

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CRIMINAL APPLICATION NO. 5651 of 2014

With

R/SPECIAL CRIMINAL APPLICATION NO. 5652 of 2014

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE NIKHIL S. KARIEL

Sd/-

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	NO
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

GODREJ AGROVET LIMITED & 1 other(s)

Versus

STATE OF GUJARAT & 1 other(s)

Appearance:

MR SALIL M THAKORE(5821) for the Applicant(s) No. 1,2

MS MD MEHTA, APP for the Respondent(s) No. 1

RULE SERVED BY DS for the Respondent(s) No. 2

CORAM: HONOURABLE MR. JUSTICE NIKHIL S. KARIEL

Date : 02/05/2022

ORAL JUDGMENT

1. Heard learned Advocate Mr.Salil Thakore appearing for the applicants

and learned APP Ms.Mehta for the respondent State.

2. By way of these applications, the applicants pray for quashing and setting aside of the Criminal Case No.4579 of 2001 and No.3808 of 2001 pending before the learned CJM, Bhavnagar.
3. Learned Advocate Mr.Thakore would submit that the Criminal Cases in question had been filed at the behest of respondent No.2 herein, more particularly alleging offences committed under Section 29(1)(c) of the Insecticides Act, 1968 and for violation of Sections 3(b), 17(1)(c) and 18(1)(g) of the said Act. Learned Advocate would submit that the said complaints could be interfered with by this Court on a very short legal aspect. Having regard to such submissions, both the applications have been taken up for hearing together.
4. Learned Advocate Mr.Thakore would submit that the impugned FIR had been preferred *inter alia* alleging that a sample of the insecticide in question had been drawn by the respondents in the month of February 2001 and whereas the said sample of the insecticide being “Vipul Booster Granules triacontanol 0.05%”, manufactured by the applicant No.1 had been sent to the Regional Pesticides Testing Laboratory for analysis and whereas the Regional Pesticides Testing Laboratory vide its report No.30/540/CCL/RPTL dated 30.3.2001 (corresponding with Criminal Case No.4579/2001) and report No.108/384/CCC/2000-01 dated 7.3.2001 (corresponding with Criminal Case No.3808/2001) had

found that the sample does not conform to the specification as mentioned in the Active Ingredient Test and, therefore, the item in question was stated to be mis-branded. It would be pertinent to note here that as per the analysis report of the Insecticides Analyst, Regional Pesticides Testing Laboratory, Chandigarh, active ingredient of Triacntanol was found at 0.02%, in connection with the complaint No.4579/2001 and whereas insofar as the complaint No.3808/2001 is concerned, the sample revealed 'nil' quantity of Triacntanol, instead of the permissible minimum of 0.05%. Learned Advocate would submit that upon such report received by the Regional Pesticide Testing Laboratory respondent No.2 had instituted the criminal cases referred to herein above against the applicants. Learned Advocate would further submit that vide order dated 25.6.2001 summons came to be issued to the applicants and whereas upon the applicants appearing before the learned Magistrate, they had filed an application under Section 24 of the Insecticides Act praying for the sample to be sent for reanalysis to the Central Insecticides Laboratory. Learned Advocate would submit that vide order dated 4.7.2001 passed in the application preferred by the applicants of the same date, the learned Magistrate had been pleased to send the sample for reanalysis to the Central Insecticides Laboratory. The complainant i.e. respondent No.2 was also permitted to send the very same sample which had been drawn at the stage of initial analysis for reanalysis before the Central Insecticides Laboratory. Learned

Advocate would submit that the CIL had after analysis submitted its report and whereas the reports in both the cases by the Central Insecticides Laboratory would show that the ingredient in question i.e. Triacntanol conforms to the specification as mentioned by the manufacturer i.e. 0.05%. As a matter of fact, learned Advocate would submit that insofar as Criminal Case No.3808 of 2001 is concerned, the active ingredient as per the reanalysis report by the Central Insecticides Laboratory would show that the content was 0.07% whereas in case of reanalysis insofar as Criminal Case No.4579 of 2001 was concerned, the reanalysis shows that the active ingredient was at 0.055%. Learned Advocate would submit that the reanalysis report by the Central Insecticides Laboratory would show that the active ingredient conformed to the specification. Learned Advocate would in this regard draw the attention of this Court to Section 24(4) of the Insecticides Act. Learned Advocate would submit that the said section *inter alia* states with regard to Analyst, who has taken a sample of the insecticides being sent for analysis. Learned Advocate would submit that insofar as Sub-section (4) of Section 24 is concerned, the same states with regard to testing and reanalysis by Central Insecticides Laboratory. Learned Advocate would submit that as per the said sub-section, upon the sample in question, being sent for test or analysis to the Central Insecticides Laboratory and the report in writing signed by or under the authority of the Director of the Central Insecticides Laboratory with regard to the

reasons thereof is received then such report shall be the conclusive evidence stated therein. Learned Advocate would submit that the term 'conclusive evidence of the fact' as mentioned in Section 24(4) denotes the intent of the statute to give a certainty to the proceedings based upon the report of the