

REPORTABLE

THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 766 OF 2003

NORTHERN MINERAL LTD. APPELLANT

Versus

UNION OF INDIA & ANR. RESPONDENT

J U D G M E N T

C.K. PRASAD, J.

1. This appeal arises out of an order dated 5th November, 2001 passed by the Punjab and Haryana High Court at Chandigarh in Criminal Revision No. 170 of 2000, whereby the revision preferred by the appellant against the order dated 13th November, 1999 passed by the Chief Judicial Magistrate, Patiala refusing to discharge the appellant has been rejected.

2. Brief facts giving rise to the present appeal are that the appellant company is a Private Limited Company registered under the Companies Act, 1956 and *inter alia* engaged in the manufacturing of insecticides including Monocrotophos 36 SL. On 10th September, 1993, the Insecticide Inspector drew sample of Monocrotophos 36 SL from the shop of the appellant's dealer, M/s. Jindal Traders respondent no. 2 herein. The aforesaid insecticide, sample of which was collected by the Insecticide Inspector, was manufactured by the appellant company in September, 1992. The sample so collected was sent for analysis to the Regional Pesticides Testing Laboratory, Chandigarh who submitted its report dated 13th October, 1993 stating that the sample was misbranded as it did not conform to the relevant ISI specifications. The Show Cause Notice dated 1st November, 1993 was issued to the appellant and it was informed about the report of the Regional Pesticides Laboratory which according to the appellant was received on 3rd November, 1993. The appellant replied to the notice by its letter dated 17th November, 1993 *inter alia* expressing its “*intention of*

adducing evidence in controversion of report". It also alleged that the report of the Regional Pesticides Testing Laboratory is of no consequence. After the Joint Director, Agriculture, gave its consent for prosecution of the appellant company and respondent No. 2 on 23rd February, 1994 the Insecticide Inspector filed the complaint in the Court of Chief Judicial Magistrate, Patiala on 16th March, 1994 alleging commission of offence under Section 29 of the Insecticides Act. Shelf-life of the insecticide expired in February, 1994. The appellant company and Respondent No.2 herein i.e. M/s. Jindal Traders were arrayed as accused in the said complaint. Appellant filed application for discharge under Section 245 of the Criminal Procedure Code. But the learned Magistrate by Order dated 13th November, 1999 dismissed the same, *inter alia* observing as follows :

"Since the accused did not make prayer for getting the second sample reanalyzed, the authorities cited at bar by the learned counsel for the accused do not render any assistance to the accused. Rather, authority cited by learned Additional PP for the State is fully applicable Moreso, the case is yet at its threshold and therefore, only prima facie commission of offence has to be taken into consideration at this stage. The

plea of the learned counsel for the accused that sample was drawn from the sealed container will be evaluated after adducing the evidence which would be adduced during the course of trial. Consequently, both the applications for discharge of the accused stand dismissed being devoid of any merit.”

3. Aggrieved by the aforesaid order, the appellant preferred Criminal Revision No. 170 of 2000 before the High Court of Punjab and Haryana. Revision application preferred by the appellant was heard alongwith Criminal Revision Petition No. 106 of 2000 preferred by another accused in a different case. The High Court by Order dated 5th November, 2001 dismissed the Revision Application preferred by the appellant. While doing so, the High Court observed as follows:

“The upshot of the above discussion is that the weight of the judicial opinion of the Hon’ble Supreme Court of India and of this Court favours the petitioners case that re-analysis is a valuable right which gets defeated if the complaint is filed after the expiry date and consequently the proceedings must be dropped. The question which is now required to be considered is whether the petitioners exercised their right to seek re-analysis or not. The replies to the Show-Cause Notices indicate that Apex Mineral did seek re-analysis whereas Northern Minerals did not. Re-analysis by Central

Insecticides Laboratory was not done in neither case. Where a party does not ask for a second analysis it should not be permitted to complain that its right of re- analysis has been defeated. This grievance can only be valid if a party seeks re-analysis before expiry but was denied this right.

Consequently, Northern Minerals case must fail. Criminal Revision No. 170 of 2000 is dismissed.”

