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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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**Reserved on: September 20, 2023**

**Decided on: December 14, 2023**

+ **CRL.M.C. 3528/2019**

**M/S. GODREJ CONSUMER  
PRODUCTS LIMITED**

**..... Petitioner**

**Through: Mr. Rajeev K. Virmani,  
Senior Advocate with  
Mr. Vaibhav Bhadana,  
Ms. Deveshi Behl and  
Mr. Hrithik Sharma,  
Advocates.**

**V**

**LICENSING OFFICER (INSECTICIDE) ..... Respondent**

**Through: Mr. Yudhvir Singh  
Chauhan, APP for State.**

**CORAM**

**HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN**

**J U D G M E N T**

**1.** The present petition is filed by the petitioner under section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “the Code”) for quashing the summoning order dated 11.12.2017



and complaint bearing CC no. 13384/2017 titled as **Licensing Officer (Insecticides) V M/s. Rajesh Enterprises and another** for the offence punishable under section 29 of the Insecticides Act, 1968 (hereinafter referred to as “**the Act**”) along with consequential proceedings which are stated to be pending in the court of Dr. Sumedh Kumar Sethi, Chief Metropolitan Magistrate, South-West District, Dwarka Courts, Delhi/successor court (hereinafter referred to as “**the trial court**”).

2. The respondent/the complainant (hereinafter referred to as “**the respondent**”) filed a complaint titled as **Licensing Officer V M/s Rajesh Enterprises & another** bearing no CC No. 13384/17 under section 200 of the Code pertaining to the offence under section 29(1)(a) of the Act and Insecticide Rules, 1971 framed thereunder through Insecticide Inspector against M/S. Godrej Consumer Products Ltd/the petitioner/the accused no. 2 (hereinafter referred to as “**the petitioner**”) and M/S Rajesh Enterprises, a proprietorship firm through its Proprietor Mukesh Kumar Mittal/the accused no. 1 on allegations that accused no.1 was selling/storing misbranded Transallethrin 0.25% W/w batch no. FF16-007 Insecticide



(hereinafter referred to as **“the product in question”**) being manufactured by the petitioner.

**2.1** A.K. Gangwar, Notified Insecticide Inspector, Development Department, Govt. of Delhi (hereinafter referred to as **“the Insecticide Inspector”**) on 03.11.2016 visited the Godown/sale counter of the accused no. 1 situated at 152-A, Todarmal Colony, Najafgarh, New Delhi-110043 for inspection of insecticides and records. The Insecticide Inspector purchased the product in question having manufacturing date as September, 2016 and expiry date as August, 2018 vide Bill/Retail Invoice dated 03.11.2016 from the premises of the accused no. 1 and also filled Form XX (under Rule 33). The samples were sealed in containers in presence of the authorized representative/proprietor of the accused no. 1. One sealed container out of three containers was handed over to the accused no.1, one container was retained in the office of the complainant and third container was sent for testing to the Insecticide Analyst i.e. Incharge, Centralized Coding Cell RPTL C/o Plant Protection Adviser (PPA), Directorate of Plant Protection, Quarantine & Storage, NH-IV, Faridabad (Haryana), Govt. of India vide Form XXI (Rule 34) and



Memo dated 04.11.2016. The respondent received the Report bearing no 001848 from the Coding Officer, Directorate of Plant Protection, Quarantine and Storage, NH-IV, Faridabad (Haryana) along with the Report dated 10.01.2017 from the Regional Pesticide Testing Laboratory, Bays No.43-45, Sector 31-A, Chandigarh (U.T.)-160030 with result **"The sample does not conform to the relevant IS Specification in the test conducted"**.

**2.2** The result obtained from R.P.T.L. Chandigarh was intimated to the accused no. 1 and the petitioner vide Memorandum dated 24.03.2017 along with copy of the Report dated 10.07.2017 with the directions to furnish the justification/reply within 28 days from the date of receipt of Memo as to why they were selling, manufacturing & stocking substandard/misbranded product in question. The accused no. 1 filed reply vide letter dated 12.04.2017 to the Memorandum dated 24.03.2017 wherein raised false and frivolous pleas but did not request for re-testing of the sample. The petitioner also filed false and frivolous reply dated 17.04.2017 to the Memorandum dated 24.03.2017 wherein denied the Report dated 10.01.2017.



