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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.11.2021

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.O.P. (MD)No.2258 of 2019

and

Crl.MP (MD)Nos.1206 and 1207 of 2019

Sh.Jaikumar Sedha

: Petitioner/1st Respondent

Vs.

J.Chandrakala

Agriculture Officer,

Thiruchuzhi @ M.Reddiapatti

: Respondent/Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records relating to the proceedings in STC No.358 of 2018 on the file of the Judicial Magistrate, Aruppukottai and quash the same as devoid of merits as against the petitioner.

For Petitioner : Mr.M.Kannan

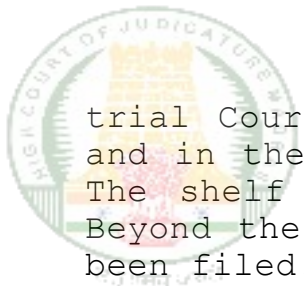
O R D E R

This petition is filed by the petitioner seeking quashment of the case in STC No.358 of 2018 on the file of the Judicial Magistrate, Aruppukottai.

2.The case of the prosecution in brief:-

On 12.08.2015, the Agricultural Officer/Insecticides Inspector lifted samples from the shop of Sri Ayyanar Traders Insecticides Shop, Kalloorani and the insecticides called branded as Profenofos 50% E.C insecticide (100 ML). One part of the sample was handed over to the owner of the shop namely Muniyappan and the 2nd sample was sent to the Insecticides Analyst, PTL, Vaigai Dam, Theni District. The analyst gave a report in Form XVII, dated 12.09.2015 opined that it is misbranded quality, which does not satisfy the requirement of the standard that has been prescribed in section 3 (K) (i) of the Insecticides Act, 1968.

3.Based upon the above said report, the Assistant Director of Agriculture, M.Reddiapatti issued a show cause notice, dated 23.06.2016 calling for explanation, which was received by the petitioner, on 05.07.2016 and reply was given, on 07.07.2016. They also intended to send another sample for re-analysis to the Central Insecticides Laboratory, Faridabad. The allegation in the show cause notice was repudiated by the petitioner. But without sending the samples for reanalysis, the complaint has been filed before the



trial Court on 22.11.2017 and it was taken on file on 22.02.2018 and in the meantime, it was returned for rectifying some defects. The shelf life period of the insecticide expired on 01.12.2016. Beyond the period of shelf life period, the private complaint has been filed.

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4.Challenging the said complaint, this petition has been filed by the petitioner mainly on the ground that it has been mentioned in the grounds of this petition that sanction that has been accorded by the concerned authority is invalid under law, because of non application of mind. The manufacturing Company has not been impleaded as a party in the criminal proceedings. No opportunity was given to the petitioner for exercising his right of re-analyzing the insecticides. So there is a clear violation of the statutory provisions. So for all the reasons, the proceedings initiated by the respondent sought to be quashed as illegal.

5.Heard both sides.

6.A simple question of legal issue that has been raised by this petitioner, which requires to be answered in the light of the various judgments rendered by the Hon'ble Supreme Court and that too which is now become more or less well settled.

7.It is not in dispute that the sample was lifted from Sri Ayyanar Traders Insecticide Shop, Kalloorani, which was branded as Profenofos 50% E.C Insecticide (100 ML) and that was manufactured and has been distributed through various Agencies and finally, it reached the hands of Sri Ayyanar Traders Insecticide Shop, Kalloorani, for being sold to the customers directly. So being the manufacturer of the above said insecticides, this petitioner has been arrayed as A1. A2 and A3 were the intermediation agencies or the distributors as the case may be. A4 is one S.Muniyappan, who is the owner of the above said Ayyanar Traders Insecticide Shop, Kalloorani. So as per law, not only the manufacturer, but also the other distributors and sellers have been arrayed as accused and this petition has been filed only by the manufacturer, who is A1 in the above said private complaint.

