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**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

FRIDAY, THE TWENTY NINTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY THREE

PRESENT

THE HONOURABLE SRI JUSTICE E.V. VENUGOPAL

CRIMINAL PETITION NO: 10025 OF 2014

Between:

M/s. Sagar Fertilizer, D.No. 5-30, Main Road, Subash Road, Siddipet - 502103
rep by

1. Sri.Allam Sudhakar Reddy, S/o. Joji Reddy, Age: 39 years, D.NO.4-11, Bayyaram Colony(v) Gajwel Mandal, Medak District. **Accused No.1**

M/s. Insecticides (India) Ltd., Industrial Growth Centre, Samba (Jammu) J and K, rep by

2. Sri K.Satyanarayana S/o Late K.Venkanna, Aged 64 years C/o. 1003/A 1061103r Paigah Plaza, Basheerbagh Hyderabad - 500 033
3. Sri.V.Somaiah, S/o.Late Venkatasubbaiah Aged 60 years, (Wrongly mentioned as V.Somaya in the Complaint) C/o 1003/A 10th floor Paigah Plaza, Basheerbagh Hyderabad - 500 033
4. Sri.B.Jayaram Reddy,, S/o.Late Pena Reddy, Aged 47 years, C/o. 1003/A 10th floor Paigah Plaza, Basheerbagh Hyderabad - 500 033 (Petitioners 2 to 4 together are shoe, as **Accused No.2**)
5. Sri.V.K.Garg,, S/o Late Sri. L.R.Garg Aged 54 years, Marketing Manager, M/sInsecticides (India) Limited, No.1003/A, 10th Floor, Paigah Plaza, Basheerbagh Hyderabad - 500 033. **Accused No.3**
6. Sri Sanjay Rana, S/o.Sri Meraj Singh Aged about 50 years, Q C, H.No.294, Ward No.3 Samba, J.K.

...Petitioner/Accused 1 to 4

AND

1. The State of Telangana, Represented by its Public Prosecutor, High Court at Hyderabad, For the State of Telangana and the State of Andhra Pradesh .

...Respondent

2. The Assistant Director of Agriculture/, Insecticide Inspector, Gajwel Mandal, Medak District

...Respondent/Complainant

Petition under Section 482 of Cr.P.C praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to quash the complaint in C.C.No. 204 of 2014 on the file of the Additional Judicial First Class Magistrate, Sangareddy, Medak District.

I.A. NO: 1 OF 2014(CRLPMP. NO: 9901 OF 2014)

Petition under Section 482 of Cr.P.C praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to stay all further proceedings in C.C.NO.204 of 2014 on the file of the Court of Addl. Judicial First Class Magistrate, Sangareddy including arrest of the Petitioners pending disposal of the Criminal Petition.

This Petition coming on for hearing, upon perusing the Memorandum of Grounds of Criminal Petition and upon hearing the arguments of Sri M. RAVINDRANATH REDDY, Advocate for the Petitioner and Sri. VIZARATH ALI, Assistant Public Prosecutor on behalf of the Respondent No.1 and for the Respondent No.2 None Appeared either in person or by Advocate.

The Court made the following: ORDER

THE HONOURABLE SRI JUSTICE E. V. VENUGOPAL**CRIMINAL PETITION Nos.10025 of 2014****ORDER:**

This Criminal Petition is filed under Section 482 Cr.P.C., seeking to quash the complaint in C.C.No.204 of 2014 on the file of the Additional Judicial First Class Magistrate, Sangareddy, Medak District.