**2.3** The respondent issued another Memorandum dated 01.05.2017 to the replies dated 12.04.2017 and 17.04.2017 received from the accused no. 1 and the petitioner. The respondent further directed the accused no. 1 and the petitioner to furnish their justification within 10 days from the receipt of Memorandum dated 01.05.2017 and in case they fail to furnish the justification within stipulated period then it will be presumed that they don't have nothing to say and the legal proceedings would be initiated against them in accordance of law. The accused no. 1 with regard to Memorandum dated 01.05.2017 submitted false and frivolous reply dated 09.05.2017 and raised same contentions which were taken in reply dated 12.04.2017. The petitioner in response to Memorandum dated 01.05.2017 sent reply dated 09.05.2017 based on false and frivolous contentions and also raised contentions which were taken in reply dated 17.04.2017. The accused no. 1 and the petitioner did not make request for re-testing of sample in question and also did not deposit requisite fee. The replies filed by the accused no. 1 and the petitioner were not found satisfactory and are liable to be summoned, tried and punished under Section 29 of the Act and the Insecticide Rules, 1971 for deliberately



selling, stocking, marketing and manufacturing the misbranded insecticides. It was prayed that the accused no 1 and the petitioner be summoned, tried and punished for having committed offence under section 29(1)(a) read with section 3(k) of the Insecticide Act, 1968.

3. The court of Dr. Sumedh Kumar Sethi vide order dated 11.12.2017 summoned the accused no. 1 and the petitioner by observing that offence under section 29 of the Act has been committed by the accused no. 1 and the petitioner as the content of the insecticide Transallethrin was found to be 0.778% rather than 0.25 % as claimed in the popular 'Hit' brand manufactured by the petitioner and sold by accused no. 1.

4. The petitioner being aggrieved filed the present petition wherein stated that present complaint was filed for violation of offence under section 29(1)(a) of the Act in respect of an insecticide Transallethrin 0.25% w/w Batch No. FF16-007 i.e. the product in question stated to be manufactured by the petitioner on allegations that a sample of Transallethrin 0.25% w/w of Batch No. FF16-00T i.e. the product in question with manufacturing date as September, 2016 and expiry date as August, 2018 was lifted from the premises



the accused no. 1 on 03.11.2016 and was sent for analysis on 04.11.2016 and was allegedly found to be misbranded vide Report dated 10.01.2017 (mentioned as 16.01.2017 in petition). The perusal of Form XX being the intimation to the seller/the accused no 1 reflects that it was in respect of a sample of an insecticide "d-trans Allethrin 0.25% w/w" with manufacturing date September, 2016 and expiry date August, 2018 and drawn on 03.11.2016 and not in respect of Transallethrin 0.25%. The perusal of Report dated 10.01.2017 reflects that the sample of "d-trans Allethrin 0.25%" did not conform to the relevant IS Specifications in the test conducted and said report was not in respect of Transallethrin 0.25%.

**4.1** The petitioner is carrying business of manufacturing and marketing fast moving consumer goods including mosquito and bug repellent spray cans under the brand name "HIT". The petitioner is a reputed company and is well known for its quality products. The petitioner challenged the present complaint on grounds that the petitioner was deprived of its valuable statutory rights under section 24(4) of the Act of getting the second sample tested from the Central Insecticides Laboratory (CIL). The petitioner was served with



summons on 17.10.2018 and was provided with a copy of the complaint on 23.01.2019 and by that time the sample of the insecticide had already expired in August, 2018 and due to this reason trial is vitiated. The second sample was not produced before the trial court with the complaint in breach of the statutory provision under section 22(6)(ii) of the Act but was rather produced on 25.02.2019 upon an application of the petitioner. The complaint is also vitiated as it pertains to insecticide "Transallethrin 0.25%" whereas sample of an insecticide "d-trans Allethrin 0.25% w/w" was drawn and was accordingly analysed. The Report dated 10.01.2017 stated that the sample of the analysed insecticide **"does not conform to the IS specification in the test conducted"** but Bureau of Indian Standards has not published any IS specifications for "d-trans Allethrin 0.25% w/w" and no such specification is mentioned in the Report dated 10.01.2017 which also vitiated Report dated 10.01.2017. The purported analysis is also vitiated as the Report dated 10.01.2017 was not made within the statutory period of 30 days as per section 24(1) of the Act as sample was received by the laboratory on 05.11.2016 and report is dated 16.01.2017 which is



more than 70 days after receipt of sample. The statutory consent dated 10.07.2017 under section 31(1) of the Act for initiation of prosecution is invalid due to non-application of mind as it relies on a purported test report from Regional Pesticides Testing Laboratory (RPTL), Kanpur and no such test report from RPTL, Kanpur was placed on record as Report dated 10.01.2017 relied on in present complaint is prepared by RPTL Chandigarh/Directorate of Plant Protection, Quarantine & Storage, Faridabad. The petitioner does not manufacture "Transallethrin 0.25%" and as such cannot be prosecuted in respect of said insecticide.

