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INDOFIL INDUSTRIES LTD. AND ORS.

v.

STATE OF PUNJAB

(Criminal Appeal No. 653 of 2017)

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JULY 03, 2017

**[DIPAK MISRA AND A. M. KHANWILKAR, JJ.]**

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*Code of Criminal Procedure, 1973 – s.482 – Quashing of proceedings – Complaint under Insecticides Act – Report of the Central Insecticides Laboratory (CIL) obtained before filing of the complaint/pursuant to the direction given by the concerned Magistrate and made part of record of the criminal prosecution – Appellant sought to quash proceedings on the ground that spare sample was sent for analysis to Central Insecticides Laboratory (CIL) without institution of any proceedings – High Court refused to quash the proceedings – Held: The purport of s.24(4) is that the report of the CIL shall be conclusive evidence of the facts stated therein – Sub-sec. (4) of s.24 opens with the words, “Unless the sample has already been tested or analysed in the CIL” – If the complaint is filed on the basis of the report of the CIL, then the question of exercising the right u/s.24(4) does not endure to the accused – Therefore, in cases where such report is already obtained or available, the criminal prosecution must proceed on that basis – Insecticide Inspector has the option either to send the third sample on the request made by the person from whom it was collected to the CIL for testing or analysis or to launch a criminal prosecution and submit the third sample in the concerned Court well before the expiry of shelf life of the Insecticide to enable the accused named in the complaint to ask for testing or analysis thereof in the CIL – Therefore, High Court did not err in dismissing the petition to quash the criminal proceedings pending against the appellants in respect of misbranded insecticide – Insecticides Act, 1968 – ss.22(5), 24.*

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**Dismissing the appeal, the Court**

**HELD: 1. As per sub-section (5) of Section 22 of Insecticide Act, if the Insecticide Inspector decides to take a sample of an insecticide for the purpose of test or analysis, he is obliged to**

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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, he shall then 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. After that, the Insecticide Inspector is expected to 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 retain the remainder and deal with same in the manner prescribed in sub-section (6) of Section 22. Out of the remainder, one portion or container is required to be sent for Insecticide Analyst Test or Analysis. The second portion is required to be produced before the Court where the proceedings if any are instituted in relation to the said insecticide. Before the proceedings are instituted, the Insecticide Inspector, in terms of Section 24, is obliged to obtain the report of the Insecticide Analyst. The Analyst is required to deliver the report to the Insecticide Inspector within the prescribed time (30 days). Upon receipt of the said report, the Insecticide Inspector is then required to issue show cause to the person from whom the sample was taken and retain the second copy of the report for use in any prosecution in respect of the samples. [Paras 11, 12][153-G-H; 154-A-D]

2. A bare reading of sub-section (3) shows that the first part declares that the report signed by the Insecticide Analyst shall be evidence of the facts stated therein and it shall be conclusive, unless the "person from whom" the sample was taken exercises his right by notifying in writing within the specified time that he intends to adduce evidence in controversion of that report. Thus, the second part of this provision gives a right to the person from whom the sample was collected to raise an objection. Once the person from whom the sample was taken exercises that right in terms of sub-section (4), the conclusiveness of the report of the Insecticide Analyst (State Analyst) referred to in the first part of the same provision cannot be used against such person. These provisions are in the nature of rules of evidence. Further, if the criminal complaint is launched and the person is named as an accused, he can request the concerned

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A Magistrate before whom the proceedings are pending to send the third sample produced before the Court to the CIL for testing or analysis. That right can be exercised only if the complaint is founded on the report of the State Insecticide Analyst. However, if the complaint is filed also on the basis of the report of the CIL, then the question of exercising the right under Section 24 (4) does not endure to the accused. For, the purport of Section 24(4) is that the report of the CIL shall be conclusive evidence of the facts stated therein. The opening part of sub-section (4) of Section 24 opens with the words, "Unless the sample has already been tested or analysed in the CIL". The provisions of the Act predicate that the Insecticide Inspector has ample power to send the sample for testing or analysis to the CIL on his own. Rather, it is his duty to do so if such an express request is made by the person from whom the sample was taken. The Insecticide Inspector must take prompt steps to send the sample to the CIL immediately after the protest is notified about the report given by the State Insecticide Analyst. The Insecticide Inspector has the option either to send the third sample on the request made by the person from whom it was collected to the CIL for testing or analysis or to launch a criminal prosecution and submit the third sample in the concerned Court well before the expiry of shelf life of the Insecticide to enable the accused named in the complaint to ask for testing or analysis thereof in the CIL. The High Court was right in dismissing the petition to quash the criminal proceedings pending against the appellants in respect of misbranded insecticide. [Paras 13, 14][155-B-H; 156-A-E]