4. From the facts stated above, it is evident that the complaint was filed on 16th March, 1994 whereas shelf life of insecticide expired in February, 1994. The appellant had given its intention to adduce evidence in controversion of the report to Insecticides Inspector but had not specifically prayed for analysis of the sample by the Central Insecticides Laboratory.

5. Mr. Arun Nehra, learned counsel appearing on behalf of the appellant submits that every insecticide has its shelf life and with passage of time, it loses its efficacy and therefore after the expiry of the shelf life of the insecticide, it may not conform to the standard specifications. He submits that in view of the aforesaid, the shelf-life shall have serious consequence when Insecticides are tested or analysed after

expiry of shelf-life. In support of the submission, reliance has been placed on a decision of this Court in the case of ***State of Haryana vs. Unique Farmaid (P) Ltd. & Ors.*** (1999) 8 SCC 190 and our attention has been drawn to the following passage from para 10 of the judgment, which reads as follows:

“10. It has been submitted before us as well as before the High Court that the Insecticide Inspector was not competent to send the sample for retesting to the Central Insecticides Laboratory and that request for retesting should have been made to the court concerned. Then the State has further submitted that no other defence than prescribed under Section 30 of the Act could be allowed to be raised in the prosecution filed under the Act and further that the shelf life of the sample was not relevant as the Act does not prescribe any expiry date. There is no substance in either of these contentions. If the expiry date is not relevant, there was no reason why in the form prescribed for submission of the report by the Insecticide Analyst, the dates of manufacture of the article and the expiry date are mentioned. We do not find any answer to this by the State.”

6. We find substance in the submission of Mr. Nehra and the decision relied on clearly supports his contention. Statute mandates disclosure of expiry date of the insecticide. The form prescribed for submission of the report by Insecticide

Analyst contains columns for the date of the manufacture and expiry. Insecticides are substances specified in the schedule of the Insecticides Act and from perusal thereof it is evident that many of substances with passage of time may lose its identity if exposed or comes into contact with other substance. Therefore, there is no escape from the conclusion that shelf-life of an insecticide shall have its bearing when it is tested or analysed in the laboratory.

7. Mr. Nehra submits that the appellant admittedly had conveyed, within 28 days of the receipt of the report, its intention to adduce evidence in controversion of the report of the Regional Pesticides Laboratory in terms of Section 24(3) of the Insecticides Act, 1968 (hereinafter referred to as the "Act"). He points out that the language of sub-section (3) as well as sub-section (4) of Section 24 of the Act is very clear and leaves no room of any ambiguity and it nowhere obliges the accused to state that it intends to get sample analysed from the Central Insecticides Laboratory. He emphasizes that sub-Section (3) only postulates the accused to notify to the Insecticide Inspector or the Court that it intends to adduce evidence in

controversion of the report. In his submission, if such a requirement is read it would tantamount to adding words in sub-Section (3) as well as sub-Section (4) of Section 24 of the Act. In sum and substance, submission of Mr. Nehra is that the law does not require the accused to say in addition that it demands analysis of the sample by the Central Insecticides Laboratory. He submits that when appellant conveyed its intention to lead evidence in controversion of the report, it would imply demand for sending the sample to Central Insecticides Laboratory for test and analysis. In support of the submission, he has placed reliance on a decision of this Court in the case of **State of Punjab vs. National Organic Chemical Industries Ltd.** (1997) SCC (CrI.) 312 and our attention has been drawn to the following passages from para 5 of the judgment which reads as follows :

“5..... At that stage, two options are open to the accused. The accused is entitled to have one copy of the sample entrusted to him to have it notified to the court for proving to be contrary to the conclusive evidence of the report of the analyst; after such a notification having been given to the court, he is entitled to have it tested by Central Insecticides Laboratory and adduce evidence of the report so

given. That such certificate by the Director of CIL has a proof of his defence to dislodge the conclusiveness attached to the report of the Insecticide Analyst under sub-section (3) of Section 24. The other option is, after the complaint is laid in the court, the copy of the sample that is lodged with the court by the Insecticide Inspector, would be requested to be sent by the court to the CIL and the report thus given by the Director of CIL shall be conclusive evidence as to the quality, content and facts stated therein. The cost thereof is to be borne either by the complainant or by the accused, as may be directed by this Court.”

