(2006) 01 P&H CK 0200

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Narinder Kumar Gupta	APPELLANT
Vs	
State of Haryana	RESPONDENT

Date of Decision: Jan. 4, 2006

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Drugs and Cosmetics Act, 1940 - Section 18A, 22, 23, 24, 25
- Insecticides Act, 1968 - Section 17, 21, 22, 24, 25

Citation: (2007) CriLJ 4157 : (2006) 1 RCR(Criminal) 862

Hon'ble Judges: Satish Kumar Mittal, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Satish Kumar Mittal, J.
Petitioner Narinder Kumar Gupta, who was the Manager of M/s. Somanil Chemicals, the manufacturer of the misbranded insecticide, has filed this petition u/s 482, Cr. P.C. for quashing of the complaint filed against him u/s 29(1)(A) and Section 17(1)(A) of the Insecticides Act, 1968 and the subsequent proceedings arising therefrom.

2. In this petition, the contention of the petitioner is that in the aforesaid complaint, the petitioner was summoned after the expiry of the shelf life of the sample, therefore, he has lost his valuable right u/s 24(4) of the Insecticides Act, 1968 (hereinafter referred to as "the Act") of getting the samples of insecticides re-tested from the Central Insecticide Laboratory.

3. In this case, on 12-8-1994, a sample of Phorat 10%G, which was manufactured by M/s. Somanil Chemicals, was taken by the Quality Control Inspector from the business premises of M/s. Rishi Markanda Trading Company, a dealer of the

aforesaid company. The date of manufacture of the said insecticide was July, 1994 and its expiry date was June, 1995. The said sample was found to be misbranded vide report dated 17-8-1994 given by the State Quality Control Insecticide Laboratory, Karnal. The intimation Regarding misbranding of the sample was given to the dealer from whom the sample was taken and the manufacturing company (petitioner) on 18-10-1994. But neither the dealer nor the petitioner company chose to notify their intention to get the sample tested/analyzed from the Central Insecticide Laboratory. Thereafter the complaint was filed against the dealer as well as the petitioner company on 8-3-1995 and all the accused were summoned for 12-7-1995. Till that time, the shelf life of the sample had expired. On 12-7-1995, the case was adjourned as the accused could not be served because of the non-filing of process, and again the accused were summoned for 22-11-1995. It has been alleged that the service was effected on the petitioner only on 10-4-2001. Thereafter, he filed the instant petition.

4. Counsel for the petitioner submitted that as per the Analyst Report (Annexure P-3), it is clear that the shelf life of the sample was expired in June, 1995 whereas the petitioner has been summoned in this case only on 10-4-2001. Thus, the petitioner has been denied the valuable right to get the sample re-analyzed/re-tested from the Central Insecticide Laboratory. Therefore. the complaint as well as the subsequent proceedings are liable to be quashed u/s 24(4) of the Act because of delayed, filing of the complaint. Learned Counsel submitted that under Sub-section (3) of Section 24 of the Act, the dealer from whom the sample was taken as well as the manufacturer of the insecticide are entitled to get re-tested the sample from the Central Insecticide Laboratory within 28 days of the receipt of the copy of the report. Though in the said Section it has been mentioned that the person from whom the sample was taken has a right within 28 days of the receipt of the copy of report to notify in writing the Insecticide Inspector or the Court to his intention to adduce evidence in contravention of the report and to get the sample re- tested from the Central Insecticide Laboratory, but the manufacturer against whom the complaint could be filed, also has a right to notify his intention about adducing evidence in contravention of the report and get the sample re-tested. In support of his contention, learned Counsel for the petitioner relied upon the decisions of this Court in M/s. Raj Hans Chemicals v. State of Punjab (P & H) 1994 (2) RCR (Cri) 139; Hindustan Pulverising Mills v. State of Haryana (P & H) 1997 (2) RCR (Cri) 116 and Jai Shri Agro Industries (P) Ltd. v. State of Haryana (P & H) 1997 (2) RCR 88.