F *State of Punjab v. National Organic Chemical Industries Ltd.* (1996) 11 SCC 613 : [1996] 7 Suppl. SCR 807; *State of Haryana v. Unique Farmaid Pvt. Ltd. and Others* (1999) 8 SCC 190 : [1999] 3 Suppl. SCR 451; *Northern Mineral Ltd. v. Union of India and Another* (2010) 7 SCC 726 : [2010] 8 SCR 1; *M/s Ravinder Kumar and Brothers v. State of Punjab* (1996) Cri. L. J. 4293; *M/s Krishi Kainder v. State of Punjab* (1998) Cri. L. J. 351; *Gupta Chemicals Pvt. Ltd. and Others v. State of Rajasthan and Another* (2010) 7 SCC 735 – referred to.

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Case Law Reference

[1996] 7 Suppl. SCR 807	referred to	Para 5	A
[1999] 3 Suppl. SCR 451	referred to	Para 5	
[2010] 8 SCR 1	referred to	Para 5	
(1996) Cri. L. J. 4293	referred to	Para 5	B
(1998) Cri. L. J. 351	referred to	Para 5	
(2010) 7 SCC 735	referred to	Para 6	

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 653 of 2017. C

From the Judgment and Order dated 08.08.2016 of the High Court of Punjab & Haryana at Chandigarh in CRM-M 4458/2016.

Arun Nehra, Ms. Shobha, Advs. for the Appellants.

V. Madhukar, AAG, Ms. Anvita Cowshics, Adv. for the Respondent. D

The Judgment of the Court was delivered by

**A. M. KHANWILKAR, J.** 1. The appellants invoked the jurisdiction of the High Court of Punjab and Haryana at Chandigarh under Section 482 of the Criminal Procedure Code, 1973 being CRM-M-4458 of 2016, for quashing of the prosecution instituted against them by the State for an offence punishable under Sections 3(k) (i), 17, 18, 29, 30 and 33 of The Insecticides Act, 1968 (for short "**the Act**"). The principal ground urged before the High Court was about the gross violation of mandatory provisions of the Act particularly Section 22, resulting in immense prejudice to the appellants. For, the appellants were neither served with the report of the Analyst nor afforded any opportunity to exercise their right of analysis of the spare sample. Whereas, the spare sample was sent for analysis to the Central Insecticides Laboratory without institution of any proceedings. Failure to produce the second sample before the Court where the criminal case was launched against the appellants was contrary to Section 22(6) (ii) of the Act. It was also contended that the appellants, who are the manufacturers of the product, were arraigned as an accused in the criminal case contrary to the spirit of Section 33 (1) of the Act. These grounds of challenge, however, did not find favour with the High Court. Hence, this appeal. E F G H

A 2. Briefly stated, on 21<sup>st</sup> December, 2012, the Insecticide Inspector,  
Bhikhi, empowered under Rule 27(5) of The Insecticide Rules, 1971  
(for short "**the Rules**"), inspected the premises of a firm M/s Jai Durga  
Pesticides Store, a licensed dealer and proprietary concern of one Vinod  
Kumar (for short "**the dealer**"). The dealer had displayed the product  
insecticide Piroxofop-Propinyl 15% W.P. under the brand name 'Gromate'  
B bearing batch No.SGR018 manufactured by the appellants for sale. It is  
an admitted position that the dealer had purchased the said insecticide  
through invoice No.361203060 dated 24.11.2012. The Insecticide  
Inspector took random samples from one out of 500 units of such  
insecticides packets, bearing manufacturing date 30.11.2011 and expiry  
C date 29.11.2013. The Insecticide Inspector completed the necessary  
formalities for taking the samples and prepared documents of three  
parcels which were duly sealed and signed by him, the dealer and the  
witnesses. The three different cloth bags were duly sealed. One of the  
sealed samples was handed over to the dealer (Vinod Kumar) and the  
D remaining two bags containing the samples were deposited in the office  
of Chief Agriculture Officer, Mansa. Out of the two samples carried by  
the Insecticide Inspector, one sample was then forwarded to the  
Insecticide Testing Laboratory, Ludhiana (for short "**the State  
Laboratory**"). After the necessary test was conducted, a report dated  
11.01.2013 was sent by the State Laboratory to the office of the Chief  
E Agriculture Officer, Mansa opining that the tested sample was  
misbranded. The said analyst report along with a show cause notice  
was then served upon the dealer as well as the manufacturer (appellants)  
on 22.01.2013 and 11.02.2013 respectively.