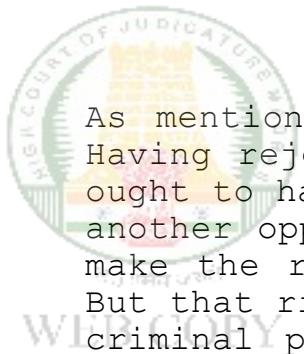
8.Now coming back to the legal issue, the learned counsel appearing for the petitioner would straightway go to the report of the analysis in PTL-THN.25/2015-16, dated 12.09.2015, wherein it has been stated that the sample was received by the laboratory on 14.08.2015, which was manufactured on 02.12.2014 and it was analyzed on 11.09.2015 and the expiry date is mentioned as 1st December 2016. So it appears that hardly 30 days before the expiry of the shelf life period of the insecticides, it was analyzed. Sample was lifted on 12.08.2015 and analyzed on 11.09.2015. There is no delay. But shelf life period is mentioned as 1st December 2016. In the report, it has been mentioned that as per the



sample exceeds by 0.27% as against the prescribed value of 1.0%. Since it does not satisfy the requirement of the standard prescribed, it has been classified as "misbranded". Now the manufacturer, who is the petitioner herein made a request for reanalysis on 7th April 2016. But that was rejected, by letter, dated 23.07.2016 (it has been wrongly mentioned as 26.07.2016). The request has been rejected stating that since the request has been made beyond the prescribed period, the request has been rejected. So he was directed to send response for misbranding. So after the above said rejection of the reanalysis request, a complaint has been filed before the Magistrate Court, on 22.11.2017. But as mentioned above, it has been returned for rectification of defects and finally, it has been taken cognizance on 22.12.2018.

9.From the chronological events, shows that it has been filed before the court concerned only after the shelf life insecticide period was over I.e., the shelf life period expired on 1st December 2016. It has been presented before the court on 22.07.2017, which means beyond the shelf life period of insecticide. The legality of taking cognizance, as mentioned earlier, has been questioned by the petitioner in view of the settled position of law.

10.We will straightaway go away in the case of **Northern Mineral Limited Vs. Union of India and another [(2010) 7 SCC 726]**. In that case, sample was lifted on 10.09.1993. It was sent to the laboratory for analysis and the report was given on 13.10.1993. The notice report was sent to the accused on 01.11.1993 and on 17.11.1993, the accused intimated his intention to adduce evidence in contravention of the report shelf life period expired on 1st February 1994. The permission to file complaint was given on 23.02.1994 and the complaint was filed only on 16.03.1994. The Hon'ble Supreme Court by going through the various provisions and Acts and previous judgments of that issue, has observed that after receiving the report from the analyst, within 28 days of the receipt of the copy, the accused must notify in writing, either to the Inspector or the Court expressing his intention to adduce evidence in contravention of the report. After receiving such a request, it is obligatory on the part of the Court or the Officer, the sample must be sent to the laboratory within 30 days for analysis. So what was the Hon'ble Supreme Court, observed that when such a request has been notified by the accused, then it is obligatory on the part of the complainant to respond, it is sufficient for passing the criminal prosecution. The Hon'ble Supreme Court has also notified the usual manner in which, the matter has been dealt with by the authorities. So here also, the complaint has been filed, much after the period of the shelf life period. Originally, the show cause notice has been issued by the authorities on 15.09.2015 to the Ayyanar Traders and to this petitioner. The reply of this petitioner seeking reanalysis has been made before the expiry of the shelf life period of the drug.



As mentioned above, due to lapse of time, it has been rejected. Having rejected the request that has been made by the complainant ought to have filed before the concerned court immediately, so that another opportunity might have been available to the petitioner to make the request to the court to send the sample for reanalysis. But that right has been rejected to the petitioner by way of filing criminal prosecution. Since the main issue has been answered in favour of the petitioner, the other issues need not be taken into consideration. So, as pointed out by the Hon'ble Supreme Court, since the complaint has been filed much after the expiry of the shelf life period of the insecticide, the prosecution is bad in law and is required to be quashed.

11. Accordingly, this criminal original petition stands **allowed**. The case in STC No.358 of 2018 pending on the file of the Judicial Magistrate, Aruppukottai is quashed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS III)

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Sub Assistant Registrar (CS)

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To

1. The Judicial Magistrate,
Aruppukottai.
2. Do Through The Chief Judicial Magistrate,
Virudhunagar at Srivilliputhur.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.M.KANNAN, Advocate (SR-35439[F] dated 23/11/2021)

Crl.OP (MD)No.2258 of 2019
22.11.2021

RS (07.12.2021) 4P 5C

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