**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**NAGPUR BENCH, NAGPUR**

**CRIMINAL APPLICATION (APL)NO.1271/2023**

Tajraj s/o Yadorav Chavhan, aged
48 years, Occ: Business. R/o
House No. 91, At Village Khajari,
Tq. Sadak / Arjuni, Dist. Gondia.

... **APPLICANT**

**...VERSUS...**

1. The State of Maharashtra, Through P.S.O, P.S. Duggipar, Tq. Sadak/ Arjuni, Dist. Gondia.

2. The Insecticide Inspector Zilla Parisad, Gondia

...**NON-APPLICANTS**

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Shri J.K. Matale, Advocate for applicant
Ms S.Z. Haidar, APP for non-applicants/State

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**CORAM : URMILA JOSHI-PHALKE AND NANDESH S. DESHPANDE, JJ.**

**RESERVED ON : 22.09.2025**
**PRONOUNCED ON : 15.10.2025**

**JUDGMENT (PER : NANDESH S. DESHPANDE, J.)**

Heard. **Admit**. Heard finally with the consent of learned Counsel for both the parties.

2. This is an application under Section 482 of the Criminal Procedure Code for quashing and setting aside the First Information Report, vide Crime No.0244/2023, for the offence punishable under 420 of Indian Penal Code and Sections 3 K (v), (vii), 13(1) (2), 17 (1,)(b, c, d), 18(1)(b,c), 27 (1), 29 of Insecticide Act, 1968 and Rules 9(3)(vi), 9(3)(vii), 10 (1) A, 10A(a)(b), 10(4)(i), 10(4)(ii), (iii), 10-D, 15(2), 16, 18(1), 18 (1)(c), 19(7), (8) Insecticides Rules, 1971, and Section 8 of the Environmental (Protection) Act, 1986, registered by P.S.O., P.S. Duggipar, Taq. Sadak Arjuni, District Gondia, and the consequent charge-sheet dated 10.09.2023, bearing charge-sheet No. 173/2023, filed by the non-applicant No.1, on a complaint of the non-applicant No.2.

3. As per the contents of the First Information Report, the non-applicant No.2, lodged the First Information Report with the non-applicant No.1, that he is working as a District Quality Control Inspector in the office of the District Superintendent Agriculture Office, Gondia, and he, being a District Quality Controller, is also working as an Insecticide Inspector as contemplated under the Insecticides Act. Being empowered under Section 20 of the

Insecticides Act as an Insecticides Inspector, he is also entitled to perform his work as per Section 21 of the said Act in the entire Gondia District. It is further alleged that, as per the authority given to him under the statutory provisions mentioned supra, he, along with his Drill Team, on the afternoon of 28.06.2023, at about 4:45 p.m., visited M/s Chavhan Krishi Kendra Khajari, Taluka Sadak/Arjuni, District Gondia. The non-applicant No.2 was along with Smt. K.K. Badole, Taluka Agricultural Officer, Sadak/Arjuni, and Shri D.K. Ramteke, Krushi Adhikari, Panchayat Samiti, Sadak/Arjuni, District Gondia.

4. It is further alleged in the First Information Report that at the time of their visit, the applicant who is a proprietor of said M/s Chavan Krishi Kendra, was not present, but his wife, Ritu Chavhan, was present at the said establishment. The visiting team asked the said wife of the applicant to show the stock of insecticides and the stock register, but she could not show it to them. As at the relevant time, the non-applicant No.2 and his team could not see the rate and stock board, therefore, they checked the entire godown. At that time, the non-applicant No.2 found a room in the underground

floor, in which, bags of Fhorate insecticide, (business name Fhorate X) (Systemic insecticide), manufacturer name Pestipak Crop care, plot no. 428/2 G.1. D.C. POR G. Baroda Pin code 391243, batch no. S-1, manufactured dated June 2020 and expiry date December 2022, total 33 bags having 5 k.g. per pocket, total pack pocket 167/-, having price of each nag Rs. 850/-, total prize of Rs.1,40,250/- and 4 nag of 1 k. g. pocket having prize of per pocket Rs. 180/-, total prize Rs.720/-, thus total prohibited insecticide of Rs.140920/-, found by the non-applicant no. 2, which is prohibited.