5. Secondly, learned Counsel for the petitioner submitted that the right under Sections 24(3) and 24(4) of the Act are two separate rights. Even if the petitioner/manufacturer of the insecticide has not availed his option u/s 24(3) of the Act in reply to the show-cause notice, but still he has legal right to avail the statutory defence u/s 24(4) of the Act to get the second sample re-tested. In this case, the petitioner has been deprived of that right because he was summoned after the expiry of the shelf life of the sample. In support of his contention. learned Counsel

for the petitioner relied upon a decision of this Court in Mewa Singh v. Prithipal Singh (P & H) 1994 (1) RCR 94 and Trilo Agro Industries (P) Ltd. v. State of Punjab, (P & H) 1997 (3) RCR 632.

6. On the other hand, counsel for the respondent-State submitted that as per the scheme of the Act, when the Insecticide Inspector takes a sample of an insecticide, he shall divide the sample into three portions and then restore one portion of the sample so divided to the person from whom he takes it and retain the remaining two with him out of which he will send one sample to the Insecticide Analyst for test and the other shall be kept by him for producing the same before the Court in which the complaint is to be instituted in respect of the said insecticide. Sub-section (1) of Section 24 of the Act provides that the Insecticide Analyst. to whom a sample of an insecticide has been submitted for test, shall within a period of 60 days, deliver to the Insecticide Inspector the report of the sample in duplicate. Sub-section (2) of Section 24 of the Act provides that the Insecticide Inspector on receipt of the said report shall deliver one copy of the report to "the person from whom the sample was taken" and shall retain the other copy for use in any prosecution in respect of the sample. Sub-section (3) of Section 24 of the Act provides that the report of the Insecticide Analyst shall be conclusive evidence of the facts stated therein unless "the person from whom the sample was taken" has within 28 days of the receipt of the copy of the report notify in writing to the Insecticide Inspector the Court before which any proceedings in respect of the sample are pending that he intends to adduce evidence in contravention of the report,. Learned Counsel submitted that the Insecticide Inspector is required to send a copy of the Analyst report to the person from whom the sample was taken and not to other persons. He further submitted that only the person from whom the sample was taken have a right to get the report and to request for re-testing of the sample within 28 days of the receipt of the report. He submitted that when the sample was taken from the premises of the dealer then the manufacturing company is neither entitled for the copy of the report of the Insecticide Analyst under Sub-section (2) of the Section 24 of the Act nor he has a right to ask the Insecticide Inspector or to the Court to adduce evidence in contravention-of the report. Learned Counsel further submitted that the right of the accused under Sub-section (4) of Section 24 of the Act to get the second sample tested by the Central Insecticide Laboratory arises only if the accused notify his intention to adduce evidence in contravention of the report within 28 days of the receipt of the copy of the report. If the accused did not exercise that option under Sub-section (2) of Section 24 of the Act within the requisite period, then he loses his right and the report of the Insecticide Inspector became conclusive evidence under Sub-section (3) of Section 24 of the Act. In such situation, delay in filing the complaint till the expiry of shelf life of the sample could not prove fatal and on that ground the complaint cannot be quashed. Learned Counsel further submitted that if an accused did not opt to challenge the re-,port of the Insecticide Inspector by adducing evidence contrary to it or ask for re-testing of the sample within the

requisite period as provided under Sub-section (3) of Section 24 of the Act, then the said accused cannot get the sample re-analyzed even as a defence, as until the provisions of Sub-section (3) of Section 24 of the Act are complied with by the person concerned, he cannot avail his right, under Sub-section (4) of Section 24 of the Act. In support of his contention, learned Counsel for the respondent placed reliance upon the decisions of the Hon''ble Apex Court in State of Haryana Vs. Brij Lal Mittal and Others, and Delhi High Court in M/s. Biochem Pharmaceutical and Ors. v. State 2005 (4) RCR 414. The learned Counsel submitted that in the instant case the report of the Insecticide Inspector was sent to the dealer as well as to the petitioner company under Sub-section (2) of Section 24 of the Act though the petitioner being manufacturer was not entitled for the said report, but neither the dealer nor the petitioner opted for re-testing of the sample within 28 days of the receipt of the said report nor shown any intention to lead evidence in contravention of the report within 28 days of the receipt of the copy of the same. Thus the report of the Insecticide Inspector shall be conclusive evidence of the facts stated therein. Thus, the petitioner has no legal right before the Court to get the sample re-analyzed even in defence, therefore, the summoning of the petitioner after the expiry of the shelf life of the sample is without any consequence, and on this ground the complaint and the subsequent proceedings cannot be quashed.

