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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10.12.2021

C O R A M

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Crl. O.P. Nos.2356 and 11792 of 2017
and
Crl. M.P.Nos.1670, 1671, 7736 and 7737 of 2017

Bio-Stadt India Ltd.,
Lane - 3, SIDCO Industries Complex
Bari - Brahmana
Jammu & Kashmir - 181 133
Represented by its Sales Unit Lead
Mr.V.Jegatheesan

..Petitioner in
Crl.O.P.No.2356/2017/1st Respondent

Syngenta India Ltd.,
Represented by its Sales Unit Lead
Mr.R.Nagarajan
S/o.A.Ramu
Amar Paradigm
S.No.110/11/3, Baner Road
Pune - 411 045

...Petitioner in Crl.O.P.No.11792 /2017
/3rd Respondent

Versus

The State of Tamil Nadu
By Agriculture Officer
Kabilar Malai
Namakkal District
(The present Agriculture Officer
Tmt.V.Malarkodi

....Respondent/Petitioner (in both)

Common Prayer : Criminal Original Petitions filed under Section 482 of Cr.P.C. to call for the records relating to the proceedings in S.T.C.No.653 of 2016 on the file of the learned Judicial Magistrate, Paramathi and quash the same as devoid of merits as against the petitioners.

For Petitioner : Mr.M.Purusothaman

For Respondents : Mr.R.Kishore Kumar
Government Advocate(Crl.side)



C O M M O N O R D E R

This application has been filed to quash the proceedings in S.T.C.No.653 of 2016 pending on the file of the Judicial Magistrate Court, Paramathi.

2. It is case of the prosecution that on 03.12.2015, the Agricultural Officer lifted the samples of insecticide known as "Curacron" (Profenofos) from the shop of Sri Murugan Farmers Association, Kabilarmalai and divided them into three parts. Out of the three parts, one sample was handed over to the owner of the shop, second sample was sent to the Court and third sample was sent to the Insecticide Analyst. The report of the Analyst was received on 15.12.2015 stating that the sample referred to in the report is of misbranded quality resulting in the issuance of a show-cause notice dated 23.12.2015 to the petitioner herein calling for explanation. The respondent, not being satisfied with the reply submitted by the petitioner, filed a private complaint before the Court for the offence under Section 29 (a) of the Insecticides Act, 1968.

3. It is the main contention of the learned counsel appearing for the petitioners that the petitioners being the manufacturer and dealer, no report from the referral laboratory has been served on them at the earlier point of time to enable them to have the second sample tested from the Central Laboratory. It is further submitted that the prosecution has not been launched immediately and it has been launched only in the year 2016, by that time the insecticide has expired and therefore, when the right to have the second sample tested has been denied, the continuation of prosecution against these petitioners is nothing but an abuse of process of law. Learned counsel further submitted that the sanction has been accorded by the concerned authority mechanically as the accused has not been named in the sanction order and such sanction is not valid in the eye of law. In sum and substance, it is the submission of the learned counsel for petitioners that the petitioners being the manufacturer and dealer, they cannot be prosecuted when the opportunity to have the second sample tested has been lost by the act of the complainant and the sanction accorded by the Authority also does not contain the name of these petitioners and therefore, the learned counsel prayed for quashing of the complaint. In support of his contention, the learned counsel relied on a judgment of the Hon'ble Supreme Court in Northern Minerals Limited and others Vs. Rajasthan Government and Another reported in (2016) 12 SCC 298, a judgment of High Court of Rajasthan in M/s.S.N.Chemicals Vs. State of Raj. & Ors. reported



in 1999 SCC Online Raj 733 and an order of this Court dated 22.11.2021 made in Crl.O.P (MD) No.2258 of 2019 [Sh.Jaikumar Sedha Vs. J.Chandrakala, Agricultural Officer].

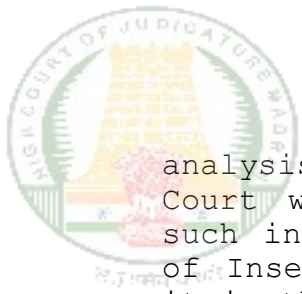
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4. Heard the learned Government Advocate (Crl.side) on the above submissions.

5. The learned Government Advocate (Crl.side) submitted that the show-cause notice has been issued to the manufacturer and dealer within the stipulated time, but they failed to avail the opportunity of having the second sample tested and therefore, the petitioners cannot now be heard to contend that the opportunity was not given to them to have the second sample tested and he opposed for quashing of the complaint.

6. This Court perused the entire materials available on record.

7. As pointed out supra, the sample was lifted on 03.12.2015. It is relevant to note that the present petitioners are manufacturer and dealer. It is clear from Annexure IV enclosed in the typed-set of papers that the date of manufacture of the sample lifted was on 06.10.2014 and the date of expiry was on 05.10.2016. The entire prosecution has proceeded on the basis that the sample of the insecticide known as "Curacron" (Profenofos) is a misbranded one. It is relevant to mention that the prosecution ought to have been initiated within a period well before the expiry of the product. In the cases on hand, it is not in dispute that the Insecticide Inspector having lifted the sample on 03.12.2015 and analyst report being received on 15.12.2015, the prosecution has been launched with inordinate delay on 20.07.2016. Section 22 of the Insecticides Act, 1968 deals with procedure to be followed by the Insecticide Inspector. Sub-section (5) of Section 22 of the said Act makes it clear that where an Insecticide Inspector takes the sample of any 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. Sub-section (6) of Section 22 of the said Act also makes it clear that one portion of the sample so divided can be handed over to the person from whom the sample is seized and from the remaining two portions, one shall be sent to the Insecticide Analyst for test or



