

showing "the transfer of bottles against the security deposit instead of outright sale is only a devise to evade the tax on the bottles" and cannot be taken as a proof of nature of transaction. Under the statutory provisions, a dealer could sell only bottled beer to the L-1 licenses and further L-1 licensee could sell beer in the bottled condition only. "Opened beer bottles could not be sold by L-1 licensee to his customers. The L-1 licensee was under obligation to return the bottles to the dealer and further he had no domain over the bottles which he sold to his customers as under law he could sell the beer only in sealed bottles". We do not find any substance in the submission of learned counsel appearing for the dealer that the words "security deposit" implied an obligation on the L-1 licensee to return the bottles to the dealer. These words, in the absence of any other evidence, would not create an obligation on L-1 licensee to return the bottles to the dealer specially when L-1 licensee sells the beer to his customers in bottled condition with no corresponding obligation on the customer to return the empty bottles to the L-1 licensee. "It may further be noticed that there was no time frame fixed for the return of bottles by L-1 licensee to the dealer to obtain the refund". It was further conceded by the learned counsel appearing for the dealer in this Court that on every consignment to the L-1 licensee a fresh deposit of security was taken for the bottles supplied. It is admitted position in this case that not a single bottle was in fact returned by the L-1 licensee to the dealer. We are in agreement with the view taken by the Bombay High Court in *Arlem Breweries'* case (supra) which in a way stands approved by their lordships of the Supreme Court in *Raj Sheel's case* (supra). Accordingly we answer the question in the affirmative, i.e. in favour of the Revenue and against the dealer and hold that the course of dealings between the parties show that "the amount of money claimed by the dealer as having been received as security was in fact part of the sale price and that the assessee is liable to pay sales tax on the same."

S.C.K.

Before : Hon'ble G. R. Majithia, J.

BALDEV KRISHAN AND OTHERS,—*Petitioners.*

versus

STATE OF PUNJAB,—*Respondent.*

Criminal Misc. No. 6435-M of 1991

November 25, 1991.

*Code of Criminal Procedure, 1973—Section 482—Quashing—
Insecticides Act 1968—Sections 24(3), 24(4)—Petitioners summoned*

after expiring date of the insecticide—Denied right to get sample reanalysed from Central Insecticide Testing Laboratory under S. 24(4) of the Act—Provisions of section 24 are mandatory—Petitioner seeking quashing of complaint—Held that petitioner issued show cause notice under section 24(3)—Petitioner failed to notify Inspector that they wanted to controvert report—cannot be allowed to urge their valuable right was defeated—S. 24(4) only comes into operation when intention is expressed by sending a notice to the Inspector to lead evidence to controvert report.

Held, that they having failed to avail the right under sub-section (3) of section 24 of the act, cannot be allowed to urge that their valuable right was defeated. Sub-section (4) of section 24 says that where a person has notified his intention under sub-section (3) of adducing evidence to controvert the report of the Insecticide Analyst, the court seized of the complaint may of its own motion or at the request of either of the parties, send the sample of the insecticide for analysis to the Central Insecticides Laboratory. Sub-section (4) of section 24 of the Act will only come into operation where the person from whom the sample has been taken, expresses his intention by sending a notice to the Insecticide Inspector, to lead evidence to controvert the report. If the notice in writing is not given, as envisaged under sub-section (3) of section 24, the provisions of sub-section (4) of section 24 will not come into play. Sub-sections (3) and (4) of section 24 have to be harmoniously read, and the provisions of either of the two sub-sections cannot be read in isolation of the other. The petitioners did not exercise the option under sub-section (3) of the section 24 of the Act. At this stage it cannot be urged that their valuable right under sub-section (4) of the section 24 of the Act was infringed.

(Para 4)

Ravinder Chopra, Advocate, Arun Chandra, Advocate with him.
for the Petitioners.

A. S. Jatana, A.A.G. Punjab, *for the Respondent.*

JUDGMENT

(1) The petitioners, who are partners of M/s Kisan Beej Bhandar, Gur Bazar, Malout, have moved this Court for quashing complaint under Sections 3(k) (i), 17, 18, 29 and 33 of the Insecticides Act, 1968, and rule 27(5) of the Insecticides Rules, 1971, filed against them and the manufacturer M/s Thakar Chemicals, New Delhi. The manufacturer has not been made a party to this petition. In the petition, it is stated that the dealer has violated Section 3(k) (i), 18 and 33 of the Insecticides Act, 1968 (hereinafter referred to as 'the Act'), by selling misbranded insecticides, and the manufacturer violated Sections 3(k) (i), 17, 18 and 33 of the Act by manufacturing and selling misbranded insecticides.

(2) The only ground on which the petitioners have moved this Court for quashing the FIR is that the sample was taken on 24th July, 1990 in form XII, giving details of the name of the insecticide, batch number, expiry date etc. The date of manufacturing was May 1990, whereas the expiry date was April 1991. The complaint was filed in Court of Judicial Magistrate Ist Class, Gidarbaha, on March 20, 1991, and the summons were issued for 16th May, 1991, and on the date they appeared in the Court, they found that the expiry date of the insecticide was April 1991; resultantly, they were deprived of the valuable right to get the sample reanalysed from the Central Insecticides Testing Laboratory under Section 24(4) of the Act. The provisions of sub-section (4) of section 24 of the Act are mandatory, but in the instant case the said provisions have been rendered nugatory, since the petitioners were summoned for a date after the expiry date.