5. It is further alleged in the said First Information Report, that as the said insecticide is harmful to human life and animals, therefore, the Central Government, vide notification dated 08.08.2008, has stopped its production from 01.01.2019 and prohibited its sale, distribution, and use from 31.12.2020. It is further stated that even though the proprietor of the establishment i.e. the applicant, with an intention to sell the prohibited and expired insecticide to the farmers, has kept it in his godown. On these sets of facts, the First Information Report was lodged with the non-applicant No.1, alleging therein that the applicant has

committed offences under various sections/rules mentioned supra. It is this First Information Report and the consequent charge-sheet, which is filed by the prosecution after completion of investigation which is impugned in the present application filed under Section 482 of the Criminal Procedure Code.

6. We have heard Shri J.K. Matale, learned Counsel for the applicant, as also, Ms S.Z. Haidar, learned Additional Public Prosecutor for the State.

7. Learned Counsel for the applicant states that the meaningful reading of the First Information Report would reveal that no offence mentioned under various sections is made out against the present applicant, and he has been falsely implicated in the alleged crime. He further submits that the non-applicant No.2 has misused the power conferred on him and has made an illegal demand of money to the applicant. He further states that as the said illegal demand was not met with, the present First Information Report is filed. He also states that during the course of investigation, the investigating agency could not collect any substantial material evidence. It is his

submission that even assuming the entire allegations to be correct, procedure as prescribed under the Insecticides Act and Rules framed thereunder have not been followed, and therefore, it's a colourable exercise of power by the non-applicant No.2. He, therefore, prays that the First Information Report and consequent charge-sheet be quashed and set aside.

8. On the other hand, Ms S.Z. Haidar, learned Additional Public Prosecutor for the State has opposed the contentions made by the learned Counsel for the applicant. It is her submission that during the course of investigation, the Investigating Officer has prepared a panchanama of the raid conducted by the complainant and has also collected a notification banning the said insecticides. She, further submits that during the course of investigation, the complainant has also taken 3 kg sample of the Fhorate i.e. seized from the premises of the applicant, and the same is forwarded for analysis at the Insecticide Testing Laboratory, Amravati, and the report in that regard is also received. She submits that as per the report, the Fhorate was found to be misbranded. It is therefore her submission that, in view of this, an offence is squarely made out within the

meaning and definition of the provisions under the Insecticides Act.

9. Before adverting the facts of the present case, it would be convenient to look at the relevant provisions of the Insecticides Act, 1968. The Insecticides Act was brought on the statute book to regulate the import, manufacture, sale, transport, distribution, and use of insecticides with a view to prevent risk to human beings or animals, and for matters connected therewith. It provides for the establishment of a Central Insecticides Board and setting up of a committee called the Registration Committee for the purpose of granting certificate of registration to person desiring to import or manufacturing insecticides. It also provides for the issuance of a license to various persons desiring to manufacture, sale, or execute for sale, or distribute any insecticides. It regulates the transport and storage of insecticides to prevent cases of accidental contamination of food with insecticides and makes provisions for immediate action by way of prohibition of sell distribution or use of any insecticides, where it is found that the same is being done in such a way as to involve risk to human beings or animals. Section 21 of the said Act provides for the powers of the Insecticides Inspector appointed

under the Act. It provides that the Insecticides Inspector will have power to enter and search, at all reasonable times, any premises in which he has reason to believe that an offence under this Act or the Rules made thereunder has been or is being or is about to be committed, for satisfying himself that the provisions of the Act or the rules are being complied with. By virtue of sub clause (b) of sub section (1) of Section 21, the Insecticide Inspector has power to require the production of, and to inspect, examine and take copies of, registers, records or other documents kept by a manufacturer, distributor, carrier, dealer or any other person in pursuance of the provisions of this Act or the rules made thereunder, if he has reason to believe that all or any of them, may furnish evidence of the commission of an offence punishable under this Act or the rules. Clause (c) further empowers the said Officer to make such examination and inquiry to ensure the compliance of Rules.

10. Furthermore, Clause 21(1)(d), which is relevant reads as under :

*(a)…*
*(b)…*
*(c)...*

*(d) to stop the distribution, sale or use of an insecticide which he has reason to believe is being distributed, sold or used in contravention of the provisions of this Act or the rules made thereunder, for a specified period not exceeding [thirty] days, or unless the alleged contravention is such that the defect may be removed by the possessor of the insecticide, seize the stock of such insecticide;*
*(e)……….*
*(f)…………*

11. As would be clear from the reading of Clause (d) of sub-section 1 of Section 21, the Insecticides Officer is empowered to stop the distribution, sell or use of an insecticide, which he has reason to believe is done in contravention of the provisions of Act. However, the said stoppage is to remain in force for a specific period of maximum 30 days, or till the defect is removed by the possessor of the insecticides.