**4.2** The Report dated 10.01.2017 was vague and ambiguous and was not containing relevant details to enable the petitioner or accused no. 1 to rebut the results. The petitioner vide reply dated 17.04.2017 refuted allegations mentioned in the Memorandum dated 24.03.2017 and conclusion of the Report dated 10.01.2017 and requested the Insecticides Inspector to withdraw the Memorandum and reserved its right to adduce further evidence. The petitioner also seriously disputed validity of the Report which did not set out about the method of puncturing the aerosol products, testing methodology,



testing apparatus/equipment adopted and used by RPTL conforms to the Central Insecticide Board's recommendations to test the insecticide. The petitioner also requested the Insecticide Inspector to provide the details of testing mechanism adopted by the RPTL as well as the testing mechanisms prescribed for such purpose. The accused no 1 also filed its reply to Memorandum vide letter dated 19.04.2017. The petitioner and the accused no 1 notified their intention of adducing evidence to controvert Report within 28 days of being notified under cover of the Memorandum as required under section 24(3) of the Act. The respondent also ignored requests contained in the reply of the petitioner to provide information as to the methodology of the test, whether protocols followed were in compliance with CIL standards, etc. and instead on a total non-application of mind asked the petitioner to show cause once again by its Memorandum No. F.I 1(2)/Sample/IT/S/2016-17/34 dated 01.05.2017 which was responded by the petitioner vide letter dated 09.05.2017 wherein petitioner referred earlier reply dated 17.04.2017 to the Memorandum and reiterated intention of the petitioner to adduce other evidence.



**4.3** A.P. Saini, Licensing Officer (insecticide), Govt. of NCT of Delhi gave permission/consent for institution of the case vide Consent Order no F.11(1)/II()/Sample/PP/2016-17/112 dated 10.07.2017 on basis of test report from Regional Pesticides Testing Laboratory (RPTL), Kanpur but no such test report from RPTL Kanpur has been placed on record. It demonstrated complete non-application of mind on part of the Licensing Officer while passing the Consent Order.

**4.4** The respondent at the time of filing the complaint did not produce the second sample before the trial court as required under section 22(6) of the Act. The petitioner also filed an application under section 22(6)(ii) of the Act for production of the second sample before the trial court. The Insecticide Inspector on 25.02.2019 produced the second sample before the trial court and the trial court vide order dated 25.02.2019 observed that the sample had already expired in August 2018. Accordingly the statutory right provided to the petitioner under Section 24(4) of the Act regarding testing of second sample by CIL was taken away due to no fault of the petitioner. The proceedings before the trial court is abuse of process



of law and the complaint along with consequential proceedings cannot continue.

**4.5** The petitioner further pleaded that the petitioner was deprived of valuable statutory rights under Section 24(4) of the Act of getting second sample tested from the Central Insecticides Laboratory (CIL). The petitioner reserved its right to adduce further evidence in controversion of Report dated 10.07.2017. The respondent acted in breach of the mandatory statutory provision contained in section 22(6)(ii) of the Act as the second sample of the insecticide was not produced before the trial court with the complaint but was produced on 25.02.2019 upon an application of the petitioner. The complaint is also vitiated as it pertains to an insecticide "Transallethrin 0.25%" whereas sample of insecticide "d-trans Allethrin 0.25% w/w" was drawn and analysed. The prosecution is based on a test report which stated that the sample of the insecticide analysed **"does not conform to the IS specification in the test conducted"** but Bureau of Indian Standards has not published any IS specifications for "d-trans Allethrin 0.25% w/w". The analysis is also vitiated as not conducted and the Report thereof was not been prepared within the statutory



period of 30 as per section 24 (1) of the Act. The statutory consent dated 10.07.2017 under section 31(1) of the Act for initiation of prosecution is invalid being made on non-application of mind. It relies on a purported test report from Regional Pesticides Testing Laboratory (RPTL), Kanpur but no such test report from RPTL Kanpur was placed on record. The Petitioner does not hold any registration for insecticide Transallethrin 0.25% and does not manufacture it. It was prayed that the complaint bearing no13384 of 2017 along with consequential proceedings including summoning order dated 11.12.2017 be quashed.

5. The respondent filed reply to petition wherein denied contents of the petition. The respondent primarily stated that in the complaint the name of the sample in question was wrongly mentioned as **“Transallethrin0.25%”** instead of **“D-TransallethrinO.25%”** due to typographical error. The second sample was produced on the directions of the Court and the respondent has not breached section 22(6)(ii) of the Act. The petitioner has failed to avail the opportunity of getting the sample in question re-tested despite two opportunities.



6. It is reflecting that the Insecticide Inspector on 03.11.2016 visited the Godown/sale counter of the accused no. 1 situated at 152-A, Todarmal Colony, Najafgarh, New Delhi-110043 and purchased the product in question having manufacturing date as September, 2016 and expiry date as August, 2018 vide Bill/Retail Invoice dated 03.11.2016 and also filled Form XX. The accused no. 1 was allegedly found selling/storing misbranded insecticide Transallethrin 0.25% W/w batch no. FF16- 007 which was stated to be manufactured by the petitioner. The Insecticide Inspector took three samples/containers which were sealed in presence of the authorized representative/proprietor of the accused no 1. Out of three sealed containers, one sealed container was handed over to the accused no 1, one container was retained in the office of the complainant and third container was sent for testing to the Insecticide Analyst i.e. In charge, Centralized Coding Cell RPTL C/o Plant Protection Adviser (PPA), Directorate of Plant Protection, Quarantine & Storage, NH-IV, Faridabad (Haryana), Govt. of India vide Form XXI and Memo dated 04.11.2016. The respondent received the Report bearing no 001848 from the Coding Officer, Directorate of Plant Protection,