7. Before considering the submissions made by the counsel for the parties, it will be necessary to notice the scheme of the Act regarding taking of the sample by the Insecticide Inspector and getting the same analyzed from the Insecticide Analyst. Section 21 of the Act provides the powers of the Insecticide Inspectors. He has the power to enter and search, at all reasonable time, any premises in which he has reason to believe that an offence under this Act or the rules made thereunder has been committed. He can take sample of an insecticide and send such sample for analysis to the Insecticide Analyst in the prescribed manner. Sub-section (3) of Section 22 of the Act provides that where an Insecticide Inspector takes any sample of an insecticide, he shall issue a receipt thereof. Sub-section (5) of Section 22 of the Act provides that he shall divide the sample into three portions and effectively seal and suitably mark the same and also permits such person from whom he takes it to add his own seal or mark to all the portions. Sub-section (6) of Section 22 of the Act provides that the Insecticide Inspector shall restore one portion of the sample to the person from whom it has been taken, and out of the remaining two portions, one he will send to the Insecticide Analyst for analysis and the third portion will be retained by him for producing in the Court before which the proceedings in the case are instituted in respect of the said insecticide.

8. Section 24 provides for report of the Insecticide Analyst. Sub-section (1) of Section 24 of the Act provides that the Insecticide Analyst shall deliver the Analyst report in duplicate to the Insecticide Inspector within a period of sixty days. Sub-section (2) provides that the Insecticide Inspector on receipt of the said report will deliver a copy of the said report to the person from whom the sample was taken and will

retain the other copy for use in any prosecution in respect of the sample. Sub-section (3) provides that the said report of the Insecticide Analyst shall be conclusive evidence of the facts stated therein, unless the person from whom the sample was taken, has within 28 days of the receipt of the copy of the report notified in writing to 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. Sub-section (4) of Section 24 of the Act provides that unless the sample has already been tested or analyzed in the Central Insecticides Laboratory, where a person has notified his intention of adducing evidence in controversion of the Insecticides Analyst''s report, the Court may have discretion at the request either of the complainant or of the accused, to send the sample of an insecticide produced before it for test or analysis to the Central Insecticides Laboratory and such report shall be conclusive evidence of the facts stated therein.

9. For facility of reference, Section 24 of the Act is reproduced below:

24. Report of Insecticide Analyst.- (1) The Insecticide Analyst to whom a sample of any insecticide has been submitted for test or analysis under Sub-section (6) of Section 22, shall, within a period of sixty days, deliver to the Insecticide Inspector submitting it a signed report in duplicate in the prescribed form.

(2) The Insecticide Inspector on receipt thereof shall deliver one copy of the report to the person from whom the sample was taken and shall retain the other copy for use in any prosecution in respect of the sample.

(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 same are pending that he intends to adduce evidence in controversion of the report.

(4) Unless the sample has already been tested or analyzed in the Central Insecticides Laboratory, where a person has under subsection" (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, within a period of thirty days, 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, and such report shall be conclusive evidence of the facts stated therein.

(5) The cost of a test or analysis made by the Central Insecticides Laboratory under Sub-section (4) shall be paid by the complainant or the accused, as the Court shall direct.

