
(2016) 04 SC CK 0021

In the Supreme Court Of India

Case No : Criminal Appeal No. 1034 of 2005 with Criminal Appeal No. 61 of 2006

M/s. Northern Minerals Ltd. & Ors.

APPELLANT

Vs

Rajasthan Govt. and Anr.

RESPONDENT

Date of Decision : 28-04-2016

Acts Referred:

Insecticides Act, 1968 — Section 24(3), 24(4), 24(5)

Citation : (2016) 95 ACrC 543 : (2016) 163 AIC 156 : (2016) 4 AICLR 302 :
(2016) AIR(SCW) 2543 : (2016) 3 AIRJharR 557 : (2016) AIRSC 2543 : (2016)
AllSCRCrI 953 : (2016) 2 ApexCourtJudgments(SC) 687 : (2016) 3 CalLJ 8 :
(2016) 3 CriCC 424 : (2016) CriLJ 3121 : (201

Hon'ble Judges : Jagdish Singh Khehar;C. Nagappan, JJ.

Bench : Division Bench

Advocate : S.S. Shamshery, AAG, Amit Sharma, Prateek Yadav, Anu Dixit
Kaushik, Ruchi Kohli, Milind Kumar, Advocates, for the Respondent

Final Decision : Allowed

Judgement

Jagdish Singh Khehar, J. - Criminal Appeal No. 1034 of 2005

1. An Insecticide Inspector-cum-Assistant Director of Agriculture (HQ) Ajmer, seized sample of Dimethoiate 30% EC (of Batch No.810) from the shop of M/s Joshi Krishi Agencies, Vyapari Mohalla, Near Power House, Madangaj, Kishangarh, Rajasthan, on 15.10.1994. It is not a matter of dispute, that the above sample of the insecticide was manufactured by M/s Northern Minerals Ltd. (appellant No.1 herein) in March, 1994. It is also not a matter of dispute, that the shelf life of the insecticide was to expire in August, 1995.

2. The concerned Insecticide Inspector sent the seized sample for analysis to the State Pesticide Testing Laboratory, Durgapura, Jaipur. Consequent upon the analysis made by the Testing Laboratory, report dated 13.12.1994 came to be submitted, which declared the sample drawn on 15.10.1994 as mis-branded.

3. A show cause notice dated 30.12.1994 was accordingly issued to appellant

No.1 i.e. M/s Northern Minerals Ltd., as also, the three other appellants before this Court, all of whom were Managing Director/Director of appellant No.1. The aforesaid show cause notice along with its report dated 13.12.1994 was received by appellant No.1 on 03.01.1995. It is also the case of the learned counsel for the appellants before this Court, that the service of the aforesaid show cause notice was effected only on appellant No.1 and not its Managing Director and Director (appellant Nos.2 to 4 herein). Consequent upon the receipt of the above show cause notice, appellant No.1 submitted its reply to the same on 06.01.1995. A copy of the reply furnished by appellant No.1 to the show cause notice is available on the record of this case as Annexure P-3. In the above report dated 06.01.1995, M/s Northern Minerals Ltd., inter alia, asserted as under:

"It is kindly to inform you that we are manufacturing Dimethoate 30% EC as per the relevant ISI specifications and are releasing the product for sale only after testing it in our laboratory and finding it conforming to the relevant ISI specifications. At the time of manufacturing of Dimethoate 30% EC Batch No.810 it was found containing 30.6% w/w a.i. contents conforming to the relevant ISI specifications. On receipt of your letter referred above we had again analyzed the said sample of Dimethoate 30% EC batch no.810 and it was again found containing 29.9% a.i. contents conforming to the relevant ISI specifications. Hence, in both the cases the above said sample has been found to be conforming to the relevant ISI specifications. Therefore, your contention that the said product has been found to be mis-branded is not acceptable to us.

Under the circumstances, we hereby express/notify our intention of adducing the evidence in controversion of the report of the Insecticide Analyst, State Pesticide Testing Laboratory, Durgapura, Jaipur dated 13.12.1994."