Quarantine and Storage, NH-IV, Faridabad (Haryana) along with the Report dated 10.01.2017 from the Regional Pesticide Testing Laboratory, Bays No.43-45, Sector 31-A, Chandigarh (U.T.)-160030 with result **"The sample does not conform to the relevant IS Specification in the test conducted"** which was intimated to the petitioner and accused no 1 vide Memorandum dated 24.03.2017. In Report bearing no 001848 and Report dated 10.01.2017, the name of the Insecticide sample purporting to be contained in the sample was mentioned as **"d-trans allethrin-0.25% Aerosol"**. The petitioner claimed that it does not manufacture "Transallethrin 0.25%". The Report dated 10.01.2017 did not mention IS specifications for "d-trans Allethrin 0.25% w/w". The petitioner and the accused no 1 were asked to furnish the justification/reply within 28 days regarding selling, manufacturing & stocking substandard/misbranded product in question. The accused no 1 and the petitioner filed reply vide letter dated 12.04.2017 and dated 17.04.2017 respectively wherein they reserved their rights to adduce such further evidence which may be deemed to be necessary and to be heard in person. The respondent issued another Memorandum dated 01.05.2017 to the replies dated



12.04.2017 and 17.04.2017 submitted by the accused no 1 and the petitioner with direction to furnish their justification within 10 days from the receipt of the Memorandum dated 01.05.2017. The accused no. 1 and the petitioner with regard to Memorandum dated 01.05.2017 again submitted respective replies dated 09.05.2017. The accused no 1 and the petitioner did not specifically make request for re-testing of sample of product in question. However, the petitioner claimed and alleged violation of its statutory rights under section 24(4) of the Act for not sending second sample to Central Insecticides Laboratory (CIL) for re-testing. The Licensing Officer (Insecticide), Govt. of NCT of Delhi vide consent order dated 10.07.2017 accorded permission for institution of complaint against the petitioner and the accused no 1 and in consent order test report from Regional Pesticides Testing Laboratory (RPTL), Kanpur was also referred. The petitioner and the accused no 1 were summoned for offence under section 29 of the Act vide summoning order dated 11.12.2017 passed by the trial court. The respondent did not produce second sample before trial court along with complaint but produced on 25.02.2019 on an application of the petitioner and trial court vide



order dated 25.02.2019 observed that the sample had already expired in August 2018.

7. The learned Senior Counsel for the petitioner argued as under:-

7.1 The petitioner has been deprived of its valuable statutory rights to have second sample re-analysed for conclusive result under section 24(4) of the Act and relied on **State of Haryana V Unique Farmaid Pvt. Ltd. and others**, (1999) 8 SCC 190.

7.2 The present complaint is based on a Report which is invalid and contrary to the Act as it was prepared beyond statutory period of 30 days. The sample was received by the laboratory on 05.11.2016 but Report was made on 10.01.2017 (mentioned as 16.01.2017 by the petitioner).

7.3 As per Report, the sample did not conform to IS (Indian Standard) specifications but the Bureau of Indian Standards Act, 2016 has not made or published any standard for the insecticide d-trans Allethrin and relied on **Dr. R. Venkatachalam and another V State**, Crl. M.C.1767-68 of 2006 dated 09.05.2013.

7.4 The statutory Consent Order dated 10.07.2017 under section 31(1) of the Act was granted without application of mind. The



consent is based on an analysis at Regional Pesticides Testing Laboratory, Kanpur whereas the complaint is based on an alleged testing at Chandigarh. The Report stated to be prepared by Kanpur Laboratory is not placed on record. The Consent Order reflects that the sample of insecticide Transallethrin 0.25% was drawn whereas Form XX filed with the complaint pertains to sample of "d-trans Allethrin which also reflects non-application of mind. The learned Senior Counsel relied on **Harjeet Singh V State**, 1998(46) DRJ96 and **Krishna Agencies V State of Rajasthan**, S.B. Criminal Misc. Petition no. 297/2006 decided on 28.11.2013 by the High Court of Rajasthan.

**7.5** The prosecution is vitiated as it pertains to an insecticide Transallethrin 0.25% w/w whereas sample of insecticide d-trans Allethrin was drawn and analysed. It was according argued that the complaint and summoned issued to the petitioner are liable to be quashed.

**8.** The Additional Public Prosecutor argued to the contrary and made arguments based on pleas and averments as mentioned in short reply. It was argued that the petition is liable to be dismissed.