F 3. The dealer (Vinod Kumar) then moved an application before  
the Chief Judicial Magistrate, Mansa, praying for analysis of the spare  
sample. The Chief Judicial Magistrate allowed the said application filed  
by the dealer Vinod Kumar. Pursuant to that order, the spare sample  
was forwarded in one sealed packet to the Director, Directorate of Plant  
Protection Quarantine and Storage, Central Insecticide Laboratory,  
Faridabad, (for short "**the CIL**") vide communication dated 06.04.2013.  
G The CIL analysed the spare sample received by it and forwarded its  
report on 17.04.2013, opining that the sample does not conform to the  
relevant specification in the active ingredients content test requirement  
and is misbranded. A formal complaint was then filed on 18.05.2015 in  
the Court of Chief Judicial Magistrate, Mansa, being Complaint No.17/  
H 2015.

4. As set out hereinabove, the appellants filed a petition under Section 482 of Cr.P.C. for quashing of the said complaint on the grounds noted earlier. The High Court by the impugned judgment dated 8<sup>th</sup> August, 2016, dismissed the said petition. The relevant extract of the said judgment which falls for our consideration reads thus:

*"The foremost argument of the petitioner's counsel that they had been denied their legitimate right of reanalysing for which refuge has been taken from the ratios M/s B.R. Agrotech and another vs. State of Haryana CRM-M-23973 of 2012; State of Punjab vs. National Organic Chemical Industries Ltd. MANU/SC1779/1996; Indofil Chemicals Co. Ltd and others Vs. State of Punjab CRM-M-16591. of 2014 and M/s Indofil Chemical Co. Vs. State of Haryana CRM-M-651H of 2011 though, appears to be highly impressive, however, a close look at the provisions bears out that by virtue of Section 24(3) of the Act period of 28 days has been prescribed from the receipt of copy of the report to enable the party to challenge it and unless it is done so a report of the insecticides Analyst shall become conclusive proof. Though, with much vehemence reliance has sought to be placed on M/s B.R. Agrotech case ibid, however, the licensed dealer of the petitioner's side had moved an application for reanalyzing on 30.01.2013, as a consequence of which, the second sample was dispatched to the Central Insecticide Laboratory, whose report was received on 17.04.2013. The manufacturer on the basis of show cause notice dated 11.02.2013 was fully aware of the outcome of the analysis but did not choose to avail of this remedy throughout and has chosen to wait till the filing of the complaint, though, aware of the fate of the reanalysis as well and the fact that the expiry of the article was to take place w.e.f. 29.11.2013, now at this belated stage the manufacturer cannot be allowed to rake up these pleas when by his own volition he has sought to keep mum over it and with the efflux of time has forfeited his own right and to his own disadvantage for which he cannot derive any such benefit. More so, when the dealer had already availed of this opportunity apparently reflects what is at the back of the mind of the petitioner-manufacturer. The ratios laid down in M/s*

A *B.R. Agrotech and another vs. State of Haryana CRM-M-23973 of 2012; State of Punjab vs. National Organic Chemical Industries Ltd. MANU/SC1779/1996; Indofil Chemicals Co. Ltd. and others vs. State of Punjab CRM-M-16591 of 2014* are factually at much variance from the case in hand and so is the fate of *M/s Indofil Chemical Co. Vs. State of Haryana CRM-M-6518 of 2011* so relied upon by the petitioners.