12. Furthermore, Section 22 sub section 2(a) provides that, if the power is exercised under Section 21(1)(d), then the Insecticide Inspector shall use all dispatch in ascertaining whether or not the insecticides in question or its sell or distribution or use contravenes any of the provisions of Section 18. After such ascertainment_if it is found that there is no such contravention he has to further revoke

the order passed under the clause and take such action as may be necessary for the return of the stock seized. Sub clause (b) of sub section 2, casts a duty on the Insecticide Inspector in the event of he seizing the stock to inform the Magistrate and take his orders as to the custody thereof. Furthermore, Clause (c) provides that if the contravention can be remedied by the possessor, and if the Insecticide Inspector is satisfied that such a contravention has been remedied, forthwith revoke the order of seizure.

> *"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 to the release thereof."*

13. Rule 18 (1)(b) and Rule 10, provides that the packing of every insecticides shall include a leaflet regarding particulars that the said chemical is harmful to human beings, animals and wild life.

14. In the backdrop of these legal provisions, if the facts in the present case are analysed, the allegation of the present applicant is that a banned pesticide named Fhorate was found in his godown. It is the case of the non-applicant No.2 that the said insecticide, being harmful for human life, has been banned by the Central Government, and therefore, the offence punishable under various Sections has been clamped upon the applicant.

15. The non-applicant No.2, has intimated to the applicant after taking of sample as contemplated under Rule 33 in form (v)(c) and also under form 'x'. Careful reading of form 'x' provides that since

the applicant has committed an offence under Section 18(1) (b), he is required under the said Act to stop the distribution, sell or use of the said stock for the period of 30 days from 28.06.2023. The First Information Report in the present case is lodged on 29.06.2023, without waiting for the report of the chemical analyst which is dated 03.08.2023. If scheme of Section 21, 22 is perused carefully : in our view, the legislature, intends that an opportunity of rectifying /remediating the deficiency is to be given to the person. No such opportunity is given in the present case and straightway a First Information Report is lodged. Thus the procedure prescribed under the said sections is not followed. It is a settled proposition of law that when a statute requires a thing to be done in a particular manner, then that has to be done only in that manner or not at all. The procedure adopted by the non-applicants in the present matter does fall foul of this proposition of law. (AIR 1936 PC 253, Nazir Ahmad Vs. Emperor followed in AIR 2016, Supreme Court 3814 – Central Coalfields Limited and Ors Vs. SLL-SML (Joint Venture Consortium) and Ors.)

16. Statement of the applicant was recorded on 29.06.2023, in

which, he has categorically stated that the said stock of insecticides was not meant for sale, therefore, was dumped in the godown. He specifically states the fact that the said insecticide was 'Not for Sale' is conspicuously displayed in the godown to avoid any confusion. He further states that the supplier, namely Ashwin Shah, has mistakenly sent the said stock to him, and the applicant was continuously persuading him to take back the returned stock. It is therefore the applicant's case that the stock was not meant for sale. In an identical case of ***State of Punjab Vs. S.H. Dhillon,*** reported in ***1982 SCC OnLine, P & H 602,*** the High Court has held that the said case cannot be one in which the stock of insecticides is exhibited for sell. Mere stocking is no offence under the Act. The Hon'ble Punjab and Haryana High Court has found support in judgment of Hon'ble Apex Court in ***Mohammad Sabir Vs. State of Maharashtra, 1979 (1) FAC 111,*** which was a case relating to Drugs and Cosmetics Act.

> *"6. Learned counsel for the petitioner argued that the accused had stocked the insecticide in his shop without a licence and moreover the said insecticide was a prohibited one and, thus, he violated the provisions of section 18 of the Insecticides Act, 1968. That section reads as follows:*
> *18. Prohibition of sale, etc. of certain insecticides-(1) No person shall, himself or by any person on his behalf, sell,*

*stock or exhibit for sale, distribute, transport or cause to be used by any worker*

*(a) any insecticide which is not registered under this Act:*

*(b) any insecticide, the sale, distribution or use of which is for the time being prohibited under section 27;*

*(c) any insecticide in contravention of any other provision of this Act or of any rule made thereunder.*

*(2) No person shall, himself or by any person on his behalf, sell, stock or exhibit for sale or distribute any insecticide except under, and in accordance with the conditions of a licence issued for such purpose under this Act.*