It is the contention of the learned counsel representing the appellants, that a perusal of the reply filed by M/s Northern Minerals Ltd. would reveal, that they had clearly indicated their intention to adduce evidence to controvert the report of the Insecticide Analyst from the State Pesticide Testing Laboratory, Durgapura, Jaipur, dated 13.12.1994.

4. The Joint Director Agriculture (Plant Protection) Rajasthan, Jaipur, accorded his written consent authorising the Insecticide Inspector to institute a case for prosecution under Section 29(1)(a) of the Insecticides Act against the appellants on 31.05.1995. In compliance with the aforesaid sanction, the Insecticide Inspector-cum-Assistant Director of Agriculture (HQ) Ajmer, filed a complaint on 13.09.1995 before the Judicial and Munsif Magistrate (1st Class), Kishangarh. On 13.12.1995, the above Magistrate took cognizance of the aforesaid complaint.

5. Dissatisfied with the order passed by the Additional Civil Judge (Junior Division-cum-Judicial Magistrate), Kishangarh, Rajasthan, in taking cognizance, the appellants approached the High Court by filing Criminal Miscellaneous Petition No.250 of 2001 under Section 482 of the Criminal Procedure Code

wherein they sought quashing of the order of cognizance dated 13.12.1995. The High Court did not accept the prayer made by the appellants and dismissed the above Criminal Miscellaneous Petition on 26.10.2004. Dissatisfied with the order passed by the High Court, the appellants have approached this Court through the instant Criminal Appeal.

6. During the course of hearing, learned counsel for the appellants invited our pointed attention to Sections 22 and 24 of the Insecticide Act, 1968 (hereinafter referred to as 'the Act'). The same are extracted hereunder for facility of reference:

"22 Procedure to be followed by Insecticide Inspectors

(1) Where an Insecticide Inspector seizes any record, register or document under clause (b) of sub-section (1) of section 21, he shall, as soon as may be, inform a Magistrate and take his orders as to the custody thereof.

(2) Where an Insecticide Inspector takes any action under clause (d) of sub-section (1) of section 21-

(a) he shall use all despatch in ascertaining whether or not the insecticide or its sale, distribution or use contravenes any of the provisions of section 18 and if it is ascertained that the insecticide or its sale, distribution or use does not so contravene, forthwith revoke the order passed under the said clause or as the case may be, take such action as may be necessary for the return of the stock seized;

(b) if he seizes the stock of the insecticide he shall, as soon as may be, inform a Magistrate and take his orders as to the custody thereof;

(c) without prejudice to the institution of any prosecution, if the alleged contravention be such that the defect may be remedied by the possessor of the insecticide, he shall, on being satisfied that the defect has been so remedied, forthwith revoke his order and in case where the Insecticide Inspector has seized the stock of insecticide, he shall, as soon as may be, inform a Magistrate and obtain his orders as the release thereof.

(3) Where an Insecticide Inspector takes any sample of an insecticide, he shall issue a receipt therefor stating therein that the fair price of such sample shall be tendered if the sample, after test or analysis is not found to be misbranded and the Insecticide Analyst has reported to that effect and on such price having been tendered may require a written acknowledgement therefor.

(4) Where the Insecticide Inspector seizes the stock of any insecticide under clause (d) of sub-section (1) of section 21, he shall tender a receipt in the prescribed form.

(5) Where an Insecticide Inspector takes a sample of an insecticide for the purpose of test or analysis, he shall intimate such purpose in writing in the prescribed form to the person from whom he takes it, and in the presence of

such person unless he wilfully absents himself, shall divide the sample into three portions and effectively seal and suitably mark the same and permit such person to add his own seal and mark to all or any of the portions so sealed and marked:

Provided that where the insecticide is made up in containers of small volume, instead of dividing a sample as aforesaid, the Insecticide Inspector may, and if the insecticide be such that it is likely to deteriorate or be otherwise damaged by exposure shall take three of the said containers after suitably marking the same and, where necessary, sealing them.

(6) The Insecticide Inspector shall restore one portion of a sample so divided or one container, as the case may be, to the person from whom he takes it and shall retain the remainder and dispose of the same as follows:-

(i) one portion or container, he shall forthwith send to the Insecticide Analyst test or analysis; and

(ii) the second, he shall produce to the court before which proceedings, if any, are instituted in respect of the insecticide.