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The other line of contention based on the ratio *M/s Indofil Chemical Co. ibid* that sample ought to be sent within 24 hours and has to be sent by the District Agriculture Officer with whom the present samples have been deposited without loss of time and the learned counsel for the petitioners could not pinpoint how there has been violation of any provisions of the Act and the Rules and that a polythene bag is not a suitable container. The plea based on ratios *P.D. Garg and others vs. State of Punjab CRM-M-932 of 2014* and *State of NCT of Delhi vs. Rajiv Khurana (2010) 11 SCC 469* that the petitioners cannot be held responsible and have no knowledge nor consented or connived in such a process of manufacturing and whether any role is attributable to them or not is a matter of evidence which cannot be gone into at this juncture and, therefore, this argument certainly is brushed aside. This Court taking support from *Narinder Kumar Gupta vs. State of Haryana 2006(1) RCR Criminal 862* where similar question of law was taken note of, since the sample in the present case was drawn from the dealer who has duly exercised his right of reanalysis, thus, even otherwise the manufacturer at this juncture cannot have any grouse over denial of such a right when he was fully aware of the outcome of the test so conducted on his product and, thus, manufacturer in the light of *Narinder Kumar Gupta case ibid* having failed to exercise his option when show cause notice has been sent to him is certainly conclusive evidence against him to this effect. From another angle the plea that the complaint has been filed after the shelf life of the product has expired needs to be relooked from the angle that in the present case the report of the insecticides Analyst was sent to the dealer as well as manufacturer on 22.1.2013 and 11.2.2013 respectively and

thus were having opportunity to exercise their option which the dealer has exercised and on his written request on 30.1.2013 spare sample was sent for this regarding which report was received on 17.4.2013 and, therefore, was sufficient opportunity to rebut the evidence to this effect and since the petitioner did not exercise such option as has been laid down in *Narinder Kumar Gupta case* *ibid* in that situation filing of the complaint after the expiry of the shelf life of the sample is of no consequence as the right provided under sub-Section (4) of Section 24 of the Act is not available to the petitioners and qua the petitioners-manufacturer the same has become conclusive evidence in terms of Section 24(3) of the Act.”

5. The principal argument before us is that, as per Section 22(6) (ii) of the Act, the spare sample was required to be submitted along with the complaint before the Court where the complaint is lodged; and that, in terms of Section 24(4) of the Act, only that Court is competent to direct analysis of the spare sample by the CIL either on its own motion or in its discretion at the request of either the complainant or the accused. As the appellants have been arraigned as accused, they had the right to ask for analysis of the spare sample so produced before the Court in the complaint proceedings. In the present case, admittedly, the spare sample was sent for analysis to the CIL much before a formal complaint was filed against the named accused (including the appellants). As a result, the appellants could not ask for analysis of that sample. Thus, their right of adducing evidence in controversion of the insecticide analyst report has been defeated. That right of the named accused is an indefeasible right. Resultantly, the prosecution launched against the appellants suffers from a defect which is incurable. In other words, continuation of the subject criminal complaint against the appellants will be an exercise in futility and abuse of the process of Court. In support of the aforementioned contentions reliance has been placed on the decisions of this Court reported in *State of Punjab Vs. National Organic Chemical Industries Ltd.*<sup>1</sup>, *State of Haryana Vs. Unique Farmaid Pvt. Ltd. and Others*<sup>2</sup>, *Northern Mineral Ltd. Vs. Union of India and Another*<sup>3</sup> and *M/s Northern Minerals Ltd. and Others Vs. Rajasthan Government and*

<sup>1</sup> (1996) 11 SCC 613

<sup>2</sup> (1999) 8 SCC 190

<sup>3</sup> (2010) 7 SCC 726

A *Another*.<sup>4</sup> The appellants have also relied upon two decisions of the Punjab and Haryana High Court in the case of *M/s Ravinder Kumar and Brothers Vs. State of Punjab*<sup>5</sup> and *M/s Krishi Kainder Vs. State of Punjab*<sup>6</sup>.