analysis and the other portion shall be produced before the Court where the proceedings is being initiated in respect of such insecticide. Section 24 of the Act deals with the report of Insecticide Analyst. After receipt of the analysis report, it is the duty of the Insecticide Inspector to deliver one copy of the report to the person from whom the sample was taken. On such delivery of report, an option is given to the person from whom the sample is taken to inform the Insecticide Inspector or the Court that he intends to adduce evidence in controversion of the report. Absolutely, no material is available on record to show that the analysis report has been sent either to the manufacturer or to the dealer in these cases. The purpose of sending such copy to the person against whom prosecution is initiated is to have a second opinion from the accredited Central Laboratory. It is not the case of the prosecution that such a report has been sent to the petitioners herein immediately after the receipt of the report from the Laboratory. Not stopping with that, one more opportunity is also available to the parties to have the second sample tested if the prosecution is launched without any delay and in such case also, at the request of the party, the Court can send the second sample for examination by the Central Laboratory. Admittedly, in these cases, the prosecution has been launched on 20.07.2016. According to the learned counsel for petitioners, though the first hearing was fixed by the learned Magistrate on 21.09.2016, the petitioners did not receive any summons and the insecticide itself got expired on 05.10.2016. Such being the position, the right to have the second sample tested has been totally denied by the lack of time and also delay in initiating the prosecution. Therefore, if the sample is sent after the summons have been served, no purpose would be served. Therefore, when the very right granted under the Statute has been denied, the continuation of prosecution against such person is nothing but abuse of process.

8. Yet another flaw that cannot be ignored altogether is that the sanctioning authority has accorded a sanction without even naming the accused and initially the sanction has been accorded on 02.05.2016. Thereafter, on 20.07.2016 the complaint has been filed. Therefore, this Court is of the view that right of the petitioners to have the re-analysis of the sample was taken away by lapse of time due to delay in filing the complaint and the shelf-life of the sample also got expired and hence, continuation of prosecution against these petitioners is nothing but a abuse of process of law and the same is liable to be quashed.

9. In S.N.Chemicals case (cited supra), Rajasthan High



Court has held in paragraph 8 that in the absence of details of the accused in the sanction order, such sanction cannot be held to be valid in the eye of law. In Crl.O.P (MD) No.2258 of 2019, this Court vide order dated 22.11.2021 held that due to lapse of time, the right to have the second sample tested is also lost, hence the complaint is not maintainable. In Northern Minerals Limited case cited supra, the Hon'ble Supreme court has held that the 28 days time period for second sample tested after receipt of the show-cause notice apply only to the person from whom the sample is lifted and not applicable to the other accused proceeded against and held that the vital right vested in the accused to get the sample re-tested to controvert the report of analysis of the sample obtained by the Insecticide Inspector, stood frustrated and the prosecution cannot succeed. The relevant paragraph is paragraph 13 and the same reads as follows:

'13. Insofar as the contention of the learned counsel for the respondents in distinguishing the right of the person from whom the sample was taken, as mandated under Section 24(3) is concerned, we need only refer to sub-Section (4) of Section 24 of the Act which extends the above right, even to the complainant and the accused. Read harmoniously, therefore, we have no hesitation to conclude, that insofar as the person from whom the sample was taken, the right to raise an objection is circumscribed by requiring him to indicate his intention to do so within 28 days of the receipt of the copy of the report. There is however no such limitation of time placed by the legislature on the complainant and/or the other accused proceeded against. In the above view of the matter, insofar as the present appeal is concerned, we find, that a vital right vested in the appellants/accused to get the sample re-tested (from the Central Insecticides Laboratory), to controvert the report of analysis of the sample obtained by the Insecticide Inspector, stood frustrated. The appellants have lost the right to disprove their guilt. The appellants cannot be proceeded against, when they have, for no fault of their own, lost a vital right of defence. We are satisfied to conclude, that under sub-Section (4) of Section 24 of the Act, an accused other than a person from whom the sample is taken, also has a right to adduce evidence in controversion of the Insecticide Analyst's Report, and in case the accused avail of the above right under sub-Section (4) of Section 24, he must bear the expenses of the test or analysis, to be made by the Central Insecticides Laboratory (under sub-Section 5 of Section 24)



Accordingly, these Criminal Original Petitions are allowed and the proceedings in S.T.C.No.653 of 2016 on the file of the learned Judicial Magistrate, Paramathi is quashed. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CCC)

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Sub Assistant Registrar

gpa/gba

To

1. The Judicial Magistrate,
Paramathi.
2. The Agriculture Officer,
Kabilar Malai,
Namakkal District.
(The present Agriculture Officer Tmt.V.Malarkodi)
3. The Public Prosecutor
Madras High Court
Chennai.

+2ccs to Mr.M.Purushothaman, Advocate, S.R.Nos.66556 & 66557

CrI. O.P. Nos.2356 and 11792 of 2017 and
CrI. M.P.Nos.6030, 6031, 7736 and 7737 of 2017

EV(CO)
SU(19/01/2022)