

Before Hon'ble P. K. Jain, J.

JAGDISH CHANDER KHURANA & ANOTHER,—*Petitioner.*

versus

STATE OF PUNJAB,—*Respondent.*

Crl. M. No. 2586-M of 1995.

23rd August, 1996.

Insecticides Act, 1968—Ss. 24 & 31—Seized insecticide on analysis form misbranded—Show Cause Notice alongwith Analyst's report served on dealer/manufacturer—Challan put in Court after the expiry of shelf life of the insecticide—Petitioner deprived of his right to get re-testing of the counter sample through Court—Effect of.

Held, that the complaint in itself was filed after the expiry of the shelf life of the insecticide in question. It is also not disputed that a request for the retesting of the counter sample can be made to the Court if proceedings in respect of the sample test by the insecticide Analyst are already pending in any Court. Consequently, if the complaint itself has been filed in a Court after the expiry of the shelf life of the insecticide, it will be taken that the accused has been debarred of his valuable right to get the same retested, because due to the expiry of the shelf life of the insecticide, its ingredients are bound to deteriorate or become less active. Service of notice regarding the sample having been found to be misbranded before the expiry of the date of the shelf life of the insecticide, thus, is of no consequence.

(Para 10)

Ravinder Chopra, Advocate, for the Petitioners.

Ramanjit Singh, A.A.G., Punjab, for the Respondent State.

JUDGMENT

P. K. Jain, J.

(1) By this judgment two Criminal Miscellaneous petition Nos. 2586-M of 1996 and 2588-M of 1996 shall be disposed of as the same have arisen out of the same complaint and also involve common question of law and facts.

(2) M/s Ajay Fertichem (Bombay) Private Limited, one of the petitioners in Crl. Misc. No. 2586-M of 1996 is the manufacturer and Jagdish Chander Khurana is carrying on business under the name

and style of M/s Jagdish Chander Khanna, who is the dealer of an insecticide known as Monocrotophos 36 per cent. On February 22, 1994, the Insecticides Inspector purchased 3 tins, each containing $\frac{1}{2}$ litre of the aforesaid insecticide, by way of sample from the said dealer. The manufacturing date thereof was May 1993 and the expiry date April 1994. The sample, on analysis, was found to be misbranded. A show cause notice along with the copy of the Analyst's report were delivered to the dealer as well as to the manufacturer. After obtaining necessary consent, a complaint was filed against the dealer as well as the manufacturer in the Court of Chief Judicial Magistrate, Ferozepur.

(3) The dealer as well as the manufacturer have filed the present petitions for quashing the said complaint on the grounds that the complaint has been filed after the expiry of the shelf life of the insecticide in question and they have been deprived of a valuable right conferred upon them by Section 24 of the Insecticides Act, 1968 (for short 'the Act') and that the provisions of Sections 30 and 31 of the Act have not been complied with.

(4) Notice of motion was issued to the respondent.

(5) In reply, the factual position as narrated above has not been disputed. It has been pleaded that the petitioners never applied before the department for sending the counter sample for testing to the Central Laboratory in spite of the notice served upon them, and thus no right of the petitioners under section 24 of the Act has been violated in this case. It has been further stated that necessary provisions of the Act have been complied with and the complaint has been filed in accordance with law.

(6) I have heard the learned counsel for the parties and have gone through the record.

(7) Mr. Ravinder Chopra, Advocate, learned counsel for the petitioners, has confined his arguments only to one ground of challenge, i.e. the complaint having been filed after the expiry of the shelf life of the insecticide is liable to be quashed since the petitioners have been deprived of their valuable right conferred by Section 24(4) of the Act. On the other hand, Shri Ramanjit Singh, Assistant Advocate General, Punjab, has argued that even inspite of the show cause notice alongwith the copy of the report of the Analyst having been served upon the petitioners, they never

challenged the correctness of the report and demanded that the second sample be sent to the Central Laboratory and, therefore, the petitioners cannot take the shelter behind the provisions of Section 24(4) of the Act.

(8) The relevant portion of Section 24 of the Act may be noticed as under :—

“24(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 Insecticides Inspector or the Court before which any proceedings in respect of the sample are pending that he intends to adduce evidence in contravention 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 controversy 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 the Central Insecticides Laboratory the result thereof an such report shall be conclusive evidence of the facts stated therein.

Thus, Section 24 of the Act confers two rights i.e. the right to challenge the correctness of the report of the analysis on the receipt of the show cause notice, and secondly, to challenge the same and to make a request before the Court for reanalysis of the counter sample after the complaint is filed. The provisions of this section simply provide that in case a written request is made by the dealer or the manufacturer expressing its intention to controvert the report of the Analyst, the report shall not be conclusive evidence of the facts contained therein. Therefore, the service of the notice regarding the sample being misbranded or intimating the dealer or the manufacturer that the reanalysis can be ordered by a Court before the date of expiry of shelf life of the insecticide, is of no consequence. The

material requirement of the Act is that the complaint should be filed and the accused should be served well in time before the expiry of the shelf life of the insecticide in question so as to enable the accused persons to challenge the correctness of the report of the Analyst by forwarding the counter-part of the sample to the Central Laboratory. If this right of an accused under the Act is violated by inaction or omission on the part of the department, the same is fatal to the prosecution.