*7. I am of the opinion that in the present case it cannot be said that the accused had <u>"stocked or exhibited for sale"</u> the insecticide in question within the meaning of section 18 of the Act. There is no evidence on the file to show that the accused sold any insecticide. At the time. P.W. 3 Hardip Singh, Plant Protection Inspector, visited the shop of the accused it was found locked. Therefore, it cannot be said that the accused had sold or stocked or exhibited for sale the insecticide in question. Mere stocking is no offence under the Act. In this view of mine, I am supported by Mohd. Shabbir v. State of Maharashtra, 1979 (I) FAC 111, which relates to a case under Drugs and Cosmetics Act, 1940. The relevant provisions of that Act are practically similar to the provisions of the Insecticides Act. In the above case, their Lordships of Supreme Court observed as follows:*

*<u>“The words used in Section 27, namely, "Manufacture for sale, sells, have a comma after each clause but there is no comma after the clause" "stocks or exhibits for sale". Thus the section postulates three separate categories of cases and no other. (1) manufacture for sale; (2) actual sale: (3) stocking or exhibiting for sale or distribution of any drugs. The absence of any comma after the word "stocks" clearly indicates that the clause "stocks" or exhibits for "sale" is one indivisible whole and it contemplates not merely stocking the drugs but stocking the drugs for the purpose of sale and unless all the ingredients of this category are satisfied, Section 27 of the Act would not be attracted.</u> In the present case there is no evidence to show that the appellant had either got these tablets for sale or was selling them or had stocked them for sale. Mr. Khanna appearing for the State, however, contended that the word "stock" used in section is wide enough to include the possession of a person with the tablets and where such a person is in the possession of tablets of a very huge quantity, a presumption should be drawn that they were meant for sale or for distribution. In our opinion, the contention is wholly untenable and must be rejected. The interpretation sought to be placed by Shri Khanna does not flow from a true and proper interpretation of Section 27. We, therefore, hold that before a person can be liable for prosecution or conviction under Section 27(a)(i) (ii) read with Section 18(c) of the Act, it must be proved by the prosecution affirmatively that he was manufacturing the drugs for sale or was selling the same or had stocked them or exhibited the articles for sale. The possession simpliciter of the articles does not appear to be punishable under any of the provisions of the Act. If, therefore, the essential ingredients of Section 27 are not*

> *satisfied the plea of guilty cannot lead the court to convict the appellant."*

17. Furthermore, the same High Court in the case of ***Safex Chemical India Limited Vs. State of Haryana***, reported in ***2001 SCC OnLine P & H 37***. On identical facts have held that mere stocking without it being exhibited for sell would not be an offence *ifso facto*. In the case in hand also, it is not even the case of the prosecution that the said banned pesticide was exhibited for sale. In fact, the contents of the First Information Report clearly reveal that it was stored in the godown, and therefore, cannot be termed as to be for sale. Statement of members of raiding team clearly states that the insecticide was found under the shop in a godown.

18. It is worthwhile to mention here that the reply of Insecticides Analyst is obtained on 03.08.2023, i.e. after the period of stoppage as provided under Section 21 of the Act. Furthermore, the statements of witnesses which include the raiding team specifically denote that the banned insecticide was found beneath the shop in a godown and not in the shop.

19. It is also worthwhile to mention that the investigating agency has written a letter to the Manager of Gujarat Industrial Development Corporation to ascertain as to the existence of the manufacturing unit, shown on the stock of the banned insecticides. The said letter is dated 03.07.2023, and on the same day statements of two persons have been shown to be recorded who stated that there is no such plot No. 428/2 in Gujarat Industrial Development Corporation. Be that as it may, the existence or non existence of the manufacturing unit, the address of which is shown on the insecticide cannot be a relevant fact vis-a-vis the present applicant is concerned. Since it is not even the case of the prosecution that the stock of banned insecticides was procured from a non-existent unit. The only case of the prosecution is that the banned insecticide was found in the godown of the applicant.

20. Section 30 of the Insecticides Act would also be relevant in the present matter. It provides for, defences which may or may not be allowed in prosecutions under the said Act. Sub-section 3 of the said Section 30 reads as under :

> ***"30. Defences which may or may not be allowed in prosecutions under this Act. -***
> *(1)……….*
> *(2)…………*
> *(3) A person not being an importer or a manufacturer of an insecticide or his agent for the distribution thereof, shall not be liable for a contravention of any provision of this Act, if he proves-*
> *(a) that he acquired the insecticide from an importer or a duly licensed manufacturer, distributor or dealer thereof,*
> *(b) that he did not know and could not, with reasonable diligence, have ascertained that the insecticide in any way contravened any provision of this Act: and*
> *(c) that the insecticide, while in his possession, was properly stored and remained in the same state as when he acquired it."*

21. In the present case, the offence complained of is under Section 3(k)(v) which speaks about an insecticide if not packed or labelled as required by or under this Act is termed as misbranded. Section 3(k)(vii) speaks about reference to registration other than the registration number. This is not even the case of prosecution, and therefore, the goods cannot be termed as misbranded.

