

that the draft Standing Orders can relate to matters outside the Schedule. Take, for instance, the case of some of the draft Standing Orders which the appellant wanted to introduce; these had reference to the liability of the employees for transfer from one branch to another and from one job to another at the discretion of the management. These two Standing Orders were included in the draft of the appellant as Nos. 10 and 11. These two provisions do not appear to fall under any of the items in the Schedule; and so, the certifying authorities were quite justified in not including them in the certified Standing Orders."

In the result, it must be held that the Board had no power to transfer the petitioners.

Before concluding it may be mentioned that the stand taken by the Board is that the petitioners had to be transferred to the neighbouring Districts because there was no work available for them at the Thermal Plant. Since I have held that the Board had no power to transfer the petitioners, there is no option left but to quash the impugned order of transfer. It will, however, be open to the Board to retrench the petitioners in accordance with law in case it has no work for them at the Thermal Plant.

(8) For the reasons recorded above, the writ petition is allowed and the impugned orders of transfer quashed. The parties are left to bear their own costs.

J.S.T.

Before Hon'ble Mrs. Harmohinder Kaur Sandhu, J.
M/S SOLAR SYNDICATE, DUNGRI,—Petitioner.

versus

STATE OF PUNJAB,—Respondent.

CrI. M.No. 9335-M of 1992

7th October, 1993

Code of Criminal Procedure, 1973—S. 482—Insecticides Act, 1968—S. 24(3)—Quashing of complaint—Insecticide misbranded—Sample taken in June, 1988—Expiry date May, 1990 and complaint filed in August, 1990 after expiry of shelf life—Denied opportunity to controvert the correctness of report of the Insecticide Analyst—Complaint liable to be quashed.

Held. that under Section 24 of the Act, a report signed by the Insecticide Analyst is an evidence of the fact stated therein and such evidence is conclusive unless the person from whom the sample was taken, notifies in writing within twenty-five days of the receipt of a copy of the report his intention to adduce evidence in contravention of the report. He can controvert the report of the Insecticide

Analyst by getting the second sample analysed from Central Insecticides Laboratory. In the present case, the petitioner was not served with copy of the report of the Insecticide Analyst and he was thus deprived of his right to get the second sample analysed from Central Insecticides Laboratory. He got notice of the complaint after more than two years of the expiry of shelf life of the sample. In this way, he was denied an opportunity to controvert the correctness of the report of the Insecticide Analyst and proceedings are liable to be quashed on this ground.

(Para 6)

Arun Chandra, Advocate, for the Petitioner.

A. R. Sidhu, D.A.G. Punjab, for the Respondent.

JUDGMENT

Harmohinder Kaur Sandhu, J.

(1) M/s Solar Syndicate, Dungri, have filed the present petition through Shri Gurinder Singh, Executive (Operations-North) under Section 482, Code of Criminal Procedure read with Article 227 of the Constitution of India for quashing the complaint Annexure P-3 pending in the Court of Chief Judicial Magistrate, Patiala, under section 2k(i) and 29(1) of the Insecticides Act, 1968, read with rule 27(5) of the Insecticides Rules, 1971, and for quashing all consequent proceedings arising therefrom.

(2) As per allegations made in the complaint, the Insecticide Inspector Jasbir Singh inspected the premises of M/s Ahuja Agro Chemicals, Patiala, on June 23, 1988, and took the sample of Butachlor 50 per cent (Solar) manufactured by the petitioner firm in three sealed packages of the company. All the three packages of tin were further sealed in the presence of Shri Bhupinder Kumar, representative of M/s Ahuja Agro Chemicals, Patiala, and one sealed package was handed over to him. One sealed package was sent to the Insecticide Quality Control Laboratory, Ludhiana, for analysis and the third sealed sample was deposited with Chief Agricultural Officer, Patiala. The Analyst reported that the sample was misbranded as it did not conform to ISI specifications in respect of its percentage of active ingredients test. Thus the complaint was filed against M/s Ahuja Agro Chemicals, Patiala and M/s Solar Syndicate, Dungri (Bulsar), manufacturer of weedicide.

(3) The petitioner alleged that the shelf life of the sample had already expired when the complaint was filed on August 29, 1990. The petitioner firm was summoned for the first time on July 17, 1992, and thus the firm was deprived of its right to get the second sample examined from the Central Insecticides Laboratory and an opportunity to controvert the correctness of the report of the Analyst was denied. No show-cause notice was ever given to the petitioner after

the report of the Analyst was received and the petitioner was denied the benefit of section 24(3) of the Insecticides Act. Two samples of same batch No. 4 which were taken from M/s Kisan Agro Service Centre, Bhunderheri, on May 30, 1988, and M/s Patiala Pesticides, Grain Market Patiala, were found as per ISI specifications. It was further pleaded that before the launching of the prosecution necessary sanction from the State Government was not obtained and in the absence of valid sanction the proceedings were liable to be quashed.