10. Thus, from the reading of the aforesaid provision, it is clear that the Insecticide Inspector will deliver a copy of the report of the Insecticide Analyst to the person from whom the sample was taken, but he is not bound to deliver a copy of the report to any other person, even the manufacturer, if the sample is not taken from him. When the report is given to the person from whom the sample was taken, he has a right to notify his intentions in writing to the Insecticide Inspector or the Court before which any proceedings in respect of the sample are taken that he intends to adduce evidence in controversion of the report. If he does not notify his intention, then the facts stated in the Insecticide Analyst''s report shall be conclusive. The right to get the sample tested by the Central Insecticides Laboratory through the Court accrues to a person accused in the case only if he had earlier notified his intention in accordance with Sub-section (3) of Section 24 of the Act of adducing evidence in controversion of the report of the Insecticide Analyst. Unless the requirement of Sub-section (3) is complied with by the person concerned, he cannot avail his right under Sub-section (4) of Section 24 of the Act.

11. Therefore, under the aforesaid provisions of the Act, the Insecticide Inspector is not bound to deliver the copy of the report to the manufacturer in case the sample was taken from a dealer Because as per Sub-section (2) of Section 24 of the Act, he has to deliver a copy of the report to the person from whom the sample was taken. Under Sub-section (3) also, a right has been given to the person from whom the sample was taken to notify his intention to adduce evidence in controversion of the report within the requisite time. Here also the manufacturer has not been given any right to ask for the re-testing the sample expressing his intentions to adduce evidence in controversion of the report.

12. In this regard, the provisions are slightly different under the Drugs and Cosmetics Act, 1940 (hereinafter referred to as ''the Act of 1940). The provisions under the Act of 1940 are almost pari materia but with slight difference. Section 22 of the Act of 1940 provides the powers of Inspector. He may take sample of a drug or cosmetic which is being manufactured or being sold or is stocked or exhibited or offered for sale or is being distributed. Section 23 of the Act of 1940 provides that where an Inspector takes a sample of a drug or cosmetic for the purpose of test or analysis, he shall divide the same into four portions, but where he takes the sample from the premises of the manufacturer whereon the drug or cosmetic is being manufactured, he shall divide the same into three portions only. Out of the four portions, he will restore one portion of the sample to the person from whom it was taken. Out of the remaining portions, one portion he will spend to the Government Analyst for test and second he will produce to the Court before whom the proceedings, if any, are instituted; and the third, where taken, he shall send to the person, whose name, address and other particulars have been disclosed u/s 18A. Section 18A of the Act of 1940 provides that every person, not being the manufacturer of a drug or cosmetic or his agent for the distribution thereof, shall disclose to the Inspector the name, address and other particulars of the person

from whom he acquired the drug or cosmetic. Thus, under the Act of 1940, when a sample is being taken by the Inspector and he has been disclosed the name of the manufacture, he is bound to divide the sample into four portions and send one portion of the sample to the manufacturer whose name has been disclosed u/s 18A. Thus, there is a difference between these two Acts regarding sending one portion of the sample to the manufacturer. Under the Insecticide Act there is no such provision. Further Section 25 of the Act of 1940 provides for report of the Government Analysts. Sub-section (1) of Section 25 provides that the Government Analyst will deliver a copy of the report to the Inspector in triplicate. Sub-section (2) provides that the Inspector on receipt of the report of the Government Analysts, shall deliver one copy of the report to the person from whom the sample was taken and another copy to the person whose name has been disclosed u/s 18A of the Act of 1940 and retain the third copy for use in prosecution in respect of the said sample. Sub-section (3) provides that the report of the Government Analyst shall be conclusive evidence of the facts stated therein unless the person from whom the sample was taken or the person whose name has been disclosed u/s 18A of the Act of 1940, has within 28 days of the receipt of a copy of the report, notified in writing to the 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. Similarly, Sub-section (4) of Section 25 of the Act of 1940 provides the right of a person to get the sample tested from Central Drugs Laboratory provided he has notified his intention to adduce evidence in controversion of the Government Analyst''s report. The provisions of .S. 24 of the Act and 25 of the Act of 1940 are almost similar except that under the Act of 1940, an additional duty has been cast on the Inspector to send a copy of the report to the manufacturer whose name has been disclosed u/s 18A and a right has been given to the manufacturer to get the said sample analysed from the Central Drugs Laboratory by notifying his intention within 28 days of the receipt of the sample to adduce evidence in controversion of the report.