9. The respondent filed present complaint in respect of insecticide Transallethrin on allegations that accused no. 1 was found selling/storing misbranded insecticide Transallethrin 0.25% W/w batch no. FF16-007 stated to be manufactured by the petitioner during visit of the Insecticide Inspector on 03.11.2016 at 152-A, Todarmal Colony, Najafgarh, New Delhi-110043 and Form No. XX was also filled. The sample was sent for testing to the Insecticide Analyst and Report bearing no 001848 from the Coding Officer, Directorate of Plant Protection, Quarantine and Storage, NH-IV, Faridabad (Haryana) along with the Report dated 10.01.2017 from the Regional Pesticide Testing Laboratory, Chandigarh (U.T.)-160030 with result **"The sample does not conform to the relevant IS Specification in the test conducted"** was received. The perusal of Form XX which is intimation to person/licensee from whom the sample is taken reflects that sample of insecticide/misbrand **d-trans Allethrin 0.25% w/w** was taken on 03.11.2016 by the Insecticide Inspector from the premises of the accused no 1. The Report bearing no. 1574/CCC/RPTL/37/2016-17/001848 from Directorate of Plant Protection, Quarantine & Storage, NH-IV, Faridabad (Haryana)-



121001 along with Report dated 10.01.2017 from Directorate of Plant Protection Quarantine & Storage , Regional Pesticide Testing Laboratory, Chandigarh also reflects that it was in respect of insecticide d-transallethrin 0.25% Aerosol. The respondent in Memorandum dated 24.03.2017 issued to the accused no. 1 and the petitioner also mentioned name of the misbrand insecticide as d-Trans Allethrin 0.25 % W/w batch No. FF16-007. It is reflecting that entire prosecution against the petitioner is based on insecticide d-transallethrin 0.25% Aerosol but in complaint, insecticide Transallethrin 0.25% W/w batch no. FF16-007 is mentioned. The Additional Public Prosecutor argued that in the complaint, insecticide Transallethrin 0.25% W/w batch no. FF16-007 was wrongly mentioned. There is force in argument advanced by the Additional Public Prosecutor for the respondent that in complaint insecticide Transallethrin 0.25% W/w batch no. FF16-007 was wrongly mentioned. The entire prosecution cannot be vitiated by mere wrong mentioning of insecticide in the complaint particularly when in the documents i.e. Form XX and Report dated 10.01.2017 relied upon by the respondent, name of the insecticide is correctly mentioned. No



prejudice was caused to the petitioner by wrong mentioning of the insecticide in the complaint although the respondent should have taken proper care regarding mentioning of correct name of the insecticide in complaint. There is no force in arguments advanced by learned Senior Counsel for the petitioner that prosecution is vitiated on ground that the complaint is filed in respect of insecticide Transallethrin 0.25% W/w batch no. FF16-007 while sample of insecticide d-trans Allethrin 0.25% w/w was taken on 03.11.2016 by the Insecticide Inspector.

**10.** A.P. Saini, Joint Director (Agri.), Licensing Officer (Insecticide) Govt. of NCT of Delhi in exercise of the powers conferred upon him under section 31(1) of the Insecticide Act by virtue of the Notification no. 72(26)/69-70/Dev./PP/21278 dated 13.11.1975 accorded permission/consent bearing no F.11(1)/II( )/Sample/PP/2016-17/112 dated 10.07.2017 for institution of the case under section 29 of the Act and Rule 71 against the accused no.1 and the petitioner after being satisfied on careful examination of the analysis report of Regional Pesticide Laboratory, Kanpur dated 09.01.2017 and formed opinion that the accused no. 1 and the



petitioner have committed violations of the provisions of Insecticide Act, 1968. The relevant part of Consent Order dated 10.07.2017 is reproduced as under:-

**AND WHEREAS I, A.P. Saini, Jt. Director (Agriculture) Licensing Officer (Insecticide), Govt. of NCT of Delhi, notified vide Notification No. F.56(333)/07/Dev. HQ/5797 dated 21.03.2014, am satisfied after careful examination of the analysis report of Regional Pesticide Laboratory, Kanpur dated 09.01.2017 that M/s. Rajesh Enterprises and M/s. (Godrej Consumer Products Ltd. have committed violations of the provisions of Insecticide Act, 1968.**

**Now I, therefore, in exercise of the powers conferred upon me U/s. 31(1) of the Insecticide Act by virtue of Notification No.72(26)/69-70/ Dev./PP/21278 dated 13.11.1975, I, A.P. Saini, Licensing Officer (Insecticide), Govt. of NCT of Delhi hereby give my permission/ consent for institution of the case U/s. 29 of the Insecticide Act and Rule 71.....**

**10.1** The perusal of consent order dated 10.07.2017 also reflects that it was passed in respect of misbranded insecticide Transallethrin 0.25% W/w batch no. FF16-007 with manufacturing date as September 2016 and expiry date as August 2018 which was stated to be purchased by the Insecticide Inspector vide Bill/Retail Invoice dated 03.11.2016 and Form XX (under Rule 33) was also obtained. The relevant part of consent order dated 10.07.2017 is reproduced as under:-



