



Crl.O.P(MD).No.3600 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 25.08.2023

CORAM:

THE HONOURABLE MR. JUSTICE P. DHANABAL

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Bio-Stadt India Ltd,
Poonam Chambers, A Wing, 6th Floor,
Dr.A.B.Road, Worly,
Mumbai – 400 018,
Rep. by its Territory Manager,
Balakumaran, M/36 Years,
S/o.C.Baskaran

...Petitioner

Vs

Agriculture Officer,
O/o. Asst. Director of Agriculture,
Musiri,
Trichy District – 621 211.

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying this Court to call for the records relating to the proceedings in S.T.C.No.195 of 2017 on the file of the learned Judicial Magistrate, Musiri and quash the same as devoid of merits as against the petitioner.

For Petitioner

: Mr.M.Kannan

For Respondent

: Mr.M.Sakthi Kumar,
Government Advocate (Crl. Side)

ORDER

This petition is filed to quash charge sheet passed in S.T.C.No.195 of 2017



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on the file of the learned Judicial Magistrate, Musiri.

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2. According to the petitioner, on 19.11.2015, the agricultural Officer Insecticides Inspector took samples from the shops of one Natarajan, Musiri, Trichy of Profenofos 50% E.C. The respondent sent one sample to Insecticides Analyst, PTL, Erode and Code No.ADA/MSR/58/2015-16 was assigned. The date of manufacture of insecticide is 13.09.2014. The expiry date of the insecticide is 12.09.2016. The batch number of the sample sent for the analysis is SBS41040. The sample was received by the Insecticides Analyst, PTL, Erode on 26.11.2015 and he had tested it on 04.12.2015. It is learnt that Insecticides Analyst had given a report in Form No.XVII dated 04.12.2015 under Insecticides Act holding that the sample is misbranded quality as defined in Section 3(K)(i) of the Insecticides Act, 1968 for reasons given therein.

3. The Assistant Director of Agriculture, Musiri issued a show cause notice dated 15.12.2015 calling for explanation for the deficiency recorded in the analytical report dated 04.12.2015 to be submitted. The petitioners company received show cause notice on 04.01.2016 and submitted a reply dated 05.01.2016 controverting the report of the Insecticides Analyst dated 04.12.2015 and also refuting the allegations in the show cause notice dated



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15.12.2015. The petitioner's company also enclosed a copy of the analysis test

report done by the company themselves on 13.09.2014 which discloses that the Insecticides is not misbranded. In the reply dated 07.01.2016, the petitioner's company clearly expressed its intention to controvert the Analysis report and adduce the evidence under Section 24 of the Insecticides Act. Further the petitioner company also formally requested the sample to be sent for re-analysis to Central Insecticides Laboratory. There was no reply received either from the respondent or from any of the higher officials of the respondent department. The respondent had not taken effective steps to sent sample for re-analysis and belatedly filed this complaint only on 09.09.2016.

4.The Joint Director of Agriculture, Musiri had given a defective and cryptic Sanction order for launching prosecution without mentioning the name of the accused, nature of the allegation, date of the occurrence, the facts constituted in the grounds of satisfaction and the role played by the accused. Based on the defective sanction order, the respondent had filed a private complaint before the learned Judicial Magistrate, Musiri. The private complaint was filed belatedly after the expiry of the shelf life of the insecticide. The provisions of Section 22 of Insecticides Act have not been followed. Therefore, the petitioner company has lost a valuable right under Section 24(4) to seek re-analysis of the sample before the Central Insecticides



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Laboratory. Therefore, the continuation of the prosecution itself will be an abuse of process of law.

5.No counter was filed by the respondents.

6.The learned counsel appearing for the petitioner has argued that on 19.11.2015, the respondent inspected the shop of the petitioner and took samples of profenofos 50% E.C., and one sample was sent to Insecticides Analyst, PTL, Erode and date of manufacture is 13.09.2014 and the date of expiry is 12.09.2016. Thereafter, the sample was received by the Analyst on 26.11.2015 and the same was tested on 04.12.2015. Thereafter, the Analyst sent a report stating that the sample referred was misbranded quality as defined in Section 3(K)(i) of the Insecticides Act, 1968 and thereafter, the Assistant Director of Agriculture, Musiri issued a show cause notice dated 15.12.2015 and the same was received by the petitioner on 04.01.2016 and the same was suitably replied on 07.01.2016 controverting the report of the Insecticides Analyst dated 04.12.2015. In the said reply notice, the petitioner clearly expressed its intention to controvert analysis report and adduce the evidence under Section 24 of the Insecticides Act. But the respondent Department instead of sending the samples for re-analysis without depositing the samples before the competent Court had dragged the proceedings and then



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the complaint was lodged only on 09.09.2016.

