

(2009) 01 BOM CK 0038

Bombay High Court (Aurangabad Bench)

Case No: Criminal Writ Petition No. 145 of 2007

United Phosphorus Ltd., Shri
Sunil Vaidhya and United
Phosphorus Limited

APPELLANT

Vs

The State of Maharashtra and
Others

RESPONDENT

Date of Decision: Jan. 15, 2009

Acts Referred:

- Drugs and Cosmetics Act, 1940 - Section 25, 25(4)
- Insecticides Act, 1968 - Section 24, 24(3), 24(4), 3, 31(1)

Citation: (2009) 111 BOMLR 973

Hon'ble Judges: V.R. Kingaonkar, J

Bench: Single Bench

Advocate: R.R. Mantri, for the Appellant; S.S. Autade, Assistant Public Prosecutor, for the Respondent

Final Decision: Allowed

Judgement

R. Kingaonkar, J.

By this petition, the petitioners challenge the order rendered by learned Judicial Magistrate (F.C.), Aurangabad on their application for discharge in Summary Criminal Case No. 3074/1998 and pray for quashing of the said Criminal proceedings.

2. Indisputably, on 13.6.1997, the Insecticide Inspector - Mr. Vasant Vyapari, visited shop of the petitioners. The petitioners are dealing in business of manufacturing and selling of insecticides. The Insecticide Inspector collected samples of the insecticide called "Phorate 10%" bearing batch No. S-486. He served a notice on the petitioners to the effect that the samples were drawn for the purpose of analysis in order to ascertain the quality of the same. The required procedure was followed and

one of the sample was sent to the Insecticide Testing Laboratory, Aurangabad. The laboratory gave report dated 13.6.1997 to the effect that the sample of insecticide was substandard and misbranded. A copy of the report was sent to the petitioners and they were called upon to explain their stand. They asserted that they had not committed any offence and the sample was in conformity with the standards required under the law. They also relied upon certificate of analysis issued by their own laboratory. The necessary sanction was accorded as required u/s 31(1) of the Insecticides Act, 1968, on 1.4.1998 by the Commissioner of Agriculture. The Insecticide Inspector lodged complaint before the learned Judicial Magistrate, Aurangabad on 24.4.1998.

3. There is no dispute about the fact that the shelf-life of the insecticide in question was up till end of February 1998. Admittedly, the complaint was lodged by the Insecticide Inspector much after the said expiry date of the insecticide samples. The sanction for the prosecution was also issued after the shelf-life of the insecticide was over. It is undisputed that the report of the analysis conducted by the Insecticide Testing Laboratory was sent to the petitioners vide show cause notice dated 28.7.1997 and reply thereto was given by them on 20.8.1997. In the reply, the petitioners made it clear that they asked their Research and Development Scientist to analyse the counter sample of the same batch of the insecticide. They also stated that the internal testing confirmed the fact that the insecticide of the same batch was in conformity with the ISI specifications in all respects. In support of such contention, they also forwarded copy of the certificate of analysis issued by the concerned R & D Scientist. In other words, they furnished evidence, whereby they desired to dispute correctness of the report of the Insecticide Testing Laboratory, Aurangabad, which was served on them.

4. The petitioners asserted that their right to challenge the report was frustrated due to filing of the complaint after the shelf life of the insecticide. Hence, they sought discharge from the Criminal case. The learned Judicial Magistrate, rejected their contention.

5. Heard Mr. R.R.Mantri, learned advocate for the petitioners and Smt. S.S.Autade, learned A.P.P. for the State.

6. At the threshold, it is significant to note that the genesis of the complaint is that the sample of the insecticide was found to be misbranded under provisions of subclause (i) of clause (k) of Section 3 of the Insecticides Act, 1968. Subclause (k) reads as follows:

(k) ♦ Misbranded ♦ - an insecticide shall be deemed to be misbranded ♦

(i) if its label contains any statement, design or graphic representation relating thereto which is false or misleading in any material particular, or if its package is otherwise deceptive in respect of its contents; or

(ii) x x x x

The report of Insecticide Testing Laboratory reveals that the sample was not in conformity with the relevant specifications in the context of A.I. contents. It was, therefore, treated as misbranded.