2. Heard and perused the record.

3. The brief facts of the case are that the Agricultural Officer/Insecticide Inspector, Gajwel has inspected the premises of M/s. Sagar Fertilizers, Gajwel on 23.10.2010 and drawn samples of insecticide namely "Lethal Super 505" (Chloropyrifos 50 % EC + Cypermethrin 5% EC), bearing batch No.344. The product was manufactured by M/s. Insecticides (India) Limited in January 2010 which was to expire in December 2011. After analyzing the said sample, the Joint Director of Agriculture (IA) PTL and Coding Center, Hyderabad gave report, dated 11-11-2010 stating that the same is misbranded. The copy of the analysis report was served on dealer and got the acknowledgment. *Prima facie*, the flow of misbranded product in

the market is detrimental to the interest of the people and selling of misbranded product is nothing but intentional cheating to get profit from the poor public farmers. The investigation established that the petitioners have committed offence punishable under Section 29 of Insecticides Act for the contravention of Section 3(k)(1) of the Insecticides Act (for short "the Act").

4. The Insecticide Inspector served the analyst report, dated 11.11.2010 on petitioner No.1 on 24.11.2010. On the same day under the cover of panchanama the said product was sought to be seized, the said stock was not available same was recorded in the panchanama. Basing on the said report, the Joint Director of Agriculture issued a show cause notice dated 16.12.2010 to M/s. Sagar Fertilizers, Dealer of M/s. Insecticides India Ltd., the manufacturer of the product in question to submit explanation as to why the license of M/s. Sagar Fertilizers should not be suspended/cancelled under Section 10(1) (c) r/w Section 14 (1) (B) and 14 (2) of the Act. To the said show cause notice, petitioner No.1 representing M/s. Sagar Fertilizers submitted a representation dated 28.12.2010 stating that it is the direct dealer of Insecticides India Ltd., and also the sample drawn was

in original sealed condition and was stored properly and it also has the protection under Section 30(3) of Insecticides Act.

5. The authorized signatory representing M/s. Insecticides India Ltd submitted representation dated 17.12.2010 to show cause notice stating that they are not satisfied with the result and wants to contest the report and requested Joint Director of Agriculture, Medak (JDA) to send referee sample for Re-analysis to CIL and kept pending till the results comes. Similar request was also made to Commissioner and Director of Agriculture A.P.No.28.12.2010.

6. Respondent No.2 without considering the above explanations, has filed the complaint against the petitioners in the Court of the learned Additional Judicial Magistrate of First Class, Sangareddy on 06.12.2012 under Section 29 (1) (a) r/w Section 3 (k) (1) of Insecticides Act, 1968 after obtaining the sanction from the collector and District magistrate, Medak on 17.04.2012.

7. The learned Magistrate took cognizance of the case on 24.12.2013 and numbered the case as C.C.No.204 of 2014 and

thereafter issued summons to all the petitioners and petitioner Nos.1 to 4 appeared on 30.07.2014. Challenging the said cognizance, the petitioners have preferred the present Criminal Petition.

8. The learned counsel appearing for the petitioners has argued that accused No.1 is the dealer and accused Nos.2 to 4 are the administrators of M/s. Insecticide (India) Limited i.e., manufacturer. It is further submitted by the learned counsel for the petitioners that on 23.10.2010, the 2nd respondent inspected the shop of accused No.1 and took samples of Chloropyrifos 50% Ec + Cypermethrin 5%, and one sample was sent to Insecticides Analyst, PTL, Hyderabad and the date of expiry is December, 2011 and the same was sent to analyst. Thereafter, the Analyst sent a report on 11.11.2010 stating that the sample referred was misbranded quality as defined in Section 3(K)(i) of the Insecticides Act, 1968 and thereafter, a show cause notice dated 16.12.2010 was issued and the same was suitably replied on 17.12.2010 and 28.12.2020 controverting the report of the Insecticides Analyst dated 11.11.2010. In the said reply notice, the petitioner clearly expressed its intention to controvert

analysis report and requested to send the sample for reanalysis. 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 the complaint was lodged only on 06.12.2012.

9. As per Section 22 of the 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.

10. 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 by December, 2011 even before filing of the case. Thereafter, the petitioners have lost their valuable right under Section 24(4) of the Act to seek re-analysis of the sample before the Central Insecticides Laboratory. Therefore, the charge sheet is liable to be quashed.