(4) In the return filed by the respondent, this fact was admitted that manufacturing date of the product of which sample was taken was May 1988, and expiry date was May 1990, but it was denied that a report of the Analyst was required to be sent to the manufacturer or that any valuable right of the petitioner was affected. The report of the Insecticide Analyst was to be delivered only to the person from whom the sample was taken and the dealer M/s Ahuja Agro Chemicals, Patiala, was informed about the failure of the sample.—*vide* letter dated September 7, 1988. Regarding sanction it was maintained that proper sanction was granted by the sanctioning authority under section 31(1) of the Insecticides Act, 1968, after due application of mind and perusal of the record placed before the sanctioning authority and moreover this was a matter of evidence which was to be appraised by the trial Court.

(5) I have heard Mr. Arun Chandra, Advocate, the learned counsel for the petitioner and Mr. A. R. Sidhu, Deputy-Advocate-General, Punjab, for the respondent.

(6) The main contention of the learned counsel for the petitioner was that the sample of Butachlor 50 per cent EC was drawn on August 23, 1988. The date of manufacturing of insecticide was May 1988 and shelf life of the sample was to expire in May, 1990, but the complaint was filed in Court on August 29, 1990, i.e., after the expiry of shelf life of the insecticide. The petitioner was summoned for the first time on July 17, 1992, and in this way he was deprived of his right to get the second sample examined from Central Insecticides Laboratory. The complaint was liable to be quashed on this ground alone. This contention of the learned counsel is quite valid. Under section 24 of the Act, a report signed by the Insecticide Analyst is an evidence of the fact stated therein and such evidence is conclusive unless the person from whom the sample was taken, notifies in writing within twenty-five days of the receipt of a copy of the report his intention to adduce evidence in contravention of the report. He can controvert the report of the Insecticide Analyst by getting the second sample analysed from Central Insecticides Laboratory. In the present case, the petitioner was not served with copy of the report of the Insecticide Analyst and he was

thus deprived of his right to get the second sample analysed from Central Insecticides Laboratory. He got notice of the complaint after more than two years of the expiry of shelf life of the sample. In this way, he was denied an opportunity to controvert the correctness of the report of the Insecticide Analyst and proceedings are liable to be quashed on this ground.

(7) So far as the question whether a copy of the report of Insecticide Analyst is required to be sent to the manufacturer or not is concerned, the same has already been settled. It is correct that there is no obligation on the part of the Insecticides Inspector to supply a copy of the report of the analysis to the manufacturer of the insecticide but if the manufacturer of insecticide is sought to be prosecuted, there is no reason why a copy of the report should not be supplied to him. In *Salil Singal and another v. The State of Haryana* (1), it was held :—

“The Insecticide Inspector is not bound to supply a copy of analysis report to manufacturer of insecticides found to be misbranded but in case manufacturer is sought to be prosecuted, copy of the report of analysis is to be supplied to him before launching prosecution against him. Failure to do so rendered the complaint against him, liable to be quashed as it amounted to abuse of process of the Court.”

In the present case, the petitioner was not supplied with copy of the report of Insecticide Analyst and he was thus deprived of his right to rebut the report.

(8) It was next urged on behalf of the petitioner that sample of Butachlor of the same batch was seized from M/s Kisan Agro Service Centre, Bhunderheri and M/s Patiala Pesticides, Grain Market, Patiala, and these were analysed by Senior Analyst, Insecticides Testing Laboratory, Ludhiana, and were found to be satisfactory. As the insecticide of the same batch was found to be according to ISI specifications, the report in the present case was defective and it could not be said that the petitioner company was at fault. This contention of the learned counsel is also tenable. Annexure P-5 and Annexure P-6 are the copies of the report of Senior Analyst which show that Butachlor 50 per cent EC manufactured by the petitioner consisting of batch No. 4 was not misbranded but was according to ISI specifications. This fact is recited in the complaint

Annexure P-3 that the sample taken in the present case was from batch No. 4. In these premises if the complaint had been filed soon after the report of the Insecticide Analyst was received and notice thereof would have been given to the petitioner, the petitioner must have controverted the report of the Insecticide Analyst by getting the second sample analysed from Central Insecticides Laboratory. As the petitioner was deprived of his valuable right of getting the sample re-analysed the complaint against him is liable to be quashed.

(9) As a result, I accept this petition, quash the complaint Annexure P-3 and all subsequent proceedings arising therefrom against the petitioner.

J.S.T.

Before Hon'ble H. S. Bedi & S. C. Malte, JJ.

GANESH DASS & OTHERS,—Petitioners.

versus

STATE OF HARYANA & ANOTHER,—Respondents.

*Crl. M. No. 4615 of 1994 &
Crl. M. No. 3545/M of 1992*

10th August, 1995

Code of Criminal Procedure, 1973—S. 156(3)—Scope and powers of Magistrate—Magistrate not empowered to direct police to register First Information Report—Function of police under Section 154 cannot be usurped by Magistrate under section 156(3).

Held, that in view of the propositions laid down by their Lordships of the Supreme Court in the case of *Tula Ram* and in view of catena of decisions which take the view contrary to the views expressed in the case of *Baru Ram*, we are of the considered opinion that the Magistrate while passing order under section 156(3) Cr.P.C. is not empowered to direct the police to register the First Information Report. The registration of the F.I.R. pertains to the sphere of powers of investigation by the police, and the registration of the First Information Report is done in exercise of powers by the police under Section 154 Cr.P.C. That function of the police need not, and cannot be usurped by the Magistrate while passing an order under Section 156(3) Cr.P.C.

(Para 12)