

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRR-918-2005 (O&M)

Reserved on: February 15, 2023

Pronounced on: March, 02, 2023

M/s Madahar Agro Centre and another Petitioners

Versus

State of Punjab Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. M.K. Singla, Advocate for the petitioners.

Mr. Ravinder Singh, AAG, Punjab.

Mr. Nikhil Ghai, Advocate for complainant.

HARKESH MANUJA, J.

Present revision petition has been filed impugning the order dated 03.03.2005 passed by Chief Judicial Magistrate, Sangrur; whereby petitioners have been served with notice of accusation under Section 29 of the Insecticide Act, 1968.

Facts of this case have been noted down in detail by this Court in its order dated 09.02.2010 and for the sake of brevity, the same are not being reproduced here and this Court is straightaway proceeding ahead with the arguments of learned counsel for both the parties.

Learned counsel for the petitioners submits that in reply to show cause notice dated 07.08.2003, petitioners categorically mentioned that it do not accept the test report and requested for testing the same from Central Insecticide Laboratory, however, vide communication dated 25.08.2003, this request was denied by the Chief Agriculture Officer, by stating that sample was very less and therefore, it was not viable to send the same for retesting. Learned counsel further submits that subsequently

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before Chief Judicial Magistrate, Sangrur, petitioners again submitted an application dated 18.08.2004 for sending the second sample for re-analysis from Central Insecticide Laboratory, but by the time this application was finally heard on 04.09.2004, the sample already stood expired and the application filed by the petitioners was disposed of as infructuous. Learned counsel, therefore, contends that despite request made by the petitioners, sample was not sent for retesting by Central Insecticide Laboratory and consequently, there has been violation of substantive right of petitioners available to them under Section 24(4) of Insecticides Act, 1968, for short 'the Act', and on this account, order dated 03.03.2005 is liable to be quashed. He also contends that petitioners kept and sold the insecticide in the same condition, in which it was purchased from its distributor, and action if any, shall be taken against the distributor or manufacturer, but in no case, petitioner can be subjected to trial.

On the other hand, learned State Counsel submits that there has been collusion between petitioners and the then Chief Agriculture Officer and Insecticide Inspector, as observed by this Court in its order dated 09.02.2010 and the second sample could not be sent for retesting on this account and in these circumstance when delay has been caused by the petitioners themselves, present petition does not hold any substance and is liable to be dismissed.

I have heard learned counsel for the parties and gone through the paper-book of the case. As pointed out by the learned State Counsel, the collusion between the petitioners, the then Chief Agriculture Officer and Insecticide Inspector was noted by this Court in detailed order passed on 09.02.2010 and even a vigilance enquiry was also ordered. Enquiry report

dated 18.06.2010 was also brought on record, in which it was found that petitioners and agricultural officials acted in collusion.

Be that as it may, it cannot be denied that due to the non-compliance of Section 24(4) of the Act, substantial right of the petitioners has been violated. Reply filed by the petitioners is on record as Annexure P-3, a perusal of the same reveals that a categorical request was made by the petitioners regarding retesting of the sample by the Central Insecticide Laboratory. Before the Chief Judicial Magistrate as well, even if delayed, but request for retesting was made by the petitioners and further, under Section 24(4) of the Act, Court could order retesting even on its own motion. Procedure as specified under Section 24(4) of the Act leads to criminal trial and hence, each step specified therein has to be followed strictly and any non-compliance has to be termed fatal to the case of prosecution. In “**State of Haryana Vs. Unique Farmaid (P) Ltd.**” reported as (1999) 8 SCC 190, following was observed by Hon’ble Apex Court:-

“It cannot be gainsaid, therefore, that the respondents in these appeals have been deprived of their valuable right to have the sample tested from the Central Insecticides Laboratory under sub-section (4) of Section 24 of the Act. Under sub-section (3) of Section 24 report signed by the Insecticide analyst shall be evidence of the facts stated therein and shall be conclusive evidence against the accused only if the accused do not, within 28 days of the receipt of the report, notify in writing to the Insecticides Inspector or the Court before which proceedings are pending that they intend to adduce evidence to controvert the report. In the present cases Insecticide Inspector was notified that the accused intended to adduce evidence to controvert the report. By the time the matter reached the court, shelf life of the sample had already expired and no purpose would have been served informing the court of such an intention. The report of the Insecticide Analyst was, therefore, not conclusive. A valuable right had been conferred on the accused to have the sample tested from the Central Insecticides Laboratory and in the circumstances of the

case accused have been deprived of that right, thus, prejudicing them in their defence.

