

**(2001) 06 RAJ CK 0010**

**In the Rajasthan High Court**

**Case No :** Criminal Miscellaneous Petition No. 1207 of 2000

Gupta Chemicals (P) Ltd. and Another

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

**Date of Decision :** 01-06-2001

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 2, 2(1), 258, 482  
Insecticides Act, 1968 — Section 17(10), 22(6), 24, 24(2), 24(3)

**Citation :** (2002) 1 RLW 348 : (2002) 5 WLC 653

**Hon'ble Judges :** Arun Madan, J

**Bench :** Single Bench

**Advocate :** T.C. Jain, for the Appellant; Madhav Mitra, Public Prosecutor, for the Respondent

**Final Decision :** Dismissed

## Judgement

Madan, J.—In this criminal misc. petition, others dated 30.3.2000 (Ann. 3) of the Addl. Chief Judicial Magistrate Bhawani Mandi (Jhalawar) confirmed by the Special Judge (SC/ST Prevention of atrocities Act) Jhalawar on 15.9.2000 (Ann. 4) have been challenged with further prayer to quash proceedings pending against petitioners (1) Gupta Chemicals (P) Ltd. & (2) Pushpendra Gupta in Cr. Case No. 149/95.

2. In nut shell the circumstances resulting in prosecution of the petitioners are that on 31.7.1992 an Insecticide Inspector Ram Swaroop Sharma holding post of Agriculture Officer. Plant Protection inspected shop of M/s Ramchandra Jai Narain Bhutra Bhawani Mandi and took a sample of Sungor 30% EC, Batch No. SE10 having manufacturing date as January 92 & expiry as June 93. This sample was sent for analysis and as per its report of 20th October 1992 it was not conforming to prescribed standards, thereby a show cause notice was sent on 20.12.92 to the dealer, distributor and manufacturer. The petitioners are manufacturers of aforesaid sample of insecticide. After sanction for prosecution u/ S. 31 of the Insecticide Act, 1968 (for short "Act"), criminal complaint was filed

by the Insecticide Inspector (respondent No.2) before Addl. Chief Judicial Magistrate Bhawani Mandi on 27.7.1995 against the dealer (from whom the sample of insecticide was taken by the respondent No.2), distributor and manufacturing company so also their Directors & Managers for violation of Sections 3(k) and- 17(10(a), punishable u/s 29(I)(a) of the Act. Accordingly criminal proceedings commenced against petitioner No.1 (Manufacturing company) and No. 2 Pushpendra Gupta (Quality Control Dy CM of the petitioner No. 1) so also others viz dealer & distributor. However, on 3.2.96 an application was filed before the trial Court u/S. 258 CrPC for quashing these criminal proceedings and to release all the accused. This application was dismissed directing the learned counsel for the served accused to produce remaining unserved accused, by the impugned order dated 30.3.2000, against which two revision petition Nos & 69 of were filed by M/s Ramchandra Jainarain Bhutra & others (including the petitioners) but were dismissed by the revisional court by its order dated 15.9.2000. Hence this criminal misc. petition.

3. The first and foremost grievance of the petitioners in this petition is that entire criminal proceedings against all the accused in criminal complaint filed by respondent No.2 (Insecticide Inspector) pending before the trial court be quashed because once the petitioners as well as other accused including the dealer and distributor specifically in their respective reply to show cause notice, had requested for reanalysis, inasmuch as the sample had expired before filing of the complaint, but no reanalysis has been got done by the respondent No.2, thereby it has resulted in depriving all the accused of their statutory right of defence u/s 24(4) of the Act and further causing miscarriage of justice and that apart continuation of such proceedings being vitiated by provisions of the Act is a show prosecution and abuse of process of law so as to call for interference by this Court by invoking Section 482 CrPC, so also for passing order u/s 258 CrPC which has been declined by the trial court and revisional court.

4. The learned Public Prosecutor supported the reasonings assigned by the courts below under the impugned orders.

5. Having considered rival contentions and perused the impugned orders, it is explicitly clear that though prayer has also been made to quash proceedings but in fact this petition u/s 482 CrPC assails the orders declining to invoke Section 258 CrPC for stoppage of proceedings upon complaint of the respondent No.2 Insecticide Inspector for violation of provisions of the Act, In my considered view, power Under Section. 258 CrPC to stop the proceedings can be exercised sparingly and only if there is no evidence against the accused, he can be discharged or acquitted as the case may be, depending on the stage to which the proceedings have reached, and above all from a plain reading of Section 258 CrPC it is patently clear that power to stop proceedings can only be exercised in any summons case instituted otherwise than upon complaint. In other words, exercise of such power u/s 258 is restricted firstly to summons case and secondly it can be exercised in summons cases instituted upon complaint.