11. 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 Another¹ and ***Northern Minerals Limited and others v. Rajasthan Government and another***².

12. The learned Government Advocate appearing for the respondent has contended that the 2nd respondent has inspected the shop of accused No.1 on 23.10.2020 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 concerned 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 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 petitioners, the petitioners have to face trial. There is no procedural

¹ (2010) 7 SCC 726

² (2016) 12 SCC 298

irregularities as alleged by the petitioners and this petition is liable to be dismissed.

13. 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 C.C.No.204 of 2014. The petitioners' contention is that on 23.10.2010, the samples of Chloropyriphos 50% Ec + Cypermethrin 5%, were taken. The 2nd respondent sent one sample to Insecticides Analyst, PTL, Hyderabad. The expiry date of the sample is December, 2011. As per report, the samples were referred misbranded quality as defined in Section 3(K)(i) of the Insecticides Act, 1968 for reasons given therein. Thereafter, the 2nd respondent has issued show cause notice to the petitioners on 16.12.2010. The reply was sent on 17.12.2010 and 28.12.2010 controverting the report of the Insecticides Analyst dated 11.11.2010. The prosecution has filed complaint only on 06.12.2012 and the same was returned and re-presented 08.03.2013 and the same was taken on file on 24.12.2013.

14. The main contention of the petitioners 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.

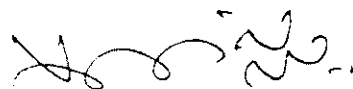
15. Further the contention of the petitioners is that the opportunity to re- analysis under Section 24(3) of the Act could not be availed by the petitioners, since the 2nd respondent failed to send the sample for re-analysis. Already the petitioners have

sent a reply, dated 17.12.2010 and 28.12.2010 by controverting the report and rebutting the allegations of the show cause notice. While so the 2nd respondent has to take steps for re-analysis of the sample as per Section 24(3) of the Insecticides Act.

16. 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.

17. In Northern Mineral Limited v. Union of India and Another (1 supra) the Hon'ble Supreme Court held in para Nos.22, 24, 25 as under:-

“22.From the language and the underlying object behind Section 24(3) and (4) of the Act as also from the ratio of <https://www.mhc.tn.gov.in/judis> 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 prosecution against the appellant to continue shall be futile and abuse of the process of Court."

18. Relying on the above judgment, the Apex Court in ***Northern Minerals Limited and others v. Rajasthan Government and another*** (2 supra) the Apex Court held as under:-

"12. 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)."

19. On careful reading of the aforesaid judgments, 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 petitioners submitted reply controverting the report of the Insecticide Analyst dated 11.11.2010 and also expressed its intention to controvert the report and adduce the evidence as per the Act. But the 2nd respondent failed to launch prosecution immediately after the reply of the notice but the prosecution was launched on 18.03.2013 with defect and the same was returned and thereafter it was re-presented on 24.12.2013. This is after the lapse of expiry period. Therefore, the valuable right of the accused has been defeated.

20. The Hon'ble Supreme Court in the aforesaid judgments 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 petitioners 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.

21. In the result, this Criminal Original Petition is allowed and the charge sheet in C.C.No204 of 2014 on the file of the learned Additional Judicial First Class Magistrate, Sangareddy, Medak District, is hereby quashed.

Miscellaneous Petitions, pending if any, shall stand closed.

//TRUE COPY//

Sd/- V.KAVITHA
ASSISTANT REGISTRAR

SECTION OFFICER

To,

1. The Additional Judicial First Class Magistrate, Sangareddy, Medak District.
2. Two CCs to Public Prosecutor, High Court for the State of Telangana at Hyderabad [OUT]
3. One CC to Sri. M. RAVINDRANATH REDDY, Advocate [OPUC]
4. Two CD Copies

PSR

CHR

HIGH COURT

DATED:29/12/2023

ORDER

CRLP.No.10025 of 2014



ALLOWING OF THE CRIMINAL PETITION.

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6/3/24