22. The next offence which is complained of is Section 13, which speaks about grant of license. It is admitted fact on record that the

applicant posses a valid license as issued under the Insecticides Act and it is valid till 24.06.2099. Therefore, the offence under Section 13 is also not made out. As far as Section 17 is concerned, it prohibits import and manufacture of certain insecticides. At this juncture, it would be relevant to point out that Section 3, sub-section (d) defines imports, Section 3(d) 3(j) states as under :

**3. Definitions. -**

(d) “import” means bringing into any place within the territories to which this Act extends from a place outside those territories;

(j) “manufacture", in relation to any insecticide, includes -

(i) any process or part of a process for making, altering, finishing, packing, labelling, breaking up or otherwise treating or adopting any Insecticide with a view to its sale, distribution or use but does not include the packing or breaking up of any insecticide in the ordinary course of retail business; and

(ii) any process by which a preparation containing an insecticide is formulated;

23. Thus, admittedly, the applicant herein is neither an importer or manufacturer as contemplated in this statue and therefore,

Section 17 is also not applied in the present case.

24. As far as prohibition of sale, etc., of insecticides as provided under Section 18 is concerned, we have stated supra that the terms "stocked" or "exhibited for sale" have been interpreted by the Hon'ble Apex Court and has found support in the judgment of Punjab and Haryana High Court referred supra. Thus, the offence under Section 18 is also not attributed.

25. As far as Insecticides Rules, 1971, is concerned, Rule 10 (1-A) speaks about application by a person for grant of license to sell stock or exhibit for sale employing persons having certain qualifications. The present Rule is also not applicable.

26. Furthermore, Rule 10 (4)(iii) is also not applicable, since it is not even the case of the prosecution that the applicant had not applied for selling, stocking or exhibiting any additional insecticides.

27. Furthermore, Rule 10-A speaks about segregation and disposal of date-expired pesticides. As can be seen from the First

Information Report in question, the date from which the insecticide was banned is December, 2022, the date which is on the package of the banned insecticide. Thus, the said Rule 10-A also does not apply.

28. Rule 16 would also not apply since there is no prohibition of sale or distribution unless packed and labelled.

29. Rule 18(1) is also referred to in the First Information Report, however, the same would not also be applied as it is not the case of prosecution.

30. Rule 19 (7) & (8) would also not apply as there is no material on record to show the ingredients as contemplated under these Rules. In nutshell, all these offences except, contravention of Rule 10-D and 15 would apply in the present case.

31. Thus, in our view, no offence under various Sections/Rule is made out. However, as far as violation of Rules 10-D and 17 is concerned, it can be seen that the applicant has failed to display stock and price list of insecticides and also failed to show cash or

credit memo and maintenance of book of accounts In view of judgment of ***State of Haryana and others Vs. Bhajanlal and others, 1992 Supp (1) SCC 335,*** the case in hand would fall in Clause 7 of paragraph No. 102 thereof:

> *"102................*
> *(1) ...*
> (2) ...
> (3) ...
> (4) ....
> (5) ...
> (6) ...
> (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

32. We, therefore, proceed to pass the following order:

**ORDER**

i) The application is partly allowed.

ii) The First Information Report vide Crime No.0244/2023, for the offence punishable under 420 of Indian Penal Code and Sections 3 K (v), (vii), 13(1) (2), 17 (1,)(b, c, d), 18(1)(b,c), 27 (1), 29 of Insecticide Act, 1968 and Rules 9(3)(vi), 9(3)(vii), 10 (1) A, 10A(a)(b), 10(4)(i), 10(4)(ii),(iii), 16, 18(1), 18 (1)(c), 19(7),

(8) Insecticides Rules, 1971, and Section 8 of the Environmental (Protection) Act, 1986, registered by P.S.O., P.S. Duggipar, Taq. Sadak Arjuni, District Gondia, and the consequent charge-sheet dated 10.09.2023, bearing charge-sheet No. 173/2023, filed by the non-applicant No.1, are hereby quashed.

(iii) The prosecution would continue as far as violation of Rule 10-D and Rule 15(2) of the Insecticides Rules, 1971, is concerned.

Application disposed of.

33. Pending applications, if any, shall stand disposed of.

**(NANDESH S. DESHPANDE, J.)** **(URMILA JOSHI-PHALKE, J.)**

*Jayashree..*