(9) In *Municipal Corporation of Delhi v. Ghisa Ram* (1), due to inordinate delay in instituting the prosecution, a valuable right conferred by section 13(2) of the Prevention of Food Adulteration was taken away. In these circumstances, the apex Court made the following observations :—

“It appears to us that when a valuable right is conferred by Section 13(2) of the Act on the vendor to have the sample given to him analysed by the Director of the Central Food Laboratory, it is to be expected that the prosecution will proceed in such a manner that the right will not be denied to him. The right is a valuable one because the certificate of the Director supersedes the report of the Public Analyst and is treated as conclusive evidence of its contents. Obviously the right has been given to the vendor in order that for his satisfaction and proper defence he should be able to have the sample kept in his charge analysed by a greater expert whose certificate is to be accepted by Court as conclusive evidence. In a case where there is denial of this right on account of the deliberate conduct of the prosecution, we think that the vendor, in his trial, is so seriously prejudiced that it would not be proper to uphold his conviction on the basis of the report of the Public Analyst, even though that report continues to be evidence in the case of the facts contained therein.”

While placing reliance upon the aforesaid judgment a complaint under the Act, on identical facts and circumstances, was quashed by this Court in *Mewa Singh v. Pritpal Singh* (2) and *M/s Rai Hans Chemicals v. State of Punjab* (3). Similar views were expressed by

(1) A.I.R. 1957 S.C. 970.

(2) 1994 (1) Recent C.R. 94.

(3) 1994 (3) Recent C.R. 139.

this Court in *M/s Hindustan Pulverising Mills v. State of Haryana* (4), *National Organic Chemicals Ltd v. State of Haryana* (5) and *M/s Jai Chemical v. State of Punjab* (6). This very view has been expressed by this Court in *M/s Thakur Chemicals v. State of Haryana*, Criminal Misc. No. 11102-M of 1995, decided on March 27, 1996.

(10) In the present case, it is not disputed that the manufacturing date of the insecticide in question was May 1993 and the expiry date April 1994. It is also not disputed that the sample was taken on 22nd February, 1994 and the show cause along with the report of the Analyst was served upon the petitioners,—*vide* letter dated 21st March, 1994. It is also admitted that the impugned complaint was filed on 10th August, 1994. In other words, the complaint in itself was filed after the expiry of the shelf life of the insecticide in question. It is also not disputed that a request for the retesting of the counter sample can be made to the Court if proceedings in respect of the sample tested by the insecticide Analyst are already pending in any court. Consequently, if the complaint itself has been filed in a Court after the expiry of the shelf life of the insecticide, it will be taken that the accused has been debarred of his valuable right to get the sample retested, because due to the expiry of the shelf life of the insecticide, its ingredients are bound to deteriorate or become less active. Service of notice regarding the sample having been found to be misbranded before the expiry of the date of the shelf life of the insecticide, thus, is of no consequence. In these circumstances, the filing of the complaint after the expiry of the shelf life is in itself fatal to the complaint. This view finds affirmation in *Bai Manjit Singh, Managing Director, Montari Industries Ltd v. The State of Punjab* (7), *M/s Dwarka Dass Sham Lal v. State of Punjab* (8) and *Mewa Singh's case* (supra). Therefore, I have no hesitation in holding that by filing the complaint after the expiry of the shelf life of the insecticide in question, the petitioners have been deprived of their valuable right conferred by Section 24(4) of the Act, which is itself is fatal to the complaint.

(4) 1992 (2) Recent C.R. 313.

(5) 1992 (1) Recent C.R. 157.

(6) 1994 (3) Recent C.R. 610.

(7) 1992 (1) Recent C.R. 244.

(8) 1993 (3) Recent C.R. 583.

(11) Consequently, I accept this petition and hereby quash the complaint (Annexure P.1) and the consequent proceedings thereon pending in the Court of Chief Judicial Magistrate, Ferozepur.

S.C.K.

Before Hon'ble Swatanter Kumar, J.

JAYVIR SINGH,—*Petitioner.*

versus

RAJ KUMAR & OTHERS,—*Respondents.*

C.O.C.P. No. 1361 of 1995.

12 September, 1996.

Contempt Courts Act. 1971—S. 12—Interim direction of Court not to impound bus of the petitioner passed on 12th October, 1994—Respondent-state filing written statement and contesting claim—Stay order in operation—In contempt petition defence set up that copy of stay order not served upon not worthy of trust—In reply, affidavit on the one hand defence set up and also unqualified apology tendered in case Court found any violation of the order—Such apology in the face of justification of the action is unacceptable—Balance between magnanimity of Court and majesty of justice does not extend at the cost of lowering the majesty and administration of justice—Apology not accepted and guilty officials punished for contempt of Court to suffer civil imprisonment for 15 days and to pay a fine of Rs. 1,000 each.

Held, that the defence put forward by the respondents that the copy of the order was not served upon them is not worthy of any trust and cannot be relied upon. Firstly for the simple reason that the things must be taken to have happened in their normal course with reasonable sense of prudence all should have acted. It is very difficult to believe that a person who has approached the High Court and the Court had passed an order in favour of the party, the party would not take benefit of such orders as would be required in the normal course of business. Considered from any reasonable standard of normal human conduct, the defence put forward by these respondents appears to be not correct. Specially in a trade where every day running of the vehicles is the source of income for the petitioner, he would normally take all steps to ensure the smooth running of his trade especially when he has an order from the Division Bench of the High Court.

(Paras 8 & 9)