Section 2(w) defines "summons case" which means a case relating to an offence and not being a "warrant case". "Warrant case" is defined in Section 2(x), which means a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years. Offence alleged in the impugned complaint is punishable u/s 29 of the Act. according to which for the first offence maximum punishment is two years or with fine which may extend to two thousand rupees or with both. Section 2(d) CrPC defines "complaint" which means any allegation made orally or in writing to a Magistrate with a view to his taking action under CrPC that some person whether known or unknown, has committed an offence but does not include a police report. According to explanation to Section 2(d) CrPC a report made by a police officer in a case which discloses after investigation the commission of a non cognizable offence shall be deemed to be a complaint. According to Section 2(1) CrPC, "non cognizable offence" means an offence for which a police officer has no authority to arrest without warrant, whereas as per Section 2(c) "cognizable offence" means an offence for which a police officer may in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant.

6. In the instant case though proceedings have been initiated in a summons case but upon a complaint having been filed before the Magistrate. The Magistrate has already taken cognizance of the offence. Therefore, this was not a case where it could be said that proceedings have been instituted otherwise than on a complaint. As per the impugned order of the learned subordinate Magistrate, after having taken cognizance of the offence, only dealer and distributor (accused) have put their appearance and no appearance has been put on behalf of the manufacturing company or its Director & Managers (who are arrayed as accused in the complaint) including present two petitioners and, therefore, there was no question having arisen to release all the accused by invoking Section 258 CrPC. In my considered view, the learned subordinate Magistrate has rightly held application dated 3.2.96 as not maintainable and the reasons assigned by him are sustainable for not invoking Section 258 CrPC. Therefore, I do not find any justification to exercise inherent powers of this Court u/s 482 CrPC against the impugned orders of two courts below because there is no abuse of process of any court or otherwise any circumstance to secure the ends of justice.

7. Further this petition u/s 482 CrPC is not maintainable at the instance of the accused (petitioners) who as is evident from the impugned order of the learned subordinate Magistrate have not at all appeared before him in complaint after having taken cognizance of the commission of offence u/s 29 of the Act despite issue of process and summons against them, inasmuch as if carefully looked at the application u/s 258 CrPC filed on 3.2.96 (certified xerox copy thereof has been produced as Ann. 2 to the instant petition) I find that it bears signature of one Jainarain Bhutra from whose shop sample was taken by the respondent No.2 which was found not conforming to the prescribed standard. That being so, the learned Magistrate in his order dated 30.3.2000 directed the counsel for the

other accused to produce rest of co-accused. Moreover the present petition u/s 482 Cr.PC is only by the manufacturing company and its Dy. GM (quality control) (who have even not put their appearance before the Magistrate in complaint case), and not by other co-accused at least the dealer from whose shop the insecticide sample was taken by the inspector (respondent No.2), because under sub Section (3) of Section 24 of the Act the report signed by an Insecticide Analyst shall be conclusive evidence only against a person from whom the sample had been taken, and that apart, sub section (4) comes into operation unless the sample has already been tested or analysed in the Central Insecticide Laboratory. That being so, the Apex Court in YRS Rao vs. Dy Director of Agriculture (1), held as under:-

"We are of the view that under Sub-section (3) of Section 24 the report signed by an Insecticide Analyst shall be conclusive evidence only against a person from whom the sample had been taken and who had the opportunity to notify his intention to contest its correctness as mentioned therein but had availed of such opportunity.

"Sub-section (4) comes into operation when the sample has not already been tested or analysed in the Central Insecticide Laboratory."

8. Where a person has under Sub-section (3) of Section 24 notified intending for adducing evidence in controversion of the Insecticide Analyst's report the Court may by its own motion, or in its discretion at the request of either the complainant or of the accused cause the sample of the insecticide produced before the Court u/s 22(6) to be sent for test or analysis to the Central insecticide Laboratory which shall make the test or analysis and report in writing signed by or under the authority of its Director, the result thereof and such report shall be conclusive evidence of the facts stated therein and of nothing else. I lent support from decision in YRS Rao v. Dy Director of Agriculture (supra) wherein the Apex Court, however, categorically observed.

