

M/s Kilpest India Limited Vs State Of Maharashtra

Court: BOMBAY HIGH COURT (AURANGABAD BENCH)

Date of Decision: Dec. 14, 2016

Acts Referred: Insecticides Act, 1968 - Section 17(i)(a), Section 18(l)(c), Section 24, Section 29(3)(i), Section 29(i)(a), Section 3(k)(i)

Citation: (2017) 1 AIRBomRCri 414 : (2017) ALLMRCri 12 : (2017) 1 BomCR(Cri) 835 : (2017) 1 MhLJCrI 189

Hon'ble Judges: Shri. Z. A. Haq, J.

Bench: Single Bench

Advocate: None, for the Applicant; Mr. K.S. Hoke Patil, A.P.P, for the Respondent No. 1; Mr. V.D. Hon, Senior Advocate, for the Respondent No. 2

Final Decision: Disposed Off

Judgement

Z. A. Haq, J. (Oral) - None for the Applicant.

2. Heard Mr. V.D. Hon, learned Senior Advocate assisted by Mr. Ajinkya Deshmukh, learned Advocate for the non-applicant No. 2 and Mr.

K.S. Hoke Patil, learned A.P.P. for the non-applicant No. 1 & ½ State.

3. The Applicant - Company has approached this Court with the prayer that the proceedings of STC No. 5829/2002 initiated on the complaint of

non-applicant No. 2 for the offences punishable u/ss 3 (k) (i), 17 (i) (a), 18 (1) (c) read with 29 (i) (a) and 29 (3) (i) of the Insecticides Act, 1968

be quashed. The contention on behalf of the applicant is that the mandatory provisions of Section 24 of the Insecticides Act are not complied with

and, therefore, the prosecution can not be continued. Section 24 of the Insecticides Act reads as under :

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 [thirty] 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 sample are pending that he intends to adduce

evidence in controversion 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 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 subsection (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.

4. According to the complainant, the Insecticide Inspector conferred with the powers under Section 21 of the Insecticides Act visited the

insecticide selling point of M/s Shriram Fertilizers, Aurad [Shahjani], Taluka Nilanga, District Latur on 29/09/1998 and during the course of

inspection of the stock of insecticides, "ENDOSULPHAN 35% EC" manufactured by the applicant's Company was found in stock for sale. As

per the procedure prescribed u/s 22 (5) and (6) of the Insecticides Act, necessary intimation was given to accused No. 3's Proprietor of M/s

Shriram Fertilizers and sample was sent to Testing Laboratory, Pune as per the procedure under Rule 34 of the Insecticides Rules, 1971.

According to the complainant, the Insecticide Testing Laboratory, Pune reported the result of sample of the above referred insecticide by the

report dated 19/12/1998 and it was found that the sample was mis - Branded and contained only 11.88% "ENDOSULPHAN 35% EC". With

these accusations, the complaint is filed seeking prosecution and conviction of the accused.

5. The applicant's Company has raised a ground that notice dated 19/02/1999 was issued in compliance with the requirements of sub-section

(3) of Section 24 of the Insecticides Act, however, the copy of report of Insecticide Testing Laboratory was not supplied. The applicant has

placed on record [Exh. D at page No. 22] copy of communication sent by it to the Insecticide Inspector on 15/03/1999 stating that test result

declared by the Testing Laboratory was not given, name of the Testing Laboratory was not mentioned and the Test Report was not enclosed with

the show cause notice. In the above-mentioned communication, the applicant requested that the Test report and other information be supplied as

the applicant intended to adduce evidence in controversion of the report u/s 24 (4) of the Insecticides Act. The non-applicant No. 2 has not denied

the fact alleged by the applicant that it gave the reply dated 15/03/1999. The case of the applicant is that as the non-applicant No. 2 failed to

comply with the request made in the communication dated 15/03/1999, the prosecution initiated against it in 2002 is unsustainable for non

compliance of mandate of provisions of Section 24 of the Insecticides Act.

6. It is well settled that the provisions of Section 24 of the said Act are mandatory and confer a valuable right on the accused to defend himself by

getting sample tested by the Central Insecticide Laboratory and if the accused is deprived of this valuable defence statutorily available to him, the

complaint is liable to be quashed. In support of the above proposition, the Judgment given in the case of Northern Minerals Limited v.

Rajasthan Government & Anr. reported in 2016 (5) Scale 617 and the Judgment given in the case of State of Punjab v. National Organic

Chemical Industries Ltd. 1996 (11) SCC 613 can be relied upon.

7. Though the learned Senior Advocate for the non-applicant No. 2 argued that the complaint can not be quashed at the thresh-hold, he has not

been able to controvert the settled legal position laid down in the above referred Judgments.

