

(2002) 04 SC CK 0082

In the Supreme Court Of India

Case No : Criminal Appeal No. 529 of 2002

Gupta Chemicals Pvt. Ltd. and Others

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 18-04-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Insecticides Act, 1968 — Section 24, 29, 3

Citation : (2002) 2 ALD(Cri) 571 : (2002) 1 JT 516 Supp : (2002) 5 WLN 776

Hon'ble Judges : D. P. Mohapatra, J; D. M. Dharmadhikari, J; Brijesh Kumar, J

Bench : Full Bench

Final Decision : Disposed Of

Judgement

1. Leave granted.
2. Heard learned counsel for the parties.
3. In these appeals filed by the accused against the judgment of the Rajasthan High Court dated 1.5.2001, declining to interfere with the criminal proceeding instituted against the appellant in exercise of the power u/s 482 of the Criminal Procedure Code is under challenge.
4. The factual backdrop of the case which is relevant for appreciating the contentions raised may be stated thus:

M/s Gupta Chemicals Pvt. Ltd. is engaged in manufacture of pesticides and insecticides including B.H.C. 10% dust, batch No. B/10-172 and phonates 10-G which are the materials in question in the present proceeding . On 31.10.1991, the insecticides inspector visited the shop of a dealer where these products were being sold. He collected samples of the materials for examination. In accordance with the procedure . prescribed under Insecticides Act, 1968, the sample was divided into different parts of which one was given to the person from whom the sample was collected and another was sent to the state insecticides laboratory for analysis. It is relevant to state here that the expiry date of B.H.C 10% dust,

batch No. B/10-172 was September, 1993 and for phonates 10-G batch No. PG-86 the expiry date was February, 1993. The report submitted by the analyst was to the effect that the material did not conform to the prescribed standard and was, therefore, misbranded. The report was received by the inspector on 2.1.1992. The intimation of the receipt of the report was sent to the dealer on 10.1.1992 and to the appellants on 16.1.1992. On receipt of the intimation about the state analyst report the appellants sent intimation to the inspector expressing their intention to lead evidence against the report. The intimation was sent within the period prescribed under the Act. Long thereafter in July, 1992 the inspector took steps to obtain permission of the competent authority to launch criminal prosecution. Permission was granted 2 years thereafter in July 1994. The complaint was filed in court against the company and its managing director and directors, alleging commission of offence punishable u/s 29(1)(a) of the Insecticides Act, 1968. By then the shelf-life of the insecticides in question had expired. Section 29 provides that whoever imports, manufactures, sells, stocks, or exhibits for sale, or distributes any insecticides deemed to be misbranded under Sub-clause (i) or Sub-clause (iii) of Section 3(k), shall be punishable in the manner prescribed under the section.

5. The appellants filed the application u/s 482 of the Criminal Procedure Code seeking quashing of the complaint and the criminal proceedings instituted against them, inter alia, on the ground that on account of the inordinate delay in filing the complaint, they have been deprived of their valuable right to get the sample of the seized material examined by the central insecticides laboratory. The High Court without entering into merit of the case declined to interfere with the proceedings relying on the general principle that the court should be loath to interfere with criminal proceeding at the inception and should not ordinarily quash a criminal complaint and proceedings.

6. Shri G.L. Sanghi, learned senior counsel appearing for the appellants contended that in the facts and circumstances of the cases, there is no doubt that the appellants have been deprived of the valuable right to get the sample examined at the central insecticide laboratory which is vested in them u/s 24 Sub-section (4) of the Act, He further contended that the appellants had sent intimation to the inspector that they were not accepting the state analysed report as correct and intend to have the sample examined at the central insecticides laboratory and that the finality and the conclusiveness attached under the statutes in respect of the state analysed report is not available to the prosecution. More than two years had elapsed between the grant of permission and filing of the complaint petition by which time the shelf-life of the material seized had expired. In these circumstances, Shri Sanghi submitted that no useful purpose will be served in continuing these criminal proceeding and it is a fit case in which the High Court should have quashed the proceeding in exercise of its power u/s 482 of the Criminal Procedure Code.

7. Per Contra the learned counsel appearing for the respondent, State of

Rajasthan contended that these points may be raised by the appellants at the appropriate stage of the proceedings and even accepting the factual position as stated to be correct, no case for quashing of the complaint in exercise of power u/s 482 of the Criminal Procedure Code is made out, and therefore, no interference with the order passed by the High Court is called for.

8. At the outset, we may note certain provisions of the Act which are relevant for the purpose of the present proceeding.

9. Section 3(k) of the Act, which defines the expression "misbranded" provides that insecticides shall be deemed to be misbranded in the circumstances enumerated in Clauses (i), (ii), and (viii). Clause (viii) of Section 3(k) under which the complaint appears to have been filed reads as follows.

"3. Definitions - in this Act, unless the context otherwise requires -

(k) "misbranded" - an insecticide shall be deemed to be misbranded.

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(viii) If the insecticide has a toxicity which is higher than the level prescribed or is mixed or packed with any substance so as to alter its nature or quality or contains any substance which is not included in the registration."

10. The provision clearly indicates that for the purpose of this clause the report of the analyst is of considerable importance.

11. Section 24 which deals with the reports of the insecticides analyst so far as material for the purpose of the case is quoted hereunder:

"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 60 days be deliver to the insecticide inspector submitting with it a signed report in duplicate in the prescribed form.

(2) Any document purporting to be a report signed by an insecticide analyst shall be the evidence of the facts stated therein, and such evidence shall be conclusive unless the person from whom the sample was taken has within 28 days of a 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.

(3) Unless the sample has already been tested or analysed in the central insecticide laboratory where a person has under subsection (3) notified his intention of adducing evidence in controversion of the insecticides analyst's report. The court may of its own motion or in its discretion at the request dither 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 make the test or analysis

and report in writing signed by or under the authority of the director of the central insecticides laboratory the results thereof. And such report shall be conclusive evidence of the facts stated therein."

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 appellants 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 u/s 482 of Cr.P.C.

13. Accordingly, the appeals are allowed, the orders passed by the High Court are set aside and the prosecution alleged against the appellants are quashed.