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 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 samples 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.

(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."

Our pointed attention was also drawn to Section 22(6) of the Act wherein the Insecticide Inspector is mandated to retain one portion of the sample and produce the same in the Court before which the proceedings, if any, are instituted in respect of the concerned insecticide. Insofar as Section 24 is concerned, learned counsel for the appellants has drawn our pointed attention to sub-Sections (3) to (5) whereunder, unless an objection to the Analyst's Report is raised within 28 days by the person from whom the sample was taken, the said Report is treated as final. With reference to sub-Section (4) of Section 24 of the Act, it was the pointed contention of the learned counsel for the appellants, that an accused can require the sample produced before the Magistrate under Section 22(6), to be re-tested, in case the veracity of the test carried out at the behest of the authorities, is disputed/contested.

7. In the background of the aforesaid statutory provisions, it was the submission of the learned counsel for the appellants, that by the time the matter came to be taken up by the learned Additional Civil Judge (Junior Division-cum-Judicial Magistrate), Kishangarh, Rajasthan, on 13.12.1995, the sample had already expired. In this behalf it was pointed out, that the sample drawn was to expire in August, 1995. Thus viewed, it was asserted, that the only right vested in the accused to controvert the report of analysis of the sample obtained by the Insecticide Inspector stood frustrated. In the above view of the matter, it was submitted that the right of defence available to the appellants in terms of Section 24 of the Act having been lost, it was imperative for this Court to quash the proceedings initiated against the appellants by the order of cognizance dated 13.12.1995.

8. In order to support his above contention, learned counsel for the appellants has placed reliance on Northern Mineral Limited v. Union of India, 2010(3) R.C.R. (Criminal) 763 : (2010) 7 SCC 726, and invited the Court's attention to the following observations recorded therein:

"19. 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 expressions have 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, the intention of adducing evidence in controversion of the Insecticide Analyst's report clothes the Magistrate with 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.

20. In the 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 with the jurisdiction to send the sample to the Central Insecticides Laboratory for analysis and it is not required to state that it intends to get the sample analysed from the Central Insecticides Laboratory. True it is that report of the Insecticide Analyst can be challenged on various grounds but the accused cannot 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, the conclusive evidentiary value of the report gets denuded and the statutory value of the report gets denuded and the statutory right to get the sample tested and analysed by the Central Insecticides Laboratory gets fructified.

21. The decision of this Court in *National Organic Chemical Industries Ltd.* (1996) 11 SCC 613, *Unique Farmaid (P) Ltd.* (1999) 8 SCC 190 and *Gupta Chemicals (P) Ltd.* (2010) 7 SCC 735, in our opinion do support Mr. Nehra's contention. True it is that in the first two cases, the accused, besides sending intimation that they intend to adduce evidence in controversion of the report the 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 the accused had intimated its intention to adduce evidence in controversion of the report and that conferred on him the right to get the sample tested by the Central Insecticides Laboratory. The decision of this Court in *Gupta Chemicals* is very close to the facts of the present case. In the said case "on receipt of the information about the State Analyst's 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."

22. From the language and the underlying object behind Sections 24(3) and (4) of the Act as also from the ratio of the aforesaid decisions of this Court, we are of the opinion that mere notifying the intention to adduce evidence in controversion of the report of the Insecticide Analyst confers on the accused the right and clothes the court with the jurisdiction to send the sample for analysis by the Central Insecticides Laboratory and an accused is not required to demand in specific terms that the sample be sent for analysis to the Central Insecticides Laboratory. In our opinion the mere intention to adduce evidence in controversion of the report, implies demand to send the sample to the Central Insecticides Laboratory for test and analysis.

23. Section 24(3) of the Act gives right to the accused to rebut the conclusive nature of the evidence of the Insecticide Analyst by notifying its intention to adduce evidence in controversion of the report before the Insecticide Inspector or before the 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.