"We are not now called upon to decide in this case which arises out of a writ petition whether such report can be read against a person from whom the same is not taken. This is the function of the criminal court. We leave open this question as well as the question of constitutionality of the provision if such report is said to be conclusive evidence also against such person."

9. No doubt, Sub-section (3) of Section 24 of the Act gives a right to a person from whom the sample was taken for controversion of the insecticide analyst's report against the evidence of the facts stated in the report of insecticide analysis but it does not give such a right to a person from whom the sample was not taken viz. distributor or manufacturer herein. Hence this petition is also not maintainable at the instance of the manufacturing company on the ground of deprivation of a right which is not given to u/s 24(4) of the Act for reanalysis.

10. The dealer (from whom the sample was taken) and the distributor has not challenged criminal proceedings before this court u/s 482 CrPC and has not

joined this petition presumably they want the matter to be tried. I may reiterate that sub-Section (4) of Section 24 will only come into operation where the person from whom the sample has been taken expresses his intention by sending a notice to the Insecticide Inspector to lead evidence to controvert the report. Thus, if the notice in writing is not given u/s 24(3), provisions of Section 24(4) will not come into play for reanalysis. An irresistible conclusion is that the person from whom the sample was taken on receipt of the test analyst's report must intimate the insecticide Inspector of his intention to lead evidence to controvert the report. If such a notice u/s 24(3) has been given and served upon the Inspector then only the court may on the request of either of the parties send the sample for reanalysis. However, as held in YRS Rao's case (supra) by the Apex Court in the context of Section 24(4) of the Act that Sub-section (4) comes into operation when the sample has not already been tested or analysed in the Central Insecticide Laboratory, since in the instant case the sample has already been tested and analysed in the Central Insecticide Laboratory, no benefit of Section 24(4) of the Act can be availed of to the present petitioners (manufacturing company) besides for further reasons assigned above, and therefore, the decisions cited by Shri Jain such as State of Haryana v. Unique Farmaid (P) Ltd (2), and of this Court in Mohanlal v. State of Rajasthan (3), do not render any help in advancing any case in favour of the petitioners.

11. Learned Public Prosecutor then contended that even otherwise merely because the complainant has failed to request the Court u/s 24(4) of the Act to send the sample seized u/s 22(6) for reanalysis, after the accused (from whom the sample was taken) had intended in writing by notice u/s 24(3) to adduce evidence in controversion of the analyst report sent by the Insecticide Inspector u/s 24(3), entire criminal proceedings for offence punishable u/s 29 cannot be stopped either u/s 258 CrPC or quashed u/s 482 CrPC by this Court at the stage when only the cognizance has been taken by the Magistrate upon the complaint having been filed where even the present petitioners have not yet put their appearance and they have straight way applied for quashing of proceedings before this Court u/s 482 CrPC inasmuch as charges have not yet been framed and at the worst failure to get the sample reanalysed u/s 24(4) of the Act would lead the evidence of the Analyst report inconclusive but the prosecuting agency has got every right to lead any other evidence to establish its case and prove the facts stated in the complaint so also its accompaniments so as to bring home guilt against the accused for offence punishable u/s 29 of the Act. I am totally in agreement with the learned Public Prosecutor.

12. In fact, Section 24 of the Act provides for as to how the reports of the Insecticide Analyst is to be considered obviously keeping in view the object with which the Act has been introduced i.e. in order to combat the menace of food poisoning arising from contamination of food with insecticides and one of the salient features of the Bill under which the Act was enacted was the provisions for taking immediate action by way of prohibition of sale, distribution or use of any insecticide with a view to prevent risk to human beings or animals and for

matters connected therewith. Thus, with a view to take immediate action, provisions have been made in Section 24 of the Act to consider Analyst's report as conclusive evidence u/s 24(3) if the person (accused) (from whom the sample was taken) fails to notify with 28 days of the receipt of report's copy, that he intends to adduce in controversion of the report. Similar provision is envisaged in Sub-section (4) of Section 24 of the Act to consider Analyst's report after reanalysis as conclusive evidence if the court (i) of its own motion or (ii) in its discretion at the request of either of the parties, causes the sample produced before it u/s 22(6) to be sent for test or analysis to Central Laboratory.