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7.As per Section 22 of Insecticides Act, the Insecticide Inspector shall divide sample taken into three portions. One portion of the said sample so divided shall be restored to the person from whom the sample was taken by the sample was taken by the Insecticide Inspector. One another portion shall be immediately sent to the Insecticides Analyst for testing. The other sample shall be produced before the Court. In this case, the aforesaid procedures have not been followed. As per Section 24 of Insecticides Act, the Analyst shall submit his report of analysis to the Insecticide Inspector within a period of 30 days in duplicate. The Insecticide Inspector on receipt of the report shall deliver one copy of the report to the person from whom the sample was taken and retain the other copy for use in any prosecution in respect of the sample. Such report shall be conclusive evidence unless the person from whom the sample was taken he was within 28 days of receipt of the report notified in writing to the Insecticide Inspector or the Court intending to adduce evidence in controverting of the report. If the sample has not been re-analyzed as per Section 24(3), this Court by its own motion or on the request either of the complainant or of the accused cause the sample of the insecticides produced before the Magistrate under Section 22(6) of the Act to be sent for analysis to the Central Testing Laboratory.



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8. In this case, the prosecution has been launched before the trial Court after a long delay and the shelf life of the insecticides came to expire on 12.09.2016 even before the filing of the case. Thereafter, the petitioner company has lost a valuable right under Section 24(4) to seek re-analysis of the sample before the Central Insecticides Laboratory. Therefore, the charge sheet is liable to be quashed.

9. To support his contention, he relied on the decision of the Hon'ble Supreme Court in the case of *Northern Mineral Limited v. Union of India and Another* reported in (2010) 7 Supreme Court Cases 726.

10. The learned Government Advocate appearing for the respondent has contended that the respondent has inspected the shop of the petitioner on 19.11.2015 and at that time, they took samples and the same was sent for laboratory for analysis and the same was analyzed and found misbranded in respect of active ingredients content even after allowing the permissible tolerance limits of 3% deviation from the nominal declared value. Thereafter, the explanation was called for from the concern through registered post and given sufficient time to answer and the explanation was not satisfactory. After the completion of the formality, the complainant placed materials before the



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Sanctioning Authority. After verifying the materials and applying mind, the

Sanctioning Authority issued consent letter to prosecute the case and thereby, the complaint has been filed. Since the chemical analysis report is as against the petitioner, the petitioner has to face trial. There is no procedural irregularities as alleged by the petitioner and this petition is liable to be dismissed.

11.Heard both sides and perused the materials available on records.

12.On perusal of the records, it is observed that the respondent has filed complaint before the learned Magistrate and the same was taken on file as S.T.C.No.195 of 2017. The petitioner's contention is that on 19.11.2015, the sample of Profenofos 50% E.C., was taken. The respondent sent one sample to Insecticides Analyst, PTL, Erode. The date of manufacture of insecticide is 13.09.2014. The expiry date of the insecticide is 12.09.2016. He had tested it on 04.12.2015. As per report, the sample was referred misbranded quality as defined in Section 3(K)(i) of the Insecticides Act, 1968 for reasons given therein. Thereafter, the respondent has issued show cause notice to the petitioner on 15.12.2015 and the same was received on 06.01.2016. The reply was sent on 07.01.2016 controverting the report of the Insecticides Analyst dated 04.12.2015. The prosecution has filed complaint only on 09.09.2016



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and the same was returned and re-presented on 14.06.2017 and the same was taken on file on 17.06.2017.

13.The main contention of the petitioner is that as per Section 22 of Insecticides Act, the Insecticide Inspector ought to have divided the sample into three portions. One portion of the said sample is to be restored to the person from whom the sample was taken by the Insecticide Inspector and another portion shall be immediately sent to the Insecticides Analyst for testing and another sample shall be produced before the Court. But in this case, there is no any sample sent to the Court as per Section 22 of the Insecticides Act. Further as per Section 24 of the Insecticides Act, Insecticide Analyst shall submit his report of analysis to the Insecticide Inspector within a period of 30 days in duplicate. In turn, the Insecticide Inspector on receipt of the report shall deliver one copy of the report to the person from whom the sample was taken and retain the other copy for use in any prosecution in respect of the sample. But in this case, the said procedures have not been followed.

14.Further the contention of the petitioner is that the opportunity to re-analysis under Section 24(3) of the Act could not be availed by the petitioner, since the respondent failed to send the sample for re-analysis. Already the



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petitioner had sent a reply dated 07.01.2016 by controverting the report and rebutting the allegations of the show cause notice. While so the respondent has to take steps for re-analysis of the sample as per Section 24(3) of the Insecticides Act.