In these circumstances, High Court was right in concluding that it will be an abuse of the process of court if the prosecution is continued against the respondents - the accused persons. High Court rightly quashed the criminal complaint. We uphold the order of the High Court and would dismiss the appeals.”

Further, there is also substance in the argument raised by the learned counsel for the petitioners that for the offence of "misbranding", retail dealer cannot be held liable, while manufacturer has not been made a party before the Court. Reliance in this regard can be placed on the judgment of this Court in **M/s Rallies India Limited and ors. Vs. State of Punjab**, 2022 (2) RCR (Crl.) 391, wherein it was held as under:-

“22. It is evident from a perusal of the petition as well as documents appended along with the same that the undisputed case of the respondent-State is that the petitioners were a marketing agent of the insecticides. It has been repeatedly so affirmed by the respondent in various paragraphs of the complaint instituted through Insecticide Inspector and already extracted above. It is also not a subject matter of dispute that the sample was drawn from a sealed packet and it is nowhere alleged that the sample had not been stored in accordance with the provisions contained under the Insecticides Act and Rules framed thereunder. There is also no allegation that the petitioners were responsible for the quality of the product as also for ensuring the labelled ingredients of the same. The petitioners are not nominated as the authorised/responsible officers in terms of section 33 of the Insecticides Act. The statutory mandate intends to penalize a person who has committed an offence. It does not intend to prosecute the people who are merely dealing with the said product and for which they have no control as regards its quality and content. The petitioners cannot be held vicariously liable and to be penalized for misbranding of a product where they were not involved in the manufacturing process at all merely for having traded in the same. Section 3(k)(i) defines misbranding. The same relates to the label of products and its contents. It is not the case that any of the activities referred to under section 3 (k) attracting misbranding was undertaken by the petitioners. Further, Section 17 of the Act is also not attracted against the petitioners inasmuch as the petitioners are neither the

importer of the misbranded insecticides, nor manufacturer thereof. Further, the ingredients of Section 18 of the Act are also not satisfied and there is no allegation that the petitioners had indulged in the sale of the insecticides, which was either not registered under the Act or was prohibited under Section 27. Similarly, Section 29 also would not be applicable against the petitioners inasmuch as the same contemplates punishment for offences as stated above. Once the necessary ingredients of the said Sections are not satisfied against the petitioners, they cannot be penalized for the same.”

Accordingly, petitioners cannot be made to face trial under Section 29 of the Act as the offence of “misbranding” is not applicable to a retail dealer, and further on account of non-compliance of Section 24(4) thereof as well, valuable right of the petitioners having been violated, on account of both these reasons, as such proceedings against the petitioners are liable to be quashed.

So far as the case of Paramjit Singh Sandhu, the then Chief Agriculture Inspector and Gurcharan Singh Shekho, the then Insecticide Inspector is concerned, vide order dated 09.02.2010, a vigilance enquiry was ordered against them and vide enquiry report dated 18.06.2010, it was found that they acted in collusion with petitioners to delay the retesting of the samples beyond the expiry date. A status report was sought from the department by this Court as to whether in pursuance of the report of Vigilance Bureau, any disciplinary action has been initiated against these persons.

Vide status report dated 16.07.2018, it has been brought on record that Paramjit Singh Sandhu, the then Chief Agriculture Inspector has expired and his death certificate is also on record in the status report as Annexure R-1/T. With respect to Gurcharan Singh Sekhon, the then Insecticide Inspector, it has been submitted that he retired from service

way-back on 31.12.2006. It has further been submitted that in view of Rule 2.2(b)(3) of Punjab Civil Services Vol. 2, action can be taken against a retired person only within 04 years of retirement and in the facts and circumstances of this case, more than 15 years have passed and now no action can be taken against him.

This Court is satisfied with the status report filed by Deputy Director in this regard. If prevalent rules does not allow for any action to be taken after 04 years of retirement, then this matter has to be given a quiet burial, and in any case more than 15 years has passed, as of now, since his retirement, so case is required to be rested here, with strong advice of caution to remain vigilant in future and not to repeat it.

In view of the discussion made hereinabove, the present petition is allowed. Impugned order dated 03.03.2005 and all the subsequent proceedings arising therefore, are hereby quashed.

Pending application(s), if any, shall also stand disposed of.

March, 02, 2023
sanjay

(HARKESH MANUJA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>