6. Per contra, the respondent State contends that in the facts of the present case, there is no infirmity in the prosecution launched against the appellants. According to the respondent, the plea taken by the appellants, if accepted, would result in adopting a pedantic approach in the matter. For, there is no express prohibition in the said Act to send the third sample for analysis to CIL before filing of a formal complaint. It is open to the Insecticide Inspector to send the third sample for analysis to the CIL on the representation received from whomsoever the sample was collected, that he intends to adduce evidence in controversion of the report of the State Insecticide Analyst. Rather, it would be the bounden duty of the Insecticide Inspector to do so with promptitude to effectuate the right of the person from whom the sample of the insecticide was collected, to get it analysed from the CIL. In this case, the third sample was sent to CIL pursuant to the order of the Court passed at the behest of the authorised dealer of the appellants' company. If such request is acted upon by the Insecticide Inspector, it would not be in contravention of any provision of the Act or the Rules. It is intended to further the cause of the person concerned to effectively defend himself in the prosecution to be later on launched against him. In that, if the analysis report of CIL was favourable to that person, the competent authority would not launch a prosecution against that person. Further, there is nothing in the Act to suggest that each accused is entitled to separately request the concerned Court to send the third sample for analysis to CIL. Analysis by CIL is possible only once and the report of CIL is conclusive evidence of the facts stated therein. The counsel for the respondent has placed reliance on the decision in the case of **State of Harayana** (*supra*), wherein the argument of the State, that the Insecticide Inspector was not competent to send the sample to CIL, has been rejected in paragraph 10 of the said decision. He has also placed reliance on the decision of a three-Judge Bench of this Court in the case of **Gupta Chemicals Pvt. Ltd. and Others Vs. State of Rajasthan and Another**<sup>7</sup>.

<sup>4</sup> (2016) 12 SCC 298

<sup>5</sup> (1996) Cri. L. J. 4293

<sup>6</sup> (1998) Cri. L. J. 351

<sup>7</sup> (2010) 7 SCC 735

In paragraph 11 of the said decision, the Court has enunciated that it is the right of the accused to have the sample examined by the CIL. In paragraph 12, the Court noted that if the Insecticide Inspector receives intimation from the person from whom the sample was collected about his intention to have the sample tested from CIL, the Insecticide Inspector may either send the sample to the CIL or file the complaint in Court with promptitude to enable the accused to move the Magistrate for an order to do analysis thereof. In the present case, admittedly, the dealer (Vinod Kumar) himself approached the Chief Judicial Magistrate for a direction regarding analysis of the third sample collected from him. That prayer was allowed by the Court, pursuant to which the third sample was sent to CIL. Acting upon the aforesaid order, the prosecution has, in effect, venerated the right of that person to get the sample tested or analysed from the CIL. The purport of sub-section (4) of Section 24 is two-fold. Firstly, it bestows a right upon the person from whom the sample is collected or the accused, to seek testing and analysis of the third sample from the CIL. The second facet of the same provision is to delineate the evidentiary value of the report of the CIL. If the analysis of the sample has been done by the CIL, the right of the accused to have the sample analysed, which flows from sub-section (4), does not endure. That is made amply clear from the opening statement found in sub-section (4) of Section 24 which predicates, unless the sample has already been tested or analysed by the CIL. In other words, the right bestowed on the person from whom the sample is collected or for that matter the accused arraigned in the formal complaint as filed, is ignited only if the sample has not been analysed by the CIL before institution of the complaint. It is contended that the obligation cast upon the Insecticide Inspector under Section 22 (6) (i), is to forward one portion or container to the insecticide analyst for analysis. It is, therefore, open to the Insecticide Inspector to send the sample to the State Insecticide Laboratory and/or to the CIL. The expression "Insecticide Analyst Test or Analysis" has not been defined in the Act or the Rules made thereunder. Section 3 (c) of the Act defines "Central Insecticide Laboratory" and Section 3 (f) defines "Insecticide Analyst". Both are separate and independent authorities. The former is established in terms of Section 16 of the Act by the Central Government and the latter is established by the Central Government or State Government under Section 19 of the Act. It is thus submitted that Section 24 (4) has no application to the fact situation of the present case as the report of the CIL of analysis of the third sample was already