**AND WHEREAS during the inspection from the premises of M/s.Rajesh Enterprises, Shri A.K. Gangwar purchased Transallethrin 0.25% W/w batch no. FF16-007 mfg. date September 2016 and Expiry Date - August 2018 the date of manufacturing being manufactured by M/s. Godrej Consumer Products Ltd. vide Bill/Retail Invoice dated 03.11.2016. Along with the said Bill, Shri A.K. Gangwar also obtained a Form No. XX (under Rule 33), in which the details of Sample were taken.**

**10.2** The learned Senior Counsel argued that consent order dated 10.07.2017 is vitiated as it was passed without application of judicial mind by the concerned authority. The consent order was passed in respect of insecticide Transallethrin 0.25%W/w batch no. FF16-007 while as per Form XX, Report dated 10.07.2017 and Memorandum dated 24.03.2017 sample of insecticide d-trans Allethrin was taken from the premised of the accused no 1 on 03.11.2016 and on basis of analysis Report dated 09.01.2017 stated to be prepared by Regional Pesticide Laboratory, Kanpur which was never placed on record.

**10.3** Section 31(1) of the Act deals with cognizance and trial of offences. It creates a bar on prosecution of offences under the Act in absence of written consent of the State Government or a person authorised by the State Government. It reads as under:-



**31. Cognizance and trial of offence:- (1) No prosecution for an offence under this Act shall be instituted except by, or with the written consent of, the State Government or a person authorised in this behalf by the State Government.**

**10.4** It is accepted legal proposition that an authority vested with discretionary power should exercise discretion by applying its mind to given set of facts and circumstances of the case. If any authority takes decision without application of mind then decision is bad and cannot be legally sustained. The sanctioning authority while according sanction/consent order must consider relevant material and evidence with due application of mind. The sanctioning/consent order must disclose that the concerned authority has actually applied its mind by considering relevant factors and evidence at time of granting sanction or consent order. The Supreme Court in **Mansukhlal Vithaldas Chauhan V State of Gujarat**, 10 (1997) 7 SCC 622 observed as under:-

**18. The validity of the sanction would, therefore, depend upon the material placed before the sanctioning authority and the fact that all the relevant facts, material and evidence have been considered by the sanctioning authority. Consideration implies application of mind. The order of sanction must ex facie disclose that the sanctioning authority had considered the evidence and other material placed before it. This fact can also be established by**



extrinsic evidence by placing the relevant files before the Court to show that all relevant facts were considered by the sanctioning authority.

19. Since the validity of “sanction” depends on the applicability of mind by the sanctioning authority to the facts of the case as also the material and evidence collected during investigation, it necessarily follows that the sanctioning authority has to apply its own independent mind for the generation of genuine satisfaction whether prosecution has to be sanctioned or not.

**10.4.1** The Supreme Court in **State of Rajasthan V Tarachand Jain**, 1974 SCR (1) 146 also observed as under:-

We find that the position of law is that the burden of proof that the requisite sanction had been obtained rests upon the prosecution. Such burden includes proof that the sanctioning authority had given the sanction in reference to the facts on which the proposed prosecution was to be based. These facts might appear on the face of the sanction or it might be, proved by independent evidence that sanction was accorded for prosecution after those facts had been placed before the sanctioning authority.

**10.4.2** It was observed by this court in **Harjeet Singh V State**, 1998 (46) DRJ 96 and also relied on by the learned Senior Counsel for the petitioner as under:-

13. The sanction to prosecute is a very vital and important matter. It constitutes a condition precedent to the institution of the prosecution. The sanctioning authorities either the Central Government or the State Government have absolute discretion either to grant sanction or



**withhold the sanction. It must be clearly borne out from the sanctioning order that before granting sanction or withholding sanction, the sanctioning authority had all the necessary facts constituting the offences before it. It should also be clear from the sanctioning order that there has been proper application of mind before taking the decision. Grant of sanction or withholding of the sanction is not an idle formality or acrimonious exercise but a solemn and sacrosanct act which has to be performed with extreme caution and care. This is virtually the foundation on which the entire future course of action is totally dependent.**

**10.5** The Joint Director (Agri.), Licensing Officer (Insecticide) Govt. of NCT of Delhi was expected to pass consent order dated 10.07.2017 for institution of the case under section 29 of the Insecticide Act and Rule 71 against the accused no.1 and the petitioner after due application of mind. However, perusal of Consent Order dated 10.07.2017 reflects that it was passed on basis of irrelevant consideration and in mechanical manner without due application of mind. The authority passed the consent order dated 10.07.2017 with reference to insecticide Transallethrin 0.25% W/w batch no FF16-007 and after considering Report dated 09.01.2017 stated to be prepared by Regional Pesticide Laboratory, Kanpur. In fact, the sample of insecticide d-trans Allethrin was taken on 03.11.2016 and subsequently analysis Report bearing no.