13. Here not only the dealer but also the distributor and the manufacturer, all have notified in writing the insecticide Inspector when they received a copy of the Analyst's report intending to adduce evidence in controversion of the report whereas u/s 24(3) only the dealer (from whom the sample has been taken) has been given a right to notify in writing his intention to adduce evidence in controversion of the report. But surprisingly enough none of the accused (either dealer or distributor or manufactures) has requested the court u/s 24(4) of the Act to sent the sample taken u/s 22(6) for reanalysis to the Central Laboratory. Merely because the accused have notified to the Insecticide Inspector for reanalysis with a view to adduce evidence in controversion of the report, it is not sufficient because a request for reanalysis is to be made by the accused to the court u/s 24(4) besides notice u/s 24(3) to the insecticide inspector, and it is only the court competent and not the insecticide inspector to cause the sample taken u/s 22(6) to be sent for test or analysis to the Central Laboratory.

14. Be that as it may, irresistible conclusion is that provisions are enacted in Section 24 of the Act in order to take immediate step by curtailing procedure to lead evidence in proof for alleged offence under Act, so as to consider any document purporting to be a report signed by an insecticide Analyst as evidence of the facts stated therein, and further to consider such evidence as conclusive if the accused (from whom the sample was taken) fails to notify u/s 24(3) intending to adduce evidence in controversion or the report, and similarly to consider reanalysis report upon the orders of the court on the request of either of the parties, as conclusive evidence of the facts stated therein. In other words, in either case i.e. if the sample is neither applied for by the accused or the complainant nor ordered by the court u/s 24(4) of the Act to be sent for reanalysis, then at the worst the Insecticide Analyst's report received u/s 24(2) shall merely be evidence of the facts stated therein and not the conclusive as provided in Sections 24(3) & 24(4) of the Act. That apart Section 30 also provides the defences which are allowed in prosecution under the Act.

15. However, once it is held that right to notify is given u/s 24(3) of the Act only to the dealer from whom the sample was taken for intending to adduce evidence in controversion of the report and not to others as in the instant case distributor or the manufacturer (petitioners) inasmuch as none of the accused including present petitioners (who have not put their appearance before the Magistrate In

complaint case) has applied for reanalysis u/s 24(4) of the Act, the petitioners cannot urge any ground for quashing criminal proceedings claimed deprivation of their right of reanalysis u/s 24(4) of the Act.

16. It is rather surprising that at a stage when the only question to be considered was whether the complaint and its accompaniments disclosed any or all of the offences alleged against the persons arraigned as accused-in the complaint, who have been summoned by the Judicial Magistrate to stand trial, this Court cannot record a conclusive finding that the accused are not guilty of the offences alleged against them or that the complaint does not disclose any offence u/s 29 of the Act being made out against the persons arraigned as accused or that proceedings are vexatious or smack of lame prosecution. I do not find any good reasons to axe down the complaint at the threshold itself. Needless to say, the question of proof of contrary or controversion can be answered after the evidence is led. The prosecuting agency should have had the freedom to go into whole gamut of the allegations and to reach a conclusion of its own to bring home guilt against the accused.

17. In ultimate analysis, I may concisely observe that right of reanalysis Under Section, 24(4) of the Act though is available as one of the defences besides others u/s 30, but is only for restricted purpose, i.e. to controvert the analyst report and/or to consider such report as conclusive evidence of the facts stated therein and in the absence of reanalysis, to consider the report merely an evidence putting further burden upon the prosecuting agency to prove a document purporting to be insecticide analyst's report with a further right to the accused to controvert it during trial under Evidence Act . and/or CrPC.