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A obtained at the instance of the dealer before the expiry date of the product  
i.e. 29.11.2013. That report could be made the basis to proceed against  
all the accused named in the complaint filed before the Magistrate at  
Mansa on 18.05.2015. The appellants could not have insisted for testing  
or analysis of the sample through CIL. Thus, the non-submission/  
B production of the third sample along with the complaint would not vitiate  
the prosecution launched against the appellants. The production of the  
third sample before the Court where the proceedings are instituted, is to  
enable the accused named in the complaint to apply for analysis thereof  
from CIL if not already done, for controversion of the report of the State  
C Insecticide Analyst. As regards the report of the CIL, by operation of  
law, it is conclusive evidence of the facts stated therein, in terms of  
second part of Section 24(4). It is thus contended by the respondent  
State that the conclusion reached by the High Court whilst dismissing  
the petition filed by the appellants for quashing of the prosecution launched  
against them, is unassailable and for which reason this appeal is devoid  
of merits.

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7. Having cogitated over the rival submissions, we find force in  
the argument of the respondent State. Before we embark upon the merits  
of the present case, we deem it apposite to analyse the decisions pressed  
into service by the appellants. In the case of **State of Punjab** (supra), it  
was an admitted position that the person (respondent company in that  
E case) from whom the sample was collected by the Insecticide Inspector  
after receipt of the show cause notice and the report of the State  
Insecticide Analyst, had requested the competent authority to send the  
third sample for analysis to CIL. That was not done by the Insecticide  
Inspector. The respondent, therefore, challenged the institution of  
F prosecution against it on the ground that the testing/analysis of the third  
sample by CIL was delayed beyond the expiry date of the insecticide in  
question and that the sample in the custody of the competent authority  
was not sent to the CIL, which deprived the respondent of its valuable  
defence. In paragraph 6 of the reported decision, the Court observed  
thus:

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*“6. 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 the  
Director of CIL, may not be entitled to plead deprivation of  
the statutory defence. But the complaint should be lodged*

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*with utmost dispatch so that the accused may opt to avail of the statutory defence. The appellant had not given the 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."*

8. In the case of **State of Haryana** (supra), the sample was collected by the Insecticide Inspector from the shop of the dealer on 5<sup>th</sup> August, 1994. The State Insecticide Analyst report was received mentioning that the sample was found to be misbranded. This analysis report of the sample was sent to the dealer and the manufacturer on 30<sup>th</sup> September, 1994. Reply to the said show cause notice was given by the manufacturer on 8<sup>th</sup> October, 1994. The Insecticide Inspector after obtaining consent for launching the prosecution on 24<sup>th</sup> June, 1995, filed criminal complaint by which time the validity of the product had expired. In this backdrop, the grievance of the accused was that they received summons to appear before the Court, by which time they had lost their right to get the third sample analysed from the CIL under Section 24 (4) of the Act. In other words, the Insecticide Inspector failed to act upon the request made by the accused person from whom the sample was collected and also the manufacturer of the product, to get the sample analysed/tested from the CIL. Notably, in that case the State had contended that the Insecticide Inspector, on his own, could not have forwarded the third sample for testing to the CIL and that that request could only be considered by the concerned Court. This Court expressly rejected this contention as being devoid of substance. This authority, in our opinion, will be of no avail to the appellants. Rather, it supports the contention of the respondent State that the Insecticide Inspector is competent to send the third sample for testing to the CIL on receipt of representation in that regard from the person from whom the sample was obtained. Even in the case of **Gupta Chemicals Pvt. Ltd.** (supra), a three-Judge Bench of this Court has expressly held in paragraph 12 of the reported judgment that the Insecticide Inspector ought to have taken

A steps to send the third sample to the CIL or promptly filed a complaint in the Court to facilitate the accused to move the concerned Court for appropriate directions in that behalf. Intrinsic in this dictum is that the Insecticide Inspector is obliged to send the third sample for analysis to the CIL on his own, if such request is received from the concerned person intending to rebut the report of the State Laboratory. In that case, the sample was collected by the Insecticide Inspector on 31<sup>st</sup> October, 1991. The State Insecticide Analyst report was received by the Inspector on 2<sup>nd</sup> January, 1992. Intimation of that report was given to the dealer on 10<sup>th</sup> January, 1992 and to the manufacturer on 16<sup>th</sup> January, 1992. The expiry date of the product was February, 1993. The complaint was, however, filed in July, 1994. By that time the shelf life of the insecticides in question had already expired. On that factual background, the Court held that the right of the accused to have the third sample analysed from the CIL, as per Section 24 (4), was defeated; and as a result, continuation of the criminal prosecution against the accused would be a futile exercise and an abuse of the process of Court.