24. No proceeding was pending before any court when the accused was served with the Insecticide Analyst's Report, the intention was necessarily required to be conveyed to the Insecticide Inspector, which was so done by the appellant and in this background the Insecticide Inspector was obliged to institute complaint forthwith and produce the sample and request the court to send the sample for analysis and test to the Central Insecticides Laboratory. The appellant did whatever was possible for it. Its right has been defeated by not sending the sample for analysis and report to the Central Insecticides Laboratory.

25. 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 the Central Insecticides Laboratory. A 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.

27. It is interesting to note that Sections 24(3) and (4) of the Act oblige the Insecticide Analyst and the 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."

9. As against the assertion made by the learned counsel representing the appellants, it was submitted on behalf of the respondents, that the claim for a re-analysis of the second sample drawn by the concerned Insecticide Inspector, does not flow to the appellants before this Court. Insofar as the above contention is concerned, a distinction was sought to be drawn between sub-Sections (3) and (4) of Section 24 of the Act. It was submitted by the learned counsel representing the respondents, that the liberty to seek a second analysis of the sample drawn is available only to "...the person from whom the sample was taken...", and further, that the said liberty is available only in case the said person from whom the said sample was taken, notifies in writing "...within 28 days of the receipt of a copy of the report..." his intention to adduce evidence in controversion of the report. It is, therefore, the contention of the learned counsel for the respondents, that the appellants before this Court not being the person from whom the sample was taken, cannot make a demand for a second test within the mandate of Section 24(4) of the Act.

10. We have given our thoughtful consideration to the submissions advanced at the hands of the learned counsel for the rival parties.

11. First and foremost, it is imperative for us to conclude, that the judgment rendered by this Court in the Northern Minerals Ltd. Case (supra), relied upon by the learned counsel for the appellants, squarely applies to the facts and circumstances of this case, and that, the prayers made in the instant appeal deserve to be accepted on the basis of the legal position declared by this Court in the above judgment. We order accordingly.

12. Insofar as the contention of the learned counsel for the respondents in distinguishing the right of the person from whom the sample was taken, as mandated under Section 24(3) is concerned, we need only refer to sub-Section (4) of Section 24 of the Act which extends the above right, even to the complainant and the accused. Read harmoniously, therefore, we have no hesitation to conclude, that insofar as the person from whom the sample was taken, the right to raise an objection is circumscribed by requiring him to indicate his intention to do so within 28 days of the receipt of the copy of the report. There is however no such limitation of time placed by the legislature on the complainant and/or the other accused proceeded against. In the above view of the matter, insofar as the present appeal is concerned, we find, that a vital right vested in the appellants/accused to get the sample re-tested (from the Central Insecticides Laboratory), to controvert the report of analysis of the sample obtained by the Insecticide Inspector, stood frustrated. The appellants have lost the right to disprove their guilt. The appellants cannot be proceeded against, when they have, for no fault of their own, lost a vital right of defence. We are satisfied to conclude, that under sub-Section (4) of Section 24 of the Act, an accused other than a person from whom the sample is taken, also has a right to adduce evidence in controversion of the Insecticide Analyst's Report, and in case the accused avail of the above right under sub-Section (4) of Section 24, he must bear the expenses of the test or analysis, to be made by the Central Insecticides Laboratory (under sub-Section 5 of Section 24)

13. For the reasons recorded hereinabove, the instant appeal is allowed. The impugned order dated 26.10.2004 passed by the High Court is set aside. The proceedings initiated against the appellants based on the cognizance taken by the Additional Civil Judge (Junior Division-cum-Judicial Magistrate), Kishangarh, Rajasthan, are hereby quashed.

Criminal Appeal No. 61 of 2006

14. We have heard learned counsel for the rival parties.

15. It is not disputed before us, that on the date when cognizance was taken on 04.02.1995 by the Judicial and Munsif Magistrate (1st Class), Ajmer, Rajasthan, the sample had already expired in June, 1994. In the above view of the matter, we are satisfied that the instant appeal deserves to be allowed in the same terms as in M/s Northern Minerals Ltd. and others v. Rajasthan Govt. and Anr.(Criminal

Appeal No. 1034 of 2005) decided on 28.04.2016.

16. In view of the above, the instant appeal is allowed in the same terms as in the M/s Northern Minerals Ltd. Case (supra).