

PETITIONER:
THE STATE OF PUNJAB

Vs.

RESPONDENT:
NATIONAL ORGANIC CHEMICAL INDUSTRIES LTD.

DATE OF JUDGMENT: 25/10/1996

BENCH:
K. RAMASWAMY, S.P. KURDUKAR

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Leave granted.

We have heard learned counsel for the parties.

This appeal by special leave arises against the order of the High Court of Punjab & Haryana at Chandigarh made on March 13, 1992 in Criminal Miscellaneous No.6835-M(A) of 1991.

The admitted position is that the respondent is a manufacturer of Monocil, an Insecticide. Insecticide Inspector visited the factory of the respondent on August 18, 1988 and had taken two samples of Monocil from batch No.0319, manufactured in March, 1988 when the same was exposed for sale in August, 1989. Admittedly, he had taken two samples thereof and sent one of the samples to the Public Analyst. The Public Analyst in his report dated October 12, 1988 reported that the ingredients used were 33.02% E.C. as against the specification of 36%. Accordingly, it was not in conformity with the ISI specifications. Consequently, he opined that it was adulterated. On receipt thereof, show cause notice was issued on October 21, 1988 as to why the respondent should not be proceeded against for sale of an adulterated insecticide. On receipt thereof, the respondent had given a reply on November 7, 1988 requesting the appellant to send the second sample to Central Insecticides Laboratory so as to enable them "to adduce evidence in controversion of the allegations made against us you may please have the retained/refer sample analysed by CIL", that was not done. The complaint was laid on March 25, 1989 for prosecution of the respondent in the Court of the Chief Judicial Magistrate, Kapurthala. The respondent challenged the same in the proceedings under Section 482 of the Code of Criminal Procedure. In the impugned order, the High Court has held that the appellant had delayed in taking action; nor was the sample in the custody of the appellant sent to the Central Insecticides Laboratory; the appellant had deprived the respondent of its valuable defence due to delay. Under these circumstances, the proceedings for prosecution of the respondent is a waste of public time; accordingly, it quashed the proceedings. Though, prima facie, we are not

impressed with the reasoning given by the High Court, on perusal and conjoint reading of Section 21, 22 and 24 of the Act, we are of the view that ultimate conclusion to quash the complaint, in the circumstances, is right. The substance of the question is: whether the appellant has complied with the statutory requirements envisaged under Section 22 read with Section 24(3) and (4) of the Act? Section 21 of the Insecticides Act, 1968 (for short, the 'Act') gives power to the Insecticide Inspector to enter and search, at all reasonable times and with such assistance, if any, as he considers necessary, any premises in which he has reason to believe that an offence under the Act or the rules made thereunder has been or is being or is about to be committed, for the purpose of satisfying himself that the provisions of the Act or the rules made thereunder or the conditions of any certificate of registration or licence issued thereunder are being complied with etc. He shall have power to enter and search the premises and take action, as contemplated under the Act including to take samples of any insecticides and send such samples for analysis to the Insecticide Analyst for its test in the prescribed manner. The procedure has been prescribed under Section 22 of the Act. The manner in which Insecticide Inspector is empowered to seize the record etc. and also to send such analysis to the Analyst is provided therein. Subsection (5) & (6) provide the manner in which the samples of an insecticide for the purpose of test or analysis, shall be taken; it reads as under:

"(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 willfully 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 for 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."

A reading thereof would indicate that Insecticide Inspector is empowered to take samples of insecticides for the purpose of test or analysis, as contemplated and in the manner laid down in the Act and the rules. He 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. Under the proviso, where the insecticide is made up in containers of small volume instead of dividing a sample as specified, 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. Under sub-section (6), the Insecticide Inspector thereafter 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 he shall retain the remainder and dispose of the same as envisaged in clauses (i) and (ii). After the receipt of the report, subsection (3) of Section 24 declares that "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 same are pending, that he intends to adduce evidence in controversion of the report." Subsection (4) of Section 24 envisages that "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, 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 Subsection (6) of Section 32 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, under Subsection (4) shall be paid by the complainant or the accused, as the court shall direct. Thus, it would be clear that after the inspection and seizure of the insecticide, the Insecticide Inspector shall divide the insecticide into three portions, as contemplated and in the manner prescribed and deliver one such sample to the manufacturer or person from whom insecticide was taken. One should be sent to the Insecticide Analyst. After the receipt of the report, the accused would be notified of the result of the report. Thereafter, the complaint is required to be lodged in the Court. 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 Insecticide Laboratory and adduce evidence of the report so given. That such certificate by the Director of the 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 Insecticides 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, consent 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.

Unfortunately, in this case, the appellant did not adopt the course as was required under the Act. Of course, the respondent, without availing of the remedy of report by Director of CIL, may not be entitled to plead deprivation of the statutory defence. But the complaint should be lodged with utmost dispatch so that the accused may opt to avail the statutory defence. The appellant had not given third sample to the respondent. As a result, the respondent has been deprived of his statutory opportunity to have the sample tested by the CIL. Resultantly, the respondent has been deprived of a valuable defence statutorily available to him. Under these circumstances, we think that further proceedings in the Court of the Chief Judicial Magistrate would be rendered fruitless. Consequently, though for different reasons the complaint quashed by the Court may be justified warranting no interference.

The appeal is accordingly dismissed.