D 9. In the case of **Northern Mineral Ltd. Vs. Union of India** (supra), the situation is no different. The Insecticide Inspector took the sample on 10<sup>th</sup> September, 1993. The State Testing Laboratory report was made ready on 13<sup>th</sup> October, 1993. That indicated that the sample was misbranded. A show cause notice was issued to the appellant therein on 1<sup>st</sup> November, 1993. The appellant replied to the said show cause notice on 17<sup>th</sup> November, 1993, expressing its intention of adducing evidence in controversion of the report of the State Testing Laboratory. Further, although consent for prosecution was given on 23<sup>rd</sup> February, 1994, the complaint was filed on 16<sup>th</sup> March, 1994, by which time the shelf life of the insecticide had expired in February 1994. The Court, therefore, accepted the plea of the said appellant that failure of the Insecticide Inspector to get the sample tested or analysed from the CIL and also having filed the complaint after the expiry date of the product, defeated the right of the appellant to seek direction from the Magistrate for sending the sample for testing and analysis by the CIL. The dictum in this decision will have to be understood in that context. The situation is similar in the case of **Northern Minerals Pvt. Ltd. and Others Vs. Rajasthan Government** (supra). The Insecticide Inspector had collected the sample on 15<sup>th</sup> October, 1994. The shelf life of the insecticide in question was to expire in August 1995. The State Testing Laboratory

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report was made ready on 13<sup>th</sup> December, 1994. A show cause notice was given to the appellant No.1 on 30<sup>th</sup> December, 1994; and was replied to by the appellant No.1 on 3<sup>rd</sup> January, 1995. Reply was given by the appellant No.1 on 6<sup>th</sup> January, 1995, clearly notifying its intention to adduce evidence in controversion of the report of the State Insecticide Testing Laboratory. Further, although the written consent authorising the Insecticide Inspector to launch prosecution was given on 31<sup>st</sup> May, 1995, the complaint was filed on 13<sup>th</sup> September, 1995. Even in that case, the Insecticide Inspector failed to send the sample for testing/analysis to the CIL before the expiry of shelf life of the insecticide in question inspite of the request made in that behalf by the appellant, nor did he file the complaint well before the expiry date of the insecticide to enable the appellant to apply for a direction from the concerned Magistrate where the third sample was produced along with the complaint, for sending it for testing/analysis to the CIL. The Court, following its earlier decision founded on the similar fact situation, concluded that continuing criminal prosecution against the appellant would be a futile exercise and an abuse of the process of Court.

10. Even the two decisions of the Punjab and Haryana High Court relied upon by the appellants have dealt with more or less similar situation where the Insecticide Inspector failed to act upon the express intention conveyed by the person from whom the sample was collected to send it to the CIL for testing/analysis. Even the Criminal complaints filed and the summons received by the accused were after the shelf life of the insecticide in question had expired.

11. On a bare perusal of Section 21 of the Act, it is amply clear that the Insecticide Inspector is empowered to take samples of any insecticide and send such samples for analysis to the Insecticide Analyst for testing in the prescribed manner. The manner of dispatch of samples for test or analysis is prescribed in Rule 34. It predicates as to how each sample is required to be sent by registered post or by hand in a sealed packet together with a memorandum set out in Form XII in an outer cover addressed to the Insecticide Analyst. As per sub-section (5) of Section 22, if the Insecticide Inspector decides to take a sample of an insecticide for the purpose of test or analysis, he is obliged to 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, he shall then divide the sample into three portions and effectively

- A 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. After that, the Insecticide Inspector is expected to 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 retain the remainder and deal with same in the manner prescribed in sub-section (6) of Section 22. Out of the remainder, one portion or container is required to be sent for Insecticide Analyst Test or Analysis. The second portion is required to be produced before the Court where the proceedings if any are instituted in relation to the said insecticide. As noted earlier, the analysis of the sample can be obtained from either the Insecticide Analyst appointed under Section 19 or the CIL established under Section 16 of the Act.

