



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-27703-2023
DATE OF DECISION :14.01.2025

M/S Fineline Agriaids Pvt. Ltd. Ahamedabad and others

...Petitioner

Versus

State of Punjab

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Deepak Aggarwal, Advocate
for the petitioner.

Mr. Rishabh Singla, AAG Punjab.

HARPREET SINGH BRAR J.(Oral)

1. Present petition has been preferred under Section 482 of Code of Criminal Procedure (now Section 528 of BNSS) seeking quashing of the Complaint no. COMA-246-2019 titled as *State of Punjab through Insecticide Inspector Vs. M/s Shiva Pesticides and Seed Store and Others* dated 14.06.2019 (Annexure P-8), as well as order dated 01.07.2019 (Annexure P-9) passed by learned Sub-Divisional Judicial Magistrate, Phul summoning the petitioner under Section 29(a) of the Insecticides Act, 1968 (hereinafter 'the Act').

2. Succinctly, the facts of the case are that the Insecticide Inspector visited M/s Shiva Pesticides & Seed Store, Village Buggran, District Bathinda on 08.07.2016. The Inspector found 37 packets of Cartap Hydrochloride 4% GR bearing Batch N0. F1/2, Mfg Date- June 2015, Exp



Date- May 2017, weighing 5 kg each. Out of these 37 packets, the Insecticide Inspector selected 1 packet, weighing 5 kg, of Cartap Hydrochloride 4% GR and three samples were drawn from it, in accordance with the procedure laid down in the Act. Three sealed samples comprising of 250 g each bearing seal no. II/13/BTI were prepared on the same day i.e. 08.07.2016, in the presence of Sh. Sukhdev Khan, Proprietor of M/s Shiva Pesticides and Seed Store. Thereafter, one sample was deposited in the office of Chief Agriculture officer, Bathinda, the second sample was sent to Senior Analyst, Insecticide Testing Laboratory, Ludhiana and third sample was deposited with Assistant Plant Protection Officer, Bathinda. Each of the sample was submitted with their designated department on 26.07.2016.

3. Learned Counsel for the petitioner contends that sample was taken on 08.07.2016 and sent to the concerned departments on 26.07.2016 i.e. after the gap of 18 days, which is in violation of mandatory provision of section 22(6) of the Act. Furthermore, the second reference sample was sent to Central Insecticide Laboratory, Faridabad on 21.12.2016 i.e after the gap of more than 5 months to reanalyse the sample and yet again it was found to be misbranded. The inordinate delay of exceeding five months is also in contravention of the provisions of section 22(6) of the Act. The learned counsel further submitted that as per section 24 of the Act, the Insecticide Analyst to deliver the signed report in duplicate to the Insecticide Inspector within 30 days.

4. *Per contra* learned State Counsel contends that as per the test report of the Senior Analyst, Ludhiana, the sample was declared misbranded and the active ingredient was also 2.43% as opposed to 4% GR.



The learned counsel further argues that the M/s Shiva Pesticides and Seed Store, Buggran Distt. Bathinda purchased the misbranded insecticide with the knowledge and connivance of each other.

5. Having heard the learned counsel for the parties and after perusing the record, it transpires that in the present case, the initial sample was drawn on 08.07.2016 and submitted on 26.07.2016 i.e after an inordinate delay of 18 days. Section 22 of the Act lays down the procedure to be followed by the Insecticide Inspector. The relevant provision is reproduced hereinbelow:

Section 22. Procedure to be followed by Insecticide Inspectors.—

xxx

xxx

xxx

(6) The Insecticide Inspector shall restore one portion of a sample so divided or one container, as the case may be, to the person from whom he takes it and shall retain the remainder and dispose of the same as follows:—

*(i) one portion or container, he shall **forthwith** send to the Insecticide Analyst for test or analysis; and*

(ii) the second, he shall produce to the court before which proceedings, if any, are instituted in respect of the insecticide.

6. A perusal of the same indicates that the sample must be deposited with the concerned departments for testing forthwith i.e. without any delay. However, in the matter at hand, there has been a significant delay of 18 days in depositing the samples, for reasons best known to the prosecution. The Act is a special statute and it is trite law that if a special enactment lays down the provisions regarding procedure that must be adopted for investigation and adjudication of an offence that falls in its purview, general provisions of the IPC or the Cr.P.C. (now BNS and BNSS, respectively) will not be attracted. Reliance in this regard can be placed on



the judgment of the Hon'ble Supreme Court in *Jeewan Kumar Raut and another vs. C.B.I (2009) 7 SCC 526* and this Court in *Ajay Kumar Sandhu vs. State of Haryana in CRM-M-29708-2014*.

7. Further, a similar question arose before Co-ordinate bench of this Court in *Sohan Singh vs. State of Punjab CRM-M-12926-2018 dated 16.01.2023*, wherein here was a delay of 6 days in sending the sample. Taking note of the violation of the mandatory provision of Section 22(6) of the Act, this Court quashed the summoning order of the accused. Another Co-ordinate bench of this Court in *M/s S.S. Fertilizer and another vs. State of Punjab, 2017(2) R.C.R.(Criminal)59*, held the delay of 4 days in sending the sample for testing to be fatal to the prosecution. Reliance in this regard can also be placed on the judgment rendered by this Court in *B.S. Rana vs. State of Punjab, 2008(3) R.C.R. (Criminal) 210*.

8. As an upshot of above discussion, the present petition is allowed and the summoning order dated 01.07.2019 passed by learned Sub-Divisional Judicial Magistrate, Phul and all the consequential proceedings are hereby quashed qua the petitioners. Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

14.01.2025
Ajay Goswami

(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No