

(2018) 05 RAJ CK 0209

In the Rajasthan High Court

Case No : Criminal Miscellaneous (Petition) No. 417 of 2001

Gupta Chemicals Private Limited B-144 @APPELLANT@Hash State of Rajasthan & Ors.

Date of Decision : 08-05-2018

Acts Referred:

Insecticides Act, 1968 — Section 17(1)(a), 20(3), 20(4), 21(1)(a), 24, 24(3), 24(4), 29(1)(a), 31, 33(1)

Citation : (2018) 05 RAJ CK 0209

Hon'ble Judges : G R MOOLCHANDANI, J

Bench : Single Bench

Advocate : P.C. Jain, Aladeen Khan

Final Decision : Allowed

Judgement

Petitioners have preferred instant S.B. Criminal Misc. Petition under the provisions of 482 of Cr.P.C. to quash criminal complaint/prosecution pending against the petitioners in the Court of Judicial Magistrate, First Class, Court No.12, Jaipur City, Jaipur pertaining to Criminal Case No.230/1995 State vs. Gupta Chemical Private Limited & Ors.

Backdrop of the matter reveals that a criminal complainant was lodged by Inspector, Insecticides/Seed/Fertilizer, Jaipur against the petitioners under

Section 29(1)(a) of the Insecticides Act, 1968 (for short hereinafter referred as the Act), pleading therein that the accused-petitioners have

since contravened provisions of Section 17(1)(a) of the Act, so be punished under Section 21(1)(a) of the Act, said complainant was presented before

the trial court on 13.11.1995 and the accused petitioners were summoned by the trial court vide equal dated order on 13.11.1995.

Contents of complaint discloses that the sample of insecticide was taken on 29.06.1995 and admitted expiry of sample was April 1996, report of

Analyst was obtained on 23.08.1995, a show-cause notice was issued to the petitioners on 31.08.1995, which was replied by the petitioners on

14.09.1995, the sanction for prosecution under Section 31 was granted on 07.10.1995 and the complaint was filed before the court below on

13.11.1995 and cognizance was taken on the same day. One of the accused P.K. Gupta appeared before the court below on 30.09.1997 and rest of

the accused persons put their appearance in on 13.05.1999. Upon appearance, petitioner P.K. Gupta moved an application before the court below

under the provisions of Section 33(1) of the Act praying that he was authorized person to conduct the business of the Firm, so proceedings against rest

of the accused persons be dropped.

On 05.11.1997 an application under Section 29(1)(a) of the Act was also preferred by P.K. Gupta that expiry date of the sample of Methyl Parathion

2% dust had already expired in April 1996 and valuable right of accused-petitioners for getting the sample re-examined from Central Insecticide

Laboratory having been frustrated because of the delay in presenting the complaint, so proceedings be quashed against the petitioners being not

maintainable under the eye of law.

Learned counsel for the petitioners, while relying upon the following authorities,

1. Northern Mineral Ltd Vs. Union of India & Anr. 2010 Cr.L.R. (SC) 729
2. M/s. Northern Mineral Ltd & Ors. Vs. Raj.Govt. & Anr. 2016 Cr.L.R. (SC) 1107
3. M/s Gupta Chemicals Pvt. Ltd. & 5 Ors Vs. State of Rajasthan & Insecticide Inspector 1996 CrLR (Raj) 134
4. Bayer India Ltd. & Ors. Vs. State of Rajasthan & Ors. 2000 IAC 405 (Raj.)
5. M/s. Nagpal Agro System & Ors Vs. The State of Rajasthan & Anr. 2001 Cr.L.R. (Raj.) 538
6. M/s. BASF India Ltd. & Others Vs. State of Raj. & Ors. RLW 2004 (2) Raj. 1225
7. BASF India Ltd. & Ors. Vs. The State of Rajasthan & Ors. 2011 (3) WLC (Raj.) 320
8. M/s. Laxmi Agencies vs. State of Rajasthan 2012 (3)

Cr.L.R. (Raj.) 1386, has contended that the petitioner/s had expressed their intent to the Inspector by sending a request on 14.09.1995 that they

were not satisfied with the outcome of the Laboratory, so a request was made to send the sample for reexamination under the provisions of Section

24(3) of the Act but request of the petitioners was not entertained and the sample impugned was not sent for re-examination, which was mandatory

under the provisions of Section 24(3) of the Act.Â Non-adherence to the mandatory provisions, makes entire proceedings unsustainable, despite

learned court below without appreciating statutory aspect, has passed impugned order, it has further been contended that the court below failed to

appreciate sanction for prosecution being granted without application of mind and sheer proforma was furnished without requisite satisfaction and

prosecution has been launched against all the petitioners without even pondering upon that at the time of alleged offence, who was holding charge of

Director by actively participating in the affairs of the Firm.Â Mandate of Section 24(4) of the Act, which postulates a valuable right in favour of the

petitioners, has been defeated for non compliance of the mandatory provisions, even the shelf life of the sample was expired for delayed launch of

prosecution, so petitioners have failed to get the sample re-examined hence prosecution is not sustainable in the eye of law, so be quashed.

Conversely, learned Public Prosecutor has contended that there is no flaw or infirmity in the order impugned and prosecution since petitioners have not

made any such request within the prescribed time under Section 24 of the Act, therefore, the petition is liable to be dismissed.

Heard both the sides and perused the record.

Perusal of the record show that the factual aspects pertaining to taking of sample, presentation of complaint, expiry of shelf date of the sample, its

analysis report, issuance of showcause notice are not in dispute.Â Expiry date of the sample of Methyl Parathion 2% dust was April 1996 and the

complaint was filed on 13.11.1995.Â Accused-petitioner P.K. Gupta having been served put in his appearance before the court below on 30.09.1997

and preferred an application that his valuable right was defeated, so the criminal proceedings were not sustainable against him.

Section 24(3) of the Act, prescribes as under:-

Â 24. 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 sixty 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 twentyeight 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 samples are pending that he intends to adduce evidence in

controversion of the report, in compliance of the provisions, accused- petitioners preferred an application with an intent to get the sample re-examined

from Central Insecticide Laboratory before the Inspector of Insecticide, on 14.09.1995.

Section 24(4) lays down:-

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 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 Central Insecticides Laboratory the result thereof, and such report shall be conclusive evidence of the facts stated therein.

Besides it, validity of sample expired in April 1996 prior to the appearance of the accused person/s before the court below by that time, the sample got

expired in April 1996 and shelf expiry did not permit it to be re-examined, as such inordinate delay caused by the prosecution in preferring the

complaint, has caused deprivation of petitioner's valuable right by not enabling petitioner/s to get the sample re-examined.

In aforesaid fact situation, it is obvious that criminal proceedings launched against the petitioner/s, if permitted to be continued then it would be an

abuse of process of court since valuable right of accused-petitioner/s is defeated for noncompliance of mandatory provisions of Section 20(3) and (4),

authorities relied by the accused-petitioner/s, support the petitioners in light of

the above.

In the result, the petition is allowed and proceedings of Criminal Case No.230/1995 State vs. Gupta Chemical Private

Limited pending against the petitioner/s in the Court of Judicial Magistrate, First Class, Court No.12, Jaipur City, Jaipur, are quashed.

Let record of the learned trial court be transmitted back with a copy of the judgment.