12. Before the proceedings are instituted, the Insecticide Inspector, in terms of Section 24, is obliged to obtain the report of the Insecticide Analyst. The Analyst is required to deliver the report to the Insecticide Inspector within the prescribed time (30 days). Upon receipt of the said report, the Insecticide Inspector is then required to issue show cause to the person from whom the sample was taken and retain the second copy of the report for use in any prosecution in respect of the samples.

13. Sub-sections (3) and (4) of Section 24 are of some significance. The same read thus:

- "24. (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 sample 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*

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[A. M. KHANWILKAR, J.]

*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."*

On a bare reading of sub-section (3), it is seen that the first part declares that the report signed by the Insecticide Analyst shall be evidence of the facts stated therein and it shall be conclusive, unless the "person from whom" the sample was taken exercises his right by notifying in writing within the specified time that he intends to adduce evidence in controversion of that report. Thus, the second part of this provision gives a right to the person from whom the sample was collected to raise an objection. Once the person from whom the sample was taken exercises that right in terms of sub-section (4), the conclusiveness of the report of the Insecticide Analyst (State Analyst) referred to in the first part of the same provision cannot be used against such person. These provisions are in the nature of rules of evidence. Further, if the criminal complaint is launched and the person is named as an accused, he can request the concerned Magistrate before whom the proceedings are pending to send the third sample produced before the Court to the CIL for testing or analysis. That right can be exercised only if the complaint is founded on the report of the State Insecticide Analyst. However, if the complaint is filed also on the basis of the report of the CIL, then the question of exercising the right under Section 24 (4) does not endure to the accused. For, the purport of Section 24(4) is that the report of the CIL shall be conclusive evidence of the facts stated therein. It is pertinent to bear in mind that the opening part of sub-section (4) of Section 24 opens with the words, "Unless the sample has already been tested or analysed in the CIL". Therefore, in cases where such report is already obtained or available, the criminal prosecution must proceed on that basis. In other words, only if the analysis report of the CIL is not available or filed along with complaint or placed on record in the criminal prosecution, would the accused get a right to request the concerned Magistrate to direct testing or analysis of the third sample produced before that Court by the prosecution from the CIL and not otherwise. Any other view would entail in rewriting of the provisions, which are otherwise plain and unambiguous. Thus, if the report of the CIL has been obtained before filing of the complaint or pursuant to the direction given by the concerned

A Magistrate and made part of record of the criminal prosecution, as in this case, the accused named in the complaint cannot ask for analysis of the sample already used at the instance of the person from whom it was taken and is named as co-accused.

B 14. To put it differently, the provisions of the Act predicate that the Insecticide Inspector has ample power to send the sample for testing or analysis to the CIL on his own. Rather, it is his duty to do so if such an express request is made by the person from whom the sample was taken. The argument of the appellants that the Insecticide Analyst cannot do so unless a formal complaint is filed and the concerned Magistrate so directs, is in the teeth of the dictum of this Court in the case of **State of Haryana Vs. Unique Pvt. Ltd. (supra)** and **Gupta Chemicals Pvt. Ltd. (supra)**. This Court has expressly rejected that stand taken by the State and has held that the Insecticide Inspector must take prompt steps to send the sample to the CIL immediately after the protest is notified about the report given by the State Insecticide Analyst. The Insecticide Inspector has the option either to send the third sample on the request made by the person from whom it was collected to the CIL for testing or analysis or to launch a criminal prosecution and submit the third sample in the concerned Court well before the expiry of shelf life of the Insecticide to enable the accused named in the complaint to ask for testing or analysis thereof in the CIL. We, therefore, conclude that the High Court was right in dismissing the petition to quash the criminal proceedings pending against the appellants in respect of misbranded insecticide, for the additional reasons indicated in this judgment.

F 15. While parting, we make it clear that we have not expressed any opinion either way on the efficacy of the CIL report in question including on the issue of admissibility thereof. All questions in that regard will have to be answered by the trial court.

16. Accordingly, we find no merit in this appeal and the same is dismissed. Interim relief is vacated forthwith.

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Devika Gujral

Appeal dismissed.