right to seek forwarding of the sample to the Central lab, which has caused serious prejudice to the applicants and on this ground alone the proceedings are liable to be quashed. He placed reliance upon following authorities :

- i) AIR 2010 SC 2829 (Northern Mineral Limited vs. Union of India and another);***
- ii) 2000 CRI.L.J. 2962 (The State of Haryana vs. Unique Farmaid P. Ltd. And others;***
- iii) 2002 CRI.L.J. 408 (U. S. Madan and another vs. State of Rajasthan);***
- iv) 1998 CRI.L.J. 1865 (M/s. Jaishree Agro Industries Pvt. Ltd. And others vs. State of Rajasthan;***
- v) 1996 (11) SCC 613 (State of Punjab vs. National Organic Chemical Industries Limited;***
- vi) 2002(5) Supreme 549 (Gupta Chemicals Private Limited vs. State of Rajasthan;***
- vii) 2002 CRI.L.J. 1295 (Murli Manohar and***

***another vs. State of Punjab) and
viii) 2009 (1) Mh.L.J.(Cri.) 531 (United Phosphorus
Ltd., and others vs. State of Maharashtra).***

9. The learned APP on the other hand states that the complaint was lodged before the expiry of shelf life of the sample. Even the reply to show cause notice on the part of the applicants beyond the period of 28 days and no fault can be found with the order passed by the learned trial Court rejecting the application filed by the applicants for discharge. He states that appropriate care is taken by the complainant and no case is made out by the applicants for the reliefs prayed for.

10. The point urged by the learned counsel for the applicants is already decided by catena of decisions of the Honourable Apex Court. In ***State of Haryana Vs. Unique Farmaid P. Ltd. and others*** (supra), the Honourable Apex Court has held that if the right of the accused to get sample re-analysed from Central Insecticides laboratory is violated and no action is taken by the Insecticide Inspector to have sample retested from

Central Insecticides laboratory as requested by accused and sales officer of Insecticide, Shelf life of insecticide, of which sample was taken had already expired by the time accused were asked to appear in the Court to stand their trial, in that case the report of Insecticide Inspector cannot be said to be conclusive and accused since is deprived of valuable right under section 24(4) of the Insecticide Act, prejudice is caused to the accused and complaint is liable to be quashed on that ground alone.

11. The same ratio is followed in ***Gupta Chemicals Private Limited Vs. State of Rajasthan*** (supra), wherein the Honourable Apex Court held that if there is delay in taking action in sending samples to Central Lab and filing complaint 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 Lab. And in the meantime, the shelf-life of sample expired and for that reason examination was not done, the continuation of criminal prosecution will be abuse of process of law.

12. Similar view is taken by this Court in ***United Phosphorus Ltd. And others vs. State of Maharashtra and others, 2009 (1) Mh.L.J. (Cri), 531.*** This Court in identical set of facts allowed the Criminal Application No. 15 of 2010.

13. If the dates mentioned herein above are taken into consideration, it is clear that in spite of asking by the applicants, the Insecticide Inspector has failed to forward the sample to the Central Lab to get it analysed. In this view of the matter, the report of the regional laboratory cannot be conclusive in terms of the authority to pronouncement of the Honourable Apex Court. The complaint since was lodged almost after one year from the date of receipt of the report from the regional lab and since the applicants were summoned and for the first time appeared on 13.09.2004, the applicants have lost their valuable right of getting sample analysed from the Central Lab., which has caused serious prejudice to the applicants and hence continuation of the criminal prosecution against the applicants, is an abuse of process of law and court. In this view of the matter, the criminal application deserves to be allowed.

Hence, the following order.

ORDER

- I) Criminal Application is allowed in terms of prayer clause "A".
- II) Rule is made absolute.
- III) There shall be no order as to costs.

(N. B. SURYAWANSHI, J.)

vsm/-