13. The aforesaid provisions in both the Acts have been considered by the Hon''ble Apex Court in various cases. In State of Haryana Vs. Brij Lal Mittal and Others, , which has a case under the Act of 1940, where the manufacturer of the drug did not controvert the report within the required period of 28 days after receipt of the report of the Government Analyst, but by way of defence, he submitted that the complaint had been filed after a long delay by which time the shelf-life of the drug had expired, therefore, the complaint was liable to be quashed. While rejecting the contentions of the manufacturer, the Hon''ble Apex Court observed as under:

5. From a bare perusal of Sub-section (3) it is manifest that the report of the Government Analyst shall be evidence of the facts stated therein and such evidence shall be conclusive unless the person from whom the sample was taken or the person whose name, address or other particulars have been disclosed u/s 8A (in this case the manufacturers) has within 28 days of the receipt of the report notified in

writing the Inspector of the Court before which any proceedings in respect of the same are pending that he intends to adduce evidence in controversion of the report. Sub-section (4) also makes it abundantly clear that the right to get the sample tested by Central Government Laboratory (so as to make its report override the report of the Analyst) through the Court accrues to a person accused in the case only if he had earlier notified in accordance with Sub-section (3) his intention of adducing evidence in controversion. of the report of the Government Analyst. "To put it differently, unless requirement of Sub-section (3) is complied with by the person concerned he cannot avail of his right under Sub-section (4).

14. The observation of the High Court that Sub-section (4) of Section 25 of the Act of .1940 gives a right to the accused to call for the sample and send it to the Central Drugs Laboratory and if by the time the complaint is filed, the shelf-life of the sample had expired, then the accused loses his valuable right to get the sample analysed from the Central Drugs Laboratory, and thus prejudice is being caused to the accused, has been rejected that it was held that the right to get the sample examined by the Central Drugs Laboratory through the Court before which the prosecution is launched arises only if the person concerned notifies in writing the Inspector or the Court concerned within 28 days from the receipt of the copy of the report that he intends to adduce evidence in controversion of the report. If the accused person did not exercise that option within the prescribed time, then not only the right of the said person to get the sample tested by the Central Drugs Laboratory through the Court concerned stood extinguished but; the report of the Government Analyst also became conclusive evidence under Sub-section (3) of Section 25 of the Act of 1940. In such case, the delay in filing the complaint till the expiry of the shelf-life of the drugs could not, therefore, have been made a ground by the High Court to quash the prosecution.

15. In Amery Pharmaceuticals and Another Vs. State of Rajasthan, , the Hon''ble Apex Court again considered the case of a manufacturer. In that case, though the manufacturer was served with a copy of the report of the Government Analyst but he did not notify his intention to challenge the report. During the prosecution at the stage of defence, it was held that mere non supply of one portion of the sample to the manufacturer did not prejudice the right of the manufacturer. If the report of the Government. Analyst was supplied to the manufacturer, then he was required to notify the Inspector or the Court concerned his intention to adduce evidence in controverston of the report, but if such person fails to give such notice within the period of 28 days, the facts contained in the report would operate as conclusive evidence against the person who failed to give such notice. In that case, the Hon''ble Apex Court has observed as under:

10. The aforesaid contention is advanced on a misconception that the mode of challenge against the report of the Government Analyst is by sending the portion of the sample kept with the vendor (the person from whom the sample was taken). The

requirement of Sub-section (3) is that one of the persons to whom the copy of the report is given, if he wants to challenge the report, has to notify the trial Court of the Inspector concerned of the intention to adduce evidence in controversion of the report. If he does not do so within 28 days of receipt of a copy of the report of the Government Analyst its consequence would be that the facts contained in the report would become conclusive as against those persons. The notice to be given shall convey the intention of the person concerned, "to adduce evidence in controversion of the report." If such a notice is given, it is open to the person who gives such notice, to adduce any evidence for the purpose of contradicting the findings in the report. But if such person fails to give any such notice within the said period of 28 days the findings in the report would operate as conclusive evidence against the person who failed to give such notice.