7. The law makes it mandatory that the Insecticide Inspector shall deliver a copy of the report to the person from whom the sample was taken. The relevant provision contained in Section 24(3) of the Insecticides Act, 1968, would make it amply clear that the report signed by the Insecticide Analyst shall be the conclusive evidence of the facts stated therein. There is deeming effect about its conclusive nature unless the same is disputed within 28 (twenty eight) days of the receipt of the copy of the report by the concerned person from whom the sample was collected, or the same is challenged after filing of the complaint and the concerned person would express intention to adduce evidence to show inaccuracy of the report. A plain reading of Sub-clause (3) of Section 24 would make it manifest that the concerned person from whom the sample is collected, is not under obligation to immediately ask for sending of the another sample to the Director of the Central Insecticide Laboratory. What is required under the law is that he shall express intention to adduce evidence in contravention of the report. By filing their reply dated 20.8.1997, within the stipulated period of 28 (twenty eight) days, the petitioners expressed intention to adduce evidence in contravention of the report. Nay, they filed copy of the internal report of analysis. It is true that they could have asked the Insecticide Inspector to send another copy to the Central Insecticide Laboratory. However, such choice was available to them under Sub-clause (4) of Section 24 of the Insecticides Act, 1968, even after filing of the complaint in the Court.

8. The interpretation of Section 25 of the Drugs and Cosmetics Act (23 of 1940) was subject matter of consideration in Ramanbhai B. Patel and Ors. v. S.R. Sharma, Drug Inspector and Anr. 1997(2) M.L.J.629. A Single Bench of this Court held that right of the accused got frustrated when the complaint was lodged after the expiry period of the drug. In Venkaiah Chowdary Nannapaneni and Ors. v. State of Maharashtra 2003 ALL MR (Cri.) 758, this Court held that right given to the accused is available to him only after the complaint is laid. It has been observed that even if the accused does not disclose his intention to controvert the report, still the right u/s 25(4) of the Drugs and Cosmetics Act, does not get obliterated. While taking such a view, this Court relied on judgments of the Apex Court in State of Punjab v. National Organic Chemical Ltd. 1996 (4) Cri 169 and [State of Haryana Vs. Unique Farmaid P. Ltd. Ors.,](#) . In State of Punjab v. National Organic Chemical Ltd. (supra), the Apex Court held that the accused were deprived of their valuable right to have the sample tested from the Central Insecticide Laboratory as permissible under subclause (4) of Section 24 of the Insecticides Act, 1968. Considering the fact that by the time the matter reached the Court, the shelf life of the sample had already expired, the Supreme Court endorsed view of the High Court that the report of the Insecticide

Analyst was not conclusive. Thus, decision of the High Court for quashing the proceedings was upheld.

9. The provision of Section 24 of the Insecticides Act, 1968 and Section 25 of the Drugs and Cosmetics Act, are substantially *pari materia*. The right of the petitioners to challenge the report of the Insecticide Laboratory is frustrated due to filing of the complaint after the shelf life of the insecticide was over. The continuation of the Criminal proceeding in such a case would be wastage of judicial time and would amount to abuse of the process of Court. There is no point in continuing the Criminal proceeding when the outcome thereof would be of no avail to the prosecution. The right of the petitioners was made nugatory due to the delay in filing of the complaint. The complaint ought to have been filed before the shelf life of the insecticide was over. The present case is, therefore, fit in which the Criminal proceedings need be quashed. In this view of the matter, the petition is allowed. The impugned order is quashed. The Criminal case bearing Summary Criminal Case No. 3074/1998, instituted against the petitioners is quashed. The bail bonds of the petitioners be deemed as cancelled.