8. Another decision relied on by the appellant to buttress its submission is the decision of this Court in the case of **Unique Farmaid (P) Ltd. & Ors. (Supra)** wherein it has held as follows:

“12. It cannot be gainsaid, therefore, that the respondents in these appeals have been deprived of their valuable right to have the sample tested from the Central Insecticides Laboratory under sub-section (4) of Section 24 of the Act. Under sub-section (3) of Section 24 report signed by the Insecticide Analyst shall be evidence of the facts stated therein and shall be conclusive evidence against the accused only if the accused do not, within 28 days of the receipt of the report, notify in writing to the Insecticide Inspector or the court before which proceedings are pending that they intend to adduce evidence to controvert the report. In the present cases

the Insecticide Inspector was notified that the accused intended to adduce evidence to controvert the report.”

9. Yet another decision on which reliance is placed is the decision of this Court in the case of **M/s. Gupta Chemicals Pvt. Ltd. & Ors. Vs. State of Rajasthan & Anr.** JT 2002 (Suppl.1) SC 516, the relevant portion reads as follows :

“12. From our 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 intentions 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 statutes 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 receipt of the copy of the state analyst 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 appellant 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 appellant will be a futile exercise and abuse of the process of court. The High Court was not right in dismissing the petition filed under Section 482 of Cr.P.C.”

10. Counsel representing the respondents, however, contends that excepting intimating its intention to adduce evidence in controversion of the report of the Regional Pesticides Laboratory specific request was not made to send the sample for test and analysis by the Central Insecticides Laboratory and, hence, failure to send the sample for test and analysis by the Central Insecticides Laboratory in no way defeats the right of the accused. The submission advanced necessitates examination of scope and ambit of Section 24(3) & 4 of the Act, same read as follows :

“24. Report of Insecticide Analyst.-

xxx

xxx

xxx

xxx

(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 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."

xxx

xxx

xxx

xxx

11. From a plain reading of Section 24(3) of the Act, it is evident that an accused within 28 days of the receipt of the copy of the report of the Insecticide Analyst to avoid its evidentiary value is required to notify in writing to the Insecticide Inspector or the Court before which the proceeding is pending that it intends to adduce evidence in controversion of the report. Section 24(4) of the Act provides that when an accused had notified its intention of adducing evidence in controversion of the Insecticide Analyst report under Section 24(3) of the Act, the court may of its own motion or in its discretion at the request either of the complainant or the accused cause the sample to be sent for analysis to the Central Insecticides Laboratory. Under the scheme of the Act when the accused had notified its intention to adduce evidence in controversion of the report of the Insecticide Analyst, the legal fiction that the report of the Insecticide Analyst shall be conclusive evidence of the facts stated in its report loses its conclusive character. The Legislature has used similar expression i.e. the “intention to adduce evidence in

controversion of the report” in both sub-section (3) and sub-section (4) of Section 24 of the Act, hence both the expression has to be given one and the same meaning. Notification of an intention to adduce evidence in controversion of the report takes out the report of the Insecticide Analyst from the class of “conclusive evidence” contemplated under sub-section (3) of Section 24 of the Act. Further intention of adducing evidence in controversion of the Insecticide Analyst report clothes the Magistrate the power to send the sample for analysis to the Central Insecticides Laboratory either on its own motion or at the request of the complainant or the accused. In face of the language employed in Section 24(4) of the Act, the act of the accused notifying in writing its intention to adduce evidence in controversion of the report in our opinion shall give right to the accused and would be sufficient to clothe the Magistrate the jurisdiction to send the sample to Central Insecticide Laboratory for analysis and it is not required to state that it intends to get sample analysed from the Central Insecticides Laboratory. True it is that report of the Insecticides Analyst can be challenged on various grounds but accused can not be

compelled to disclose those grounds and expose his defence and he is required only to notify in writing his intention to adduce evidence in controversion. The moment it is done conclusive evidentiary value of the report gets denuded and the statutory right to get the sample tested and analysed by the Central Insecticides Laboratory gets fructified.