11. One of the modes of challenging the report is indicated in Sub-section (4) of Section 25. It reads thus:

25(4) Unless the sample has already been tested or analysed in the Central Drugs Laboratory, where a person has under Sub-section (3) notified Analyst''s report, the Court may, if its own motion or in its discretion at the request either of the complainant or the accused cause the sample of the drug or cosmetic produced before the Magistrate under Sub-section (4) of Section 23 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 Drugs Laboratory the result there of and such report shall be conclusive evidence of the facts stated therein.

12. If the person who was given a copy of the report of the Government Analyst notifies his intention to challenge the report it is open to the Court to forward the portion of the sample kept in the Court, to the Central Drugs Laboratory. The sub-section further envisages that any of the parties involved in the criminal proceedings (the accused as well as the complainant) can make a request to the Court that the portion of the sample produced by the Inspector before the Magistrate may be sent to the Central Drugs Lab. When the said Central Drugs Laboratory sends a. report after conducting the analysis or tests, the facts contained therein become conclusive evidence.

16. This case further deals with a situation where the manufacturer in a given situation is not entitled to get a copy of the report of the Government Analyst as of right, as been happened in the present case, what can he do for the purpose of challenging the report? Thus, in case the manufacturer though not having a right to get the copy of the report and has also not notified his intention to controvert the report of the Government Analyst as the copy of the same was not supplied to him, then whether the contents of such report shall be conclusive evidence against him u/s 25(3) of the Act of 1940. In this regard, the Hon''ble Apex Court has observed as under:

25. In our view the Court should lean to an interpretation as would avert the consequences of depriving an accused of any remedy against such evidence. He must have the right to disprove or controvert the facts stated in such a document at least at the. first tier. It is possible to interpret the provisions in such a way as to make a remedy '' available to him. When so interpreted the position is thus : the collusiveness meant in Section 25(3) of the Act need be read in juxtaposition with the persons referred to in the sub-section. In other words, if any of the persons who receives a copy of the report of the Government Analyst fails to notify his intention to adduce evidence in controversion of the facts stated in the report within a period of 28 days of the receipt of the report, then such report of the Government Analyst could become conclusive evidence regarding the facts stated therein as against such persons. But as for an accused, like the manufacturer in the present case, who is not entitled to be supplied with a copy of the report of the Government Analyst, he must have the liberty to challenge the correctness of the facts stated in the report by resorting to any other mode by which such facts can be disproved. He can also avail himself of the remedy indicated in Sub-section (4) of Section 25 of the Act by requesting the Court to send the other portion of the sample remaining in the Court to be tested at the Central Drugs Laboratory. Of course, no Court is under a compulsion to cause the said sample to be so tested if the request is made after a long delay. It is for that purpose that a discretion has been conferred on the Court to decide whether such sample should be sent to the Central Drugs Laboratory on the strength of such request. However, once the sample is tested at the Central Drugs Laboratory and a report as envisaged in Section 25(4) of the Act is produced in the Court the conclusiveness mentioned in that sub-section would become incontrovertible.

17. From the aforesaid observation, it is clear that if a manufacturer is added as an accused in the complaint and who is not entitled to be supplied with a copy of the report of Government Analyst, he must have the liberty to challenge the correctness of the facts stated in the report by resorting to the remedy indicated in Sub-section (4) of Section 25 of the Act of 1940 by requesting the Court to send the other portion of the sample remaining in the Court to be tested at the Central Drugs Laboratory.

18. Thus, under the Act if the report of the Insecticide Analyst has not been sent to the manufacturer and he was having no opportunity to notify his intention to controvert the report within the prescribed period, he can get an opportunity by invoking the provisions under Sub-section (4) of Section 24 of the Act. But in case the copy of the report of the Insecticide Analyst has been supplied to the manufacturer under Sub-section (2) of Section 24 of the Act, if the said manufacturer on receipt of the said report has not notified his intention to adduce evidence in controversion of the report within 28 days of the receipt of a copy of the said report, then such person has no right under Sub-section (4) of Section 24 of the Act to get the sample re-analysed/re-tested from the Central Insecticides Laboratory. In this regard, the Hon''ble Apex Court in Amery Pharmaceuticals and Another Vs. State of Rajasthan,

has categorically held that if a person fails to give any such notice within a period of 28 days of the receipt of a copy of the report of the Government Analyst, the findings in the report would operate as conclusive evidence against such person who failed to give such notice.