(3) In the written statement filed by the Agricultural Development Officer, Malout, on behalf of the state, it is stated that the Insecticide Inspector took the sample in conformity with the mandatory provisions of the statute and the rules framed thereunder. He gave one container of sealed sample to the petitioners, from whom the sample was taken. On receipt of the result from the Punjab Insecticide Quality Control Laboratory, Ludhiana, the petitioners were duly served with a show cause notice, along with copies of test reports by the Chief Agricultural Officer, Faridkot,—*vide* letter No. 13279 dated 27th September, 1990. After receipt of the report, the petitioners could get the sample re-analysed under sub-section (3) of section 24 of the Act. The test report issued by the Punjab Insecticide Quality Control Laboratory, Ludhiana, was served upon the petitioners before the date of expiry of the sample, i.e. April 1991. He submits that the right of the petitioners to get the sample reanalysed was not violated.

(4) In order to appreciate the rival contentions, it is necessary to examine sub-sections (3) and (4) of Section 24 of the Act. The same read thus :—

24(3) "Any document purporting to be 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 notify in writing, the Insecticide Inspector of the Court before which any proceedings in respect of the sample are

pending, that he intends to adduce evidence in controversion of the report.”

24(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 make the test or analysis and report in writing signed by, or under the authority of, the Director of Central Insecticides Laboratory, the result thereof, and such report shall be conclusive evidence of the facts stated therein.

Sub-section (3) of Section 24 says that the report and the insecticide analysis is conclusive evidence of the facts stated therein, but the person from whom the sample was taken can within 28 days of the receipt of the copy of the report notify in writing, Insecticide Inspector or the Court before which any proceedings in respect of the sample are pending, that he intends to adduce evidence to controvert the report. The petitioner received the result of the test report issued by the Punjab Insecticide Quality control Laboratory, Ludhiana, along with show cause notice,—*vide* letter No. 13279, dated 27th September, 1990 from the Chief Agricultural Officer, Faridkot. **The receipt of this letter is not denied.** The said letter issued the Chief Agricultural Officer, Faridkot, on 27th September, 1990, could have been received by the petitioners the day following, or latest by 30th September, 1990. They did not notify to the Insecticide Inspector within 28 days of the receipt of the report that they wanted to controvert the report by adducing evidence, and the only method of controverting the report is to send the sample retained by the petitioner to the Central Insecticides Laboratory. They having failed to avail the right under sub-section (3) of section 24 of the act, cannot be allowed to urge that their valuable right was defeated. Sub-section (4) of section 24 says that where a person has notified his intention under sub-section (3) of adducing evidence to controvert the report of the Insecticide analyst, the Court seized of the complaint may of its own motion or at the request of either of the parties, send the sample of the insecticide for analysis to the Central Insecticides Laboratory. Sub-section (4) of section 24 of the Act will only come into operation where the person from whom the sample has been taken, expresses

his intention by sending a notice to the Insecticide Inspector, to lead evidence to controvert the report. If the notice in writing is not given, as envisaged under sub-section (3) of section 24, the provisions of sub-section (4) of section 24 will not come into play. Sub-sections (3) and (4) of section 24 have to be harmoniously read, and the provisions of either of the two sub-sections cannot be read in isolation of the other and on harmonious construction, the irresistible conclusion is that the person from whom the sample was taken on receipt of the test report, must intimate the Insecticide Inspector of his intention to lead evidence to controvert the report. If the notice in writing has been served on the Insecticide Inspector, the court may on the request of either of the parties send the sample for testing or re-analysis. The petitioners did not exercise the option under sub-section (3) of section 24 of the Act. At this stage it cannot be urged that their valuable right sub-section (4) of section 24 of the Act was infringed.

(5) Learned counsel for the petitioners cited some authorities to contend that sub-section (4) of section 24 of the Act gives a very valuable right to the petitioners, from whom the sample was taken. Those authorities have no applicability to the facts of the instant case, since in those authorities the dispute did not arise, rather it was not disputed that the person from whom the sample was taken, exercised his option under sub-section (3) of section 24 of the Act.

(6) The manufacturer has not challenged the complaint, and has not joined the petition; presumably it wants the matter to be tried.

(7) For the reasons stated above, the petition fails and is accordingly dismissed. The trial Magistrate is directed to proceed expeditiously with the trial of the complaint.

J.S.T.

Before : J. L. Gupta, J.

BHAGAT RAM.—Petitioner.

versus

THE STATE OF PUNJAB AND OTHERS.—Respondents.

Civil Writ Petition No. 10371 of 1991

February 11, 1992

Constitution of India 1950—Art 226 and 227—Punjab Department of Public Works (Buildings and Roads Branch) Circle offices (Class III Ministerial) Service Rules 1988—Promotion—Challenge