12. The decisions of this Court in the cases of **National Organic Chemical Industries Ltd. (Supra)**, **Unique Farmaid (P) Ltd. & Ors. (Supra)** and **M/s. Gupta Chemicals Pvt. Ltd. (Supra)**, in our opinion do support Mr. Nehra's contention. True it is that in first two cases, the accused, besides sending intimation that they intend to adduce evidence in controversion of the report accused persons have specifically demanded for sending the sample for analysis by the Central Insecticides Laboratory. However, the ratio of the decision does not rest on this fact. While laying down the law, this Court only took into consideration that accused had intimated its intention to adduce evidence in controversion of the report and that conferred him the right to get sample tested by

Central Insecticides Laboratory. The decision of this Court in the case of ***M/s Gupta Chemicals*** (supra) is very close to the facts of the present case. In the said case “on receipt of the information about the State Analyst report the appellants sent intimation to the Inspector expressing their intention to lead evidence against the report” and this intimation was read to mean “their intention to have the sample tested in the Central Insecticides Laboratory”. From the language and the underlying object behind Section 24(3) and (4) of the Act as also from the ratio of the decisions aforesaid of this Court, we are of the opinion that mere notifying intention to adduce evidence in controversion of the report of the Insecticide Analyst confers on the accused the right and clothes the court jurisdiction to send the sample for analysis by the Central Insecticides Laboratory and an accused is not required to demand in specific terms that sample be sent for analysis to Central Insecticides Laboratory. In our opinion the mere intention to adduce evidence in controversion of the report, implies demand to send the sample to Central Insecticides Laboratory for test and analysis.

13. Section 24(3) of the Act gives right to the accused to rebut the conclusive nature of the evidence of Insecticide Analyst by notifying its intention to adduce evidence in controversion of the report before the Insecticide Inspector or before Court where proceeding in respect of the samples is pending. Further the Court has been given power to send the sample for analysis and test by the Central Insecticides Laboratory of its own motion or at the request of the complainant or the accused. No proceeding was pending before any Court, when the accused was served with Insecticide Analyst report, the intention was necessarily required to be conveyed to the Insecticide Inspector, which was so done by the appellant and in this background Insecticide Inspector was obliged to institute complaint forthwith and produce sample and request the court to send the sample for analysis and test to the Central Insecticides Laboratory. Appellant did whatever was possible for it. Its right has been defeated by not sending the sample for analysis and report to Central Insecticides Laboratory. It may be

mentioned herein that shelf life of the insecticides had expired even prior to the filing of the complaint. The position therefore which emerges is that by sheer inaction the shelf life of the sample of insecticides had expired and for that reason no step was possible to be taken for its test and analysis by Central Insecticides Laboratory. Valuable right of the appellant having been defeated, we are of the opinion that allowing this criminal prosecution against the appellant to continue shall be futile and abuse of the process of Court.

14. We are distressed to note the casual manner in which the whole exercise has been done. Insecticide Inspector had collected the sample on 10th September, 1993 and sent it to the Insecticide Analyst for analysis and report. Insecticide Analyst submitted its report dated 13th October, 1993. Notice of the report was sent to the appellant on 1st November, 1993, in reply whereof by letter dated 17th November, 1993 it intimated its intention to adduce evidence in controversion of the report. The shelf-life of the pesticide had not expired by that time but expired in February 1994. However, permission

to file complaint was given on 23rd February, 1994 and the complaint was actually filed on 16th March, 1994. Had the authority competent to grant consent, given consent and complaint lodged immediately after the receipt of intimation of the accused, sample could have very well sent for analysis and report, before the expiry of shelf-life. It is interesting to note that Section 24(3) and (4) of the Act obliges the Insecticide Analyst and Central Insecticides Laboratory to make the test and analysis and report within thirty days. When 30 days is good enough for report, there does not seem any justification not to lodge complaint within 30 days from the receipt of the intimation from the accused and getting order for sending the sample for test and analysis to the Central Insecticides Laboratory. All who are entrusted with the implementation of the provisions of the Act, would be well advised to act with promptitude and adhere to the time-schedule, so that innocent persons are not prosecuted and real culprits not left out.

15. In the result, the appeal is allowed, the impugned judgments of the High Court as also that of the Chief Judicial

Magistrate refusing to discharge the appellant are set aside and the appellant is discharged of its criminal liability.

.....J.
(HARJIT SINGH BEDI)

.....J.
(C.K. PRASAD)

New Delhi,
July 7, 2010.