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**(2006) 01 P&H CK 0223**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Criminal M. No. 58374-M of 2003

Ajay Kumar

APPELLANT

Vs

State of Punjab

RESPONDENT

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**Date of Decision:** Jan. 11, 2006

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 482

**Citation:** (2006) 16 CriminalCC 543 : (2006) 2 RCR(Criminal) 111

**Hon'ble Judges:** Nirmal Yadav, J

**Bench:** Single Bench

**Advocate:** J.S. Bedi, for the Appellant; G.P. Gill, AAG, Punjab, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

Nirmal Yadav, J.

Petitioner is the proprietor of firm M/s Sharma Seeds Store, Sahnewal, District Ludhiana and dealing in the sale of insecticides and pesticides. This petition u/s 482 Cr. P.C has been filed by him for quashing of complaint Annexure P/5 filed by the Insecticide Inspector, Sahnewal and the subsequent proceedings taken thereon pending in the Court of Chief Judicial Magistrate, Ludhiana.

2. On 24.7.1992 the premises of M/s Sharma Seeds Store, Grain Market, Sahnewal, was checked by the Insecticide Inspector. He took sample of "Phosphomidon" 85% SL manufactured by M/s Unique Farmaid Pvt. Ltd., Ghaziabad. Its manufacturing date was June, 1992 and the date of expiry was November, 1993. One sample was sent for chemical analysis. As per report Annexure P/2 the sample did not conform to the relevant IS specification in active ingredients test requirement and was found to be misbranded. Petitioner was served with a show cause notice dated 3.11.1992, Annexure P/3. Along with the show cause notice, copy of the test report of the sample was also enclosed. Petitioner submitted reply, Annexure P/4, within 28 days of the receipt of the copy of the test report and also desired that another sample

with the petitioner may be sent for reanalysis to the Central Drugs Laboratory at his expenses. As such the petitioner complied with the requirement as per the provisions of Section 24(3) of the Insecticides Act, hereinafter referred to as "the Act".

3. In pursuance of the complaint, petitioner has been summoned by the Court of Chief Judicial Magistrate, Ludhiana, vide order dated 17.11.1993, Annexure P/6. Petitioner seeks quashing of the complaint as well as subsequent proceedings mainly on the ground that he was summoned when the shelf life of the sample had already expired. He was, therefore, deprived of his valuable right of getting the sample re-analysed from the Central Drugs Laboratory. He had earlier informed the Insecticide Inspector that the report of the Senior Analyst was not acceptable to him and he wished to get another sample re-analysed. In support of his contention the learned counsel placed reliance on the judgments reported as *State of Haryana v. Unique Faarmaid P. Ltd.*, 1999 (4) RCR(Cri) 540 ; *Bayer India Ltd. v. State of Punjab*, 2002 (4) RCR(Cri) 50 ; *M/s Hindustan Pulverising Mills v. State of Haryana*, 2002 (4) RCR (Cri) 555 and *M/s Gupta Chemicals Pvt. Ltd. & Others v. State of Rajasthan & Another*, 2002 (4) RCR (Cri) 763. Learned State counsel, however, argued that all these points may be raised by the petitioner at the appropriate stage of the proceedings and even accepting the factual position as stated to be correct, no case for quashing of the complaint in exercise of power u/s 482 Cr. P.C., is made out.

4. At the outset, certain provisions of the Act, which are relevant for the purposes of the present proceedings, may be reproduced hereunder :

3. Definitions - In this Act, unless the context otherwise requires -

(k) "misbranded" - An insecticide shall be deemed to be misbranded :

x x x x

(viii) if the insecticide has a toxicity which is higher than the level prescribed or is mixed or packed with any substance so as to alter its nature or quality or contains any substances which is not included in the registration.

24. Report of Insecticide Analyst -

(1) x x x x

(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 sample are pending that he

intends to adduce evidence in controversial of the report.

(4) Unless the sample has already been tested or analysed in the Central Insecticide Laboratory, where a person has under sub-section (3) notified his intention of adducing evidence in controversial of the Insecticide Analyst 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 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, and such report shall be conclusive evidence of the facts stated therein.

(5) x x x x

5. From a bare reading of the afore-quoted provisions, it is manifest that the report of the Government Analyst shall be conclusive evidence of fact, unless the person from whom the sample was taken or the person whose name, address and other particulars have been disclosed, has, within 28 days of the receipt 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 controversial of the report. Sub-section (4) of Section 24 of the Act further makes it clear that right to get the sample re-analysed through the Court accrues to a person only if he had earlier notified to the concerned authority, his intention of adducing evidence to controvert the report of the Government Analyst in accordance with the provisions of sub- section (3). It needs no emphasis that this right vested in the State is valuable for the defence, particularly in a case where the allegations are that material does not conform to the prescribed standard. In the present case, although the petitioner had expressed his desire to get the sample re- analysed from the Central Drugs Laboratory within the stipulated time, yet no step was taken by the Inspector either to send the sample to the Central Drugs Laboratory or to file complaint in the Court with promptitude in which case the petitioner would have moved the Court for appropriate order for the purpose. The Apex Court in Unique Farmaid"s case (supra) has held as under :-

Procedure for testing the sample is prescribed and if it is contravened to the prejudice of the accused, he certainly has right to seek dismissal of the complaint. There cannot be two opinions about that. Then in order to safeguard the right of the accused to have the sample tested from Central Insecticides Laboratory, it is incumbent on the prosecution to file the complaint expeditiously so that the right of the accused is not lost. In the present case, by the time the respondents were asked to appear before the Court, expiry date of the insecticide was already over and sending of sample to the Central Insecticides Laboratory at that late stage would be of no consequence. This issue is no longer res integral. In [State of Punjab Vs. National Organic Chemical Industries Ltd.](#), this Court in somewhat similar circumstances said that the procedure laid down u/s 24 of the Act deprived the

accused to have sample tested by the Central Insecticides Laboratory and adduce evidence of the report so given in his defence. This Court stressed the need to lodge the complaint with utmost dispatch so that the accused may opt to avail the statutory defence. The Court held that the accused had been deprived of a valuable right statutorily available to him. In this view of the matter, the court did not allow the criminal complaint to proceed against the accused. We have cases under the Drugs and Cosmetics Act, 1940 and the Prevention of Food Adulteration Act, 1954 involving the same question. In this connection reference be made to decisions of this Court in [State of Haryana Vs. Brij Lal Mittal and Others](#), under the Drugs and Cosmetics Act, 1940; [Municipal Corporation of Delhi Vs. Ghisa Ram](#), ; [Chetumal Vs. State of Madhya Pradesh and Anr](#), and [Calcutta Municipal Corporation Vs. Pawan Kumar Saraf and Another](#), all under the Prevention of Food Adulteration Act, 1954.

6. It would be gain-saying that due to the inaction on the part of the Insecticide inspector it was not possible for the petitioner to have the sample re-analysed by the Central Drugs Laboratory and in the meantime the shelf life of the sample of insecticide seized had expired. Therefore, the petitioner has been deprived of a valuable right. In these circumstances I am of the view that continuance of the criminal prosecution against the petitioner would be an abuse of process of Court.

7. In view of the above discussion, this petition is allowed and consequently complaint Annexure P/5 filed against the petitioner and subsequent proceedings in pursuance thereof are hereby quashed.

Petition allowed.