19. In Gupta Chemicals Pvt. Ltd. and Ors. v. State of Rajasthan and Anr. 2002 (4) RCR 762 a sample of an insecticide was taken from the shop of the dealer, which was subsequently found to be mis-branded; the report of the Insecticide Analyst was sent to the dealer as well as to the manufacturer; the manufacturer intimated his intention to lead evidence in controversion of the report within the prescribed period, but no such step was taken by the Insecticide Inspector to send the sample to the Central Insecticides Laboratory; and after expiry of the shelf-life of the sample, the complaint was filed against the manufacturer; the petition filed by the manufacturer for quashing of the complaint and the subsequent proceedings was dismissed by the High Court without entering into the merits of the case on the ground that no interference is required at the stage. While setting aside the order of the High Court and allowing the appeals of the manufacturers, the Hon''ble Apex Court has held as under:

10. From a perusal of the aforequoted provisions, it is manifest that ordinarily in the absence of any material to the contrary, the report of the insecticides analyst will be accepted as final and conclusive of the material contained therewith. This is, however, subject to the right of the accused to have the sample examined by the Central Insecticides Laboratory provided he communicates his intention for the purpose within 28 days of the receipt of the copy of the report. It needs no emphasis that this right vested under the statute is valuable for the defence, particularly, in a case where the allegations are that the material does not conform to the prescribed standard. As noted earlier, in the present case, the appellants had intimated the Insecticide Inspector their intention to have the sample tested in the Central Insecticides Laboratory within the prescribed period of 28 days of the receipt of the copy of the State Analyst''s report, yet no step was taken by the Inspector either to send the sample to the Central Insecticides Laboratory or to file the complaint in the Court with promptitude in which case the appellants would have moved the Magistrate for appropriate order for the purpose. The resultant position is that due to sheer inaction on the part of the Inspector, it has not been possible for the appellants to have the sample examined by the Central Insecticides Laboratory and in the meantime, the shelf-life of the sample of insecticide seized had expired and for that reason no further step could be taken for its examination. In the circumstances, we are of the view that continuing this criminal prosecution against the appellants will be a futile exercise and abuse of the process of the Court. The High Court was not right in dismissing the petition filed u/s 482 of the Cr.P.C.

20. In view of the aforesaid law, only that accused has a legal right to avail the statutory defence under Sub-section (4) of Section 24 of the Act, who has not been

sent a copy of the report of the Insecticide Analyst under Sub-section (2) of Section 24 of the Act, and thus he has been deprived of a right to controvert the contents of the said report by showing his intention to lead evidence in controversion of the same. If complaint in such a case is filed after a delay by that time the shelf-life of the sample had expired, then such person is deprived of his valuable right because of the delayed filing of the complaint and in that situation the complaint is liable to be quashed. But in the present case, that is not the position. In the instant case, undisputedly the report of the Insecticide Analyst was sent to the petitioner and he was having an opportunity to exercise his option and to notify his intention to controvert the contents of the said report by adducing evidence under Sub-section (3) of Section 24 of the Act but the petitioner did not exercise such option/right. In that situation, the filing of the complaint after the expiry of the shelf-life of the sample is of no consequence as the right provided under Sub-section (4) of Section 24 of the Act is not available to the petitioner and qua him the report of the Public Analyst has become conclusive evidence under Sub-section (3) of Section 24 of the Act. Thus, in view of the aforesaid decisions of the Supreme Court, in my opinion, if the petitioner has not availed the option available to him under Sub-section (3) of Section 24 of the Act, he has no additional legal right to avail the statutory defence u/s 24(4) of the Act, which according to him, he has been deprived because of the delayed filing of the complaint in the Court.

21. In view of the aforesaid discussion, I do not find any merit in this petition and the same is hereby dismissed.