

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

CRM-M-41152-2018

Date of Decision: January 16, 2023

Sohan Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Rakesh Verma and Mr. Manish Verma, Advocates
for the petitioner.

Mr. R.S. Khaira, DAG, Punjab.

DEEPAK GUPTA, J.(Oral)

By way of this petition filed under Section 482 of the Code of Criminal Procedure, prayer has been made to quash Complaint Case No.7648 dated 01.06.2018 titled as ***“State vs M/s Mundi & Sons & Others”*** under Sections 3(k)(i), 17, 18, 29, 33 of the Insecticides Act, 1968 (hereinafter referred as 'the Act') read with Rules 27(5) of the Insecticides Rules, 1971, pending for adjudication in the Court of learned Chief Judicial Magistrate, Ludhiana (Annexure P-1), apart from the summoning order dated 01.06.2018 (Annexure P-2) and all the consequential proceedings arising therefrom qua the petitioner.

2. As it emerges on perusal of the paper book, on 22.06.2016 Insecticide Inspector, Block Bagga Khurd, Block Mangat, District Ludhiana, along with Agriculture Development Officer visited the shop of M/s Mundi & Sons, V.P.O. Nurpur Bet, District Ludhiana and after making necessary statutory compliances, drew sample of insecticide *Pretilachlor 50% EC (Parleen)*, Batch No.VOIC16M, with manufacturing date as May, 2016 and expiry date as April, 2018, manufactured by M/s Vikas Organic Ind. Corporation, village Panj Grain Kalan, Tehsil & District Faridkot; and marketed by M/s Suminova Agri Science, 334, Scheme No.103, Keshar Bagh Marg, Indore (M.P.). Out of

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three representative samples collected by the Insecticide Inspector, one of them was sent to the Senior Analyst, Insecticide Quality Control Laboratory, Ludhiana on 23.06.2016. The report dated 05.07.2016 of the Analyst, Insecticide Quality Control Laboratory, Ludhiana was received, as per which sample was declared misbranded as it was found contain active ingredient content only 39.87% instead of 50% EC. Against the show cause notice sent to the accused i.e. the dealer, supplier and the manufacturing company, replies were filed by them on 25.07.2016 and 01.08.2016 making a request to send the second part of the sample to the Central Insecticide Laboratory, Faridabad, so as to controvert the report of Public Analyst. The sample was sent to the Central Insecticide Laboratory, Faridabad on 19.09.2016, which was received thereon 25.11.2016 as confirmed on 07.03.2017 and the actual analysis was done on 22.03.2017 as per the report Annexure P-4. After obtaining necessary sanction from the competent authority, the prosecution was launched in the Court of learned Chief Judicial Magistrate, Ludhiana, on 01.06.2018.

3. On the same day i.e. 01.06.2018, learned Chief Judicial Magistrate, Ludhiana directed to issue the summons to the accused.

4. Seeking quashing of the complaint and the consequent proceedings, it is contended by the petitioner – one of the accused that re-testing of the sample was requested under Section 24(3) of the Act on 01.08.2016 as admitted in the complaint itself and the same was sent to the Central Insecticide Laboratory, Faridabad on 19.09.2016. Re-analysis of the sample was done by the Central Insecticide Laboratory on 22.03.2017 i.e. after a period of 273 days, which is gross violation of the

mandatory provisions of Section 24(3) of the Act, as said part of the sample was required to be tested within 30 days. It is contended that it is because of this delay in re-analysis of the sample that active ingredient as were found to be 39.8% against 50% EC by the State Public Analyst, Ludhiana that the same on re-analysis after 273 days were found to be nil. It happened due to huge delay of 273 days, causing gross prejudice to the petitioner. It is also urged that learned Trial Court has passed non-speaking summoning order without making any application of mind.

5. Refuting the aforesaid contention, it is contended by the learned State counsel on behalf of the respondent that as the sample was received in the Central Insecticide Laboratory, Faridabad with its seal intact and the said sample was re-analyzed on 22.03.2017, therefore, mere delay in analyzing of sample cannot be the reason for quashing of the complaint.

6. I have considered the submissions made on behalf of the parties and have also perused the record carefully.

7. The relevant part of Section 24 of the Insecticide Act, 1968 reads as under:-

1) xxxx

(2) xxxx

(3) xxxx

(4) Unless the sample has already been tested or analysed in the Central Insecticides Laboratory, where a person has under sub-section (3) notified his intention of adducing evidence in controversion of the Insecticide Analyst's report, the Court may, of its own motion or in its discretion at the request either of the complainant or of the accused, cause the sample of the insecticide produced before the Magistrate under sub-section (6) of section

22 to be sent for test or analysis to the said laboratory, which shall, within a period of thirty days, make the test or analysis and report in writing signed by, or under the authority of, the Director or the Central Insecticides Laboratory the result thereof, and such report shall be conclusive evidence of the facts stated therein.

(5) xxxx ”

8. It is evident from the aforesaid provision that re-testing at the Central Insecticide Laboratory, is to be conducted within a period of 30 days and then report in writing under authority of the Director of Central Insecticide Laboratory, which is to be conclusive proof of the facts stated therein is to be made.

9. In the present case, factual position is not in dispute that the different accused requested for sending the second part of the sample for re-analysis by the Central Insecticide Laboratory, Faridabad on 25.07.2016 and 01.08.2016. The sample was received in the said Laboratory on 25.11.2016 after a gap of more than two months, with no justification of this delay. The receipt of the sample by Central Insecticide Laboratory was confirmed on 07.03.2017 and then actual analysis was done on 22.03.2017 i.e. after a gap of 273 days. As the report of the Central Insecticide Laboratory, Faridabad (Annexure P-4) reveals that active ingredient was not detected at all against the requirement of 48.5-52.5%.

10. A somewhat similar situation arose before the Patna High Court in case of ***“Dow Agro Sciences India Private Limited and another vs State of Bihar and another”*** reported as 2014(84) R.C.R. (Civil) 265 with the difference that in that case the initial analysis by the Public Analyst as per Section 24(1) of the Act required to be done within 30

days was actually done beyond the requirement period of 30 days. Not only this, demand of the petitioner for re-analysis before the State Level Laboratory was refused. After noting that samples were not drawn and stored in accordance with Rules and the petitioners were not afforded the liberty of having sample re-analyzed, it was held no charges could be maintained.

11. Though, the above said authority is squarely not applicable to the facts of the present case but it is evident that delay in analyzing the sample by public analyst was one of the reason for holding the complaint as non-maintainable. In the present case, there is unjustified huge delay of 273 days in re-analyzing of the sample, which has certainly caused prejudice to the petitioner.

12. The contention of the respondent that as the seals of the samples sent to the Central Insecticide Laboratory were found to be intact, so delay is of no consequence, has absolutely no merit, inasmuch as use of word 'shall' in Section 24(4) makes it mandatory to conduct the test or analysis by the Central Insecticide Laboratory within 30 days.

13. For the reasons as discussed above, it is held that prosecution launched by the respondent can not be sustained. Therefore, the complaint (Annexure P1), the impugned summoning order (Annexure P2) and all the consequential proceedings are hereby quashed. It is ordered accordingly.

January 16, 2023
sarita

(DEEPAK GUPTA)
JUDGE

Whether reasoned/speaking: Yes/No
Whether reportable: Yes/No