1574/CCC/RPTL/37/2016-17/001848 received from Directorate of Plant Protection, Quarantine & Storage, NH-IV, Faridabad (Haryana)-121001 along with Report dated 10.01.2017 from Directorate of Plant Protection Quarantine & Storage , Regional Pesticide Testing Laboratory, Chandigarh were received. It is apparent that authority passed the consent order dated 10.07.2017 on basis of irrelevant consideration and without application of mind. It is established that authority has not considered sample of d-trans Allethrin and Report dated 10.01.2017 at time of passing consent order dated 10.07.2017 and accordingly Consent Order dated 10.07.2017 is vitiated by non-application of mind and irrelevant consideration. The learned Senior Counsel rightly argued that Consent Order dated 10.07.2017 was passed without application of mind. The present complaint is accordingly bad in law.

11. The learned Senior Counsel for the petitioner argued that the respondent has violated section 24(4) of the Act as the petitioner was deprived of its statutory right to have second sample re-analysed as per section 24(4) of the Act and relied on **State of Haryana V Unique Farmaid Pvt. Ltd. and others**, (1999)8SCC190. The



Additional Public Prosecutor for the respondent argued that the petitioner has failed to avail the opportunity of getting the sample in question re-tested despite two opportunities. The Insecticide Inspector on 03.11.2016 found that the accused no. 1 was selling/storing misbranded insecticide stated to be manufactured by the petitioner and Form XX was filed/obtained. Subsequently, the analysis Report dated 10.01.2017 was received with the result "**The sample does not conform to the relevant IS Specification in the test conducted**". The respondent vide Memorandum dated 24.03.2017 intimated about Report dated 10.01.2017 to the accused no. 1 and the petitioner. The accused no. 1 and the petitioner vide respective reply vide letter dated 12.04.2017 and dated 17.04.2017 reserved their rights to adduce further evidence as may be deemed necessary. Thereafter the respondent issued another Memorandum dated 01.05.2017 and the accused no 1 and the petitioner submitted replies dated 09.05.2017 wherein they did not specifically make request for re-testing of sample of misbrand insecticide by the Central Insecticides Laboratory but again reserved rights to adduce such other evidence as may be deemed necessary



and right to be heard in person. The respondent filed complaint bearing no 13384 of 2017 on 11.07.2018 which was listed on 12.07.2018 for hearing before the trial court. The summoning order was passed on 11.12.2017. The sample expired in August, 2018. The petitioner appeared before the trial court on 22.10.2018 after being served with summons on 17.10.2018 and filed an application for production of second sample under section 22(6)(ii) of the Act. The respondent produced second sample before the trial court on 25.02.2019 and trial court vide order dated 25.02.2019 observed that the sample had already expired in August 2018.

**11.1** Section 24 of the Act deals with Report of Insecticide Analyst.

Sub clauses (3) & (4) read as under:-

**(3) Any document purporting to be a report signed by an Insecticide Analyst shall be evidence of the facts stated therein, and such evidence shall be conclusive unless the person from whom the sample was taken has within twenty-eight days of the receipt of a copy of the report notified in writing the Insecticide Inspector or the court before which any proceedings in respect of the sample are pending that he intends to adduce evidence in controversion of the report.**

**(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 Analysts 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 of the Central Insecticides Laboratory the result thereof, and such report shall be conclusive evidence of the facts stated therein.**

**11.2** Issue which needs consideration is that whether averments made by the petitioner in replies dated 17.04.2017 and 09.05.2017 in response to Memorandum dated 24.03.2017 and 01.05.2017 that the petitioner reserved its right to adduce other evidences as may be deemed necessary is sufficient to notify intention of the petitioner for adducing evidence in controversion of analyst report dated 10.01.2017 as per section 24 (3) &(4) of the Act. The Supreme Court in **Northern Mineral Ltd V Union of India and another**, (2010) 8 SCR 1 dealt with said issue and observed that the act of the accused notifying in writing its intention to adduce evidence in controversion of the report shall give right to the accused and would be sufficient to clothe the Magistrate the jurisdiction to send the sample to Central Insecticide Laboratory for analysis and it is not required to state that



it intends to get sample analysed from the Central Insecticides Laboratory. It was observed as under:-