18. Merely because right of reanalysis of the sample to controvert the analyst's report u/s 24(4) was lost to the accused because of the prosecution having failed to either to apply for reanalysis to the Magistrate or to file complaint promptly and further because by the time the matter reached the Court, shelf life of the sample had already expired, the complaint should itself be sieved through a colander of finest gauzes for testing the sufficiency of evidence. Such as endeavour may be Justified during trial, but certainly not during the stage of cognizance or prosecution. On the other hand, however, the right of prosecution to prove the ingredients of the offence alleged in the complaint under special law cannot be curtailed at the threshold holding insufficient or lack of conclusive evidence, whereas there is Analyst's report as an evidence of facts stated therein, where is a report submitted by an expert and which does not go in evidence automatically because an expert is to be examined as a witness in court to prove his report, and he was to face cross-examination, To prove a document (in the absence of exemption to do so or failure to avail of statutory right under special law like analyst report, its author is required to be produced in the witness box and in case of an expert to also show that he had made any scientific study or research in assessing the productivity of subject matter of analysis.

19. Such a situation as has arisen in the present case may occasion in every case for offences under that Act because samples of insecticide substance cannot be supposed to have long shelf life with a view to wait for prosecution ordeals or tactics of dilly dally being adopted by the accused to avail of losing right of reanalysis u/s 24(4) of the Act and then to get the prosecution itself quashed at the threshold by invoking Section 482 CrPC and in that eventuality the object with which the Act has been enacted will certainly be defeated and no persons indulging in culpable activities under the Act i.e. menace of food poisoning arising from contamination of food with insecticides, will let loose free unpunished on hypertechnical approach. Suppose a manufacturing company of insecticides including pesticides, herbicides or fungicides in the country is indulged in producing such products totally in contravention of the Insecticides Act and the rules but sample of its products is taken with remainder of short period of expiry or its samples are taken during an incident of mass food poisoning but the samples taken are of remainder expiry of short shelf life and samples are found misbranded or arising from contamination with insecticides, before its shelf life is expired and the complaint is filed in court after expiry of shelf life of the samples having no purpose to serve for reanalysis u/s 24(4), men certainly in every case what is the purpose to initiate criminal proceedings by filing complaint and why the agency wait for criminal prosecution u/s 31 of the Act. With due respect. I am of the considered opinion that quashing of criminal proceedings in complaints of menace arising from contamination with Insecticides, at the out set, would itself be an abuse of process of law defeating the object of statute i.e. the Insecticides Act by letting loose free such culprits without trial, and curtailing the right of the prosecution.

20. Before parting with this order. I must express my anguish as to how and in what manner the authority under the Insecticides Act acted in launching and according sanction for prosecution resulting in multiplicity of litigation and affording opportunity to avail of lacunas of prosecuting agency by way of adopting dilly dally tactics with a view of take benefit thereof so as to let loose free without trial and further defeating the purpose with which the Act was enacted. In the instant case, sample was taken on 31.7.92 and was sent for analyst's report on, 26.8.92 knowing the fact that its shelf life was to expire on June, 1993. The Analyst report was issued on 20.10.92 and its copy was sent on 22.12.92 to the persons against whom prosecution was to be launched. And, the authority competent under the Act issued sanction for prosecution on 13.1.94 against the dealer (from whom sample was taken), distributor and the manufacturing company and further issued corrigendum on 13.12.94 impleading petitioner No.2 Pushpendra Gupta. The Insecticide Inspector filed complaint against the accused in 1995, and in the meantime shelf life of the sample expired. Even after the complaint was filed, the prosecutor thereof did not care to pursue the matter diligently by observing the requisites under the Act and till application u/s 258 CrPC was filed on 3.2.96 by the accused, and decided by the impugned order dated 30.2.2000, all of whom (accused) could not have been

served. All these facts show callousness & lethargy apart from red tapeism on the part of the concerned department and therefore require prompt action at the level of the Secretariat to avoid recurrences. Hence a copy of this order be sent to the Chief Secretary of the State to take initiatives of all promptitudes in launching prosecution against the offenders for commission of offences in the light of the object with which the Act had been enacted so as to avoid such recurrences of affording chance to me accused.

21. As a result of the above discussion, this criminal misc. petition being devoid of any merit is hereby dismissed. The impugned order dt. 30.3.2000 passed by ACJM Bhawani Mandi in Cr. Case No. 149/95 confirmed by the Special Judge (Prevention of Atrocities to SC/ST), Jhalawar in Cr. Rev. Nos. 68/2000 & 69/2000 are hereby affirmed. The trial Court is directed to expedite the trial and get it completed as early as possible put not beyond six months from the date of receipt of certified copy of this order. The prosecution agency as well as the defence both will cooperate each other in producing their evidence before the Court without any delay. A copy of the order be sent to the trial Court.