8. In view of the above, the Criminal Application has to be allowed.

Hence, the following order :

The proceedings of STC No. 5829/2002 initiated in the complaint filed by the non applicant No. 2 and pending before the Chief Judicial

Magistrate, Latur are quashed.

9. After going through the matter, I found that the non-applicant No. 2 has failed to discharge the statutory obligation to comply with the mandate

of Section 24 of the Insecticides Act. The crime for which the prosecution was initiated against the applicant affects large number of people and

most of them from lower income group. As the complaint is filed without complying with the mandate of Section 24 of the Insecticides Act and

there is no explanation on the record for this lapse, I feel it appropriate to impose costs of Rs.50,000/- [Rupees Fifty Thousand] on the non

applicant No. 2. Out of the amount of costs that will be deposited by the non-applicant No. 2, Rs. 25,000/- [Rupees Twenty Five Thousand] shall

be paid to the applicant $\tilde{A}\tilde{A}\tilde{A}\frac{1}{2}$ Company and Rs. 25,000/- [Rupees Twenty Five Thousand] shall be deposited with the non-applicant No. 1 $\tilde{A}\tilde{A}\tilde{A}\frac{1}{2}$

State of Maharashtra.

The facts on record create an impression that the non-applicant No. 2, who is impleaded by name, has acted in a calculated manner and in

collusion with the accused to frustrate the prosecution. I had put the learned Senior Advocate appearing for the non-applicant No. 2 on notice that

I intend to direct the departmental enquiry against the non-applicant No. 2. The learned Senior Advocate submitted that the non-applicant No. 2 is

presently not in touch with him and requested for some time.

10. List the Criminal Application for further orders on this point on 20/12/2016.

11. In response to the notice i to the non-applicant no.02 through his advocate, to show cause why directions for conducting departmental enquiry

against him Id not be given, the learned Senior Advocate has submitted that the Non - Applicant cannot be held responsible for any lapse and all

steps were taken in the matter by Shri I.N. Mogle, who was working as Insecticide Inspector and Agriculture Officer during the relevant period. It

is pointed out that the sample was collected by Shri I.N. Mogle and the proposal to obtain consent as per Section 31 of the Insecticides Act, 1968

was also sent by Shri I.N. Mogle. It is submitted that office of Commissioner of Agriculture, Maharashtra State, Pune, issued the consent order on

14th of March, 2002 and at that time, the non-applicant no.02 was posted as Insecticide Inspector in the office of Block Development Officer,

Panchayat Samiti, Nilanga, and therefore, he filed the complaint immediately in April, 2002.

It is argued that the above facts show that the non-applicant no.02 is not at fault and he cannot be made liable to pay the . costs and directions for

departmental enquiry against him are also not necessary.

12. The conclusions recorded in the judgment given on 14th December, 2016 a are to the effect that the complaint under Sections 3 (k) (i), 17 (i)

(a), 18(1) (c) read j with Sections 29 (i) (a) and 29 (3) (i) of the)r Insecticides Act, 1968 was filed without complying with the mandatory

provisions of Section 24 of the Insecticides Act, 1968. The Jr non-applicant no.02 being the responsible o officer exercising the powers conferred

by the provisions of the Insecticides Act, 1968, is supposed to know the consequences of filing complaint without complying with the mandate of

Section 24 of the Insecticides Act, 1968. Though at the first blush, the submissions made on behalf of the non - Applicant no.02 that he is not

responsible for the non-compliance of mandate of Section Insecticides Act, 1968 appear to be of the non-applicant no.02 for filing the complaint

of which fate was known to the non-applicant no.02.

In these facts, the order directing the non-applicant no.02 to pay the amount of costs of Rs.50,000/- is not required to be recalled, however,

further directions are required to be given as follows :-

(a) The Secretary, Department of Agriculture, Government of Maharashtra, shall conduct an enquiry to find out who is at fault for non-compliance

of the mandate of Section 24 of the Insecticides Act, 1968 and the delay in grant of consent as per Section 31 of the Insecticides Act, 1968,

because of which the shelf life of the sample collected had expired and the prosecution launched against the accused vide S.T.C. No. 5829/2002

is frustrated.

(b) If in the enquiry it is found that the non-applicant no.02 is not at fault and some other officer / officers are at fault, the amount of Rs.50,000/-

which is directed to be paid by the non-applicant no.02 shall be recovered from the erring officer/officers and shall be paid to the non-applicant

no.02.

(c) Departmental enquiry for dereliction of duty shall also be conducted against the officer/officers who are found to be responsible for the delay in

taking action.

(d) The action taken report shall be filed before this Court till 30th March, 2017.

The office of Public Prosecutor shall send the copy of this order to the Secretary, Department of Agriculture, Government of Maharashtra,

Mantralaya, Mumbai.

13. The Criminal Application is disposed in the above terms.