**11. From a plain reading of Section 24(3) of the Act, it is evident that an accused within 28 days of the receipt of the copy of the report of the Insecticide Analyst to avoid its evidentiary value is required to notify in writing to the Insecticide Inspector or the Court before which the proceeding is pending that it intends to adduce evidence in controversion of the report. Section 24(4) of the Act provides that when an accused had notified its intention of adducing evidence in controversion of the Insecticide Analyst report under Section 24(3) of the Act, the court may of its own motion or in its discretion at the request either of the complainant or the accused cause the sample to be sent for analysis to the Central Insecticides Laboratory. Under the scheme of the Act when the accused had notified its intention to adduce evidence in controversion of the report of the Insecticide Analyst, the legal fiction that the report of the Insecticide Analyst shall be conclusive evidence of the facts stated in its report loses its conclusive character. The Legislature has used similar expression i.e. the “intention to adduce evidence in controversion of the report” in both subsection (3) and subsection (4) of Section 24 of the Act, hence both the expression has to be given one and the same meaning. Notification of an intention to adduce evidence in controversion of the report takes out the report of the Insecticide Analyst from the class of “conclusive evidence” contemplated under subsection (3) of Section 24 of the Act. Further intention of adducing evidence in controversion of the Insecticide Analyst report clothes the Magistrate the power to send the sample for analysis to the Central**



**Insecticides Laboratory either on its own motion or at the request of the complainant or the accused. In face of the language employed in Section 24(4) of the Act, the act of the accused notifying in writing its intention to adduce evidence in controversion of the report in our opinion shall give right to the accused and would be sufficient to clothe the Magistrate the jurisdiction to send the sample to Central Insecticide Laboratory for analysis and it is not required to state that it intends to get sample analysed from the Central Insecticides Laboratory. True it is that report of the Insecticides Analyst can be challenged on various grounds but accused can not be compelled to disclose those grounds and expose his defence and he is required only to notify in writing his intention to adduce evidence in controversion. The moment it is done conclusive evidentiary value of the report gets denuded and the statutory right to get the sample tested and analysed by the Central Insecticides Laboratory gets fructified.**

**11.2.1**The Supreme Court in **Northern Mineral Ltd V Union of India and another** also referred **State of Haryana V Unique Farmaid (P) Ltd. & others**, (1999) 8 SCC 190 which was also relied on by the learned Senior Counsel for the petitioner. The Supreme Court in **State of Haryana V Unique Farmaid (P) Ltd. & others** as under:-

**12. 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.**

11.3 The petitioner was supplied with analysis Report dated 10.01.2017 vide Memorandum dated 24.03.2017 and the petitioner vide letter dated 17.04.2017 reserved right to adduce further evidence and a right to be heard in person. The petitioner again in response/reply dated 09.05.2017 to another Memorandum dated 01.05.2017 reserved right to adduce such other evidence as may be deemed necessary and right to be heard in person. This plea of the petitioner is sufficient to notify its intention to adduce evidence in controversion of analyst Report dated 10.01.2017 although the



petitioner did not specifically make request for re-testing of sample of misbrand insecticide by the Central Insecticides Laboratory. The petitioner as such notified its intention for re-testing of sample within 28 days. The Report dated 10.01.2017 in these circumstances lost its conclusive character. The respondent produced sample of contraband before the trial court on 25.02.2019 and by that time sample had already expired in August 2018. The petitioner as such was deprived his valuable statutory right for re-testing of sample as section 24 (3) & (4) of the Act and due to this reason prosecution of the petitioner by filing complaint is vitiated. The argument advanced by the learned Senior Counsel to this effect is legally sustainable. There is no force in argument advanced by the Additional Public Prosecutor that the petitioner has failed to avail the opportunity of getting the sample in question re-tested despite two opportunities.

**12.** Section 24(1) of the Act provides that the Insecticide Analyst shall deliver a signed report in duplicate in the prescribed form to the Insecticide Inspector within a period of thirty days. The Insecticide Inspector submitted sample to analyst on 04.11.2016 and Report was submitted to Insecticide Inspector on 10.01.2017 which is beyond



thirty days and is in contravention of section 24(1) of the Act. This lapse may also vitiate prosecution against the petitioner. There is legal force in argument advanced by the learned Senior Counsel for the petitioner that Report is invalid having been prepared beyond statutory period of thirty days.

**13.** Section 26(6)(ii) of the Act casts a mandatory duty on the Insecticide Inspector to produce sample of insecticide before the trial court. The learned Senior Counsel for the petitioner also argued that the respondent did not produce second sample with the complaint in violation of section 22(6)(ii) of the Act but submitted the second sample on 25.02.2019 on application filed by the petitioner before the trial court. The Insecticide Inspector produced sample only on 25.02.2019 before the trial court and as such violated section 26(6)(ii) of the Act.

**14.** In view of above narration, the present complaint against the petitioner is vitiated due to many procedural lapses. The trial arising out of the present complaint cannot continue against the petitioner. The petition is accordingly allowed and present complaint titled as **Licensing Officer (Insecticide) V M/s Rajesh Enterprises &**



**another** and bearing CC No. 13384/17 is quashed along with consequential proceedings including summoning order dated 11.12.2017 qua the petitioner.

**DR. SUDHIR KUMAR JAIN  
(JUDGE)**

**DECEMBER 14, 2023**

*N/AK*