15.Such report shall be conclusive evidence unless the person from whom the sample was taken within 28 days of receipt of the report notified in writing to the Insecticide Inspector or the Court intending to adduce evidence in controverting of the report. If the sample has not been re-analyzed as per Section 24(3) of the Act, this Court by its own motion or on the request either of the complainant or of the accused cause the sample of the insecticides produced before the Magistrate No.II under Section 22(6) of the Act to be sent for analysis to the Central Testing Laboratory.

16.The learned counsel appearing for the petitioner relied upon the decision of the Hon'ble Supreme Court in the case of ***Northern Mineral Limited v. Union of India and Another*** reported in ***(2010) 7 Supreme Court Cases 726***, wherein the Hon'ble Supreme Court in para nos.22, 24, 25 reads as follows:-

*“22.From the language and the underlying object behind **Section 24(3)** and (4) of the Act as also from the ratio of*



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the decisions aforesaid of this Court, we are of the opinion that mere notifying intention to adduce evidence in controversion of the report of the Insecticide Analyst confers on the accused the right and clothes the court jurisdiction to send the sample for analysis by the Central Insecticides Laboratory and an accused is not required to demand in specific terms that sample be sent for analysis to Central Insecticides Laboratory. In our opinion the mere intention to adduce evidence in controversion of the report, implies demand to send the sample to Central Insecticides Laboratory for test and analysis.

24.No proceeding was pending before any Court, when the accused was served with Insecticide Analyst report, the intention was necessarily required to be conveyed to the Insecticide Inspector, which was so done by the appellant and in this background Insecticide Inspector was obliged to institute complaint forthwith and produce sample and request the court to send the sample for analysis and test to the Central Insecticides Laboratory. Appellant did whatever was possible for it. Its right has been defeated by not sending the sample for analysis and report to Central Insecticides Laboratory.

25.It may be mentioned herein that shelf life of the insecticides had expired even prior to the filing of the complaint. The position therefore which emerges is that by sheer inaction the shelf life of the sample of insecticides had expired and for that reason no step was possible to be taken for its test and analysis by Central Insecticides Laboratory. Valuable right of the appellant having been defeated, we are of the opinion that allowing this criminal



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prosecution against the appellant to continue shall be futile and abuse of the process of Court.”

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17. On careful reading of the aforesaid judgment, it is clear that the underlying object behind [Section 24\(3\)](#) and (4) of the Act is that mere notifying intention to adduce evidence in controversion of the report of the Insecticide Analyst confers on the accused the right and clothes the court jurisdiction to send the sample for analysis by the Central Insecticides Laboratory and an accused is not required to demand in specific terms that sample to be sent for analysis to Central Insecticides Laboratory. When the accused was served with Insecticide Analyst report, the intention was necessarily required to be conveyed to the Insecticide Inspector, which was so done by the appellant and the Insecticide Inspector was obliged to institute complaint forthwith and produce sample and request the court to send the sample for analysis and test to the Central Insecticides Laboratory. In this case also, the petitioner submitted a reply controverting the report of the Insecticide Analyst dated 04.12.2015 and also expressed its intention to controvert the report and adduce the evidence as per the Insecticides Act. But the respondent failed to launch prosecution immediately after the reply of the notice but the prosecution was launched on 09.09.2016 with defect and the same was returned and thereafter it was re-presented on 14.06.2017. This is



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after the lapse of expiry period. Therefore, the valuable right of the accused has been defeated.

18.The Hon'ble Supreme Court in the aforesaid judgment has clearly stated that shelf life of the insecticides had expired even prior to the filing of the complaint. The position therefore which emerges is that by sheer inaction the shelf life of the sample of insecticides had expired and for that reason, no steps was taken for its test and analysis by the Central Insecticides Laboratory. Therefore, allowing this criminal prosecution against the petitioner is continue shall be futile and abuse of process of Court. In the case on hand also, the prosecution was launched after the expiry of the aforesaid sample and the right of the accused to sent the sample was defeated and thereby, this Court is inclined to quash the charge sheet.

19.In the result, this Criminal Original Petition is allowed and the charge sheet in S.T.C.No.195 of 2017 on the file of the learned Judicial Magistrate, Musiri, is hereby quashed.

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NCC : Yes/No
Internet : Yes/No
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To

- 1.The Judicial Magistrate, Musiri.
- 2.The Agriculture Officer,
O/o. Asst. Director of Agriculture,
Musiri,
Trichy District – 621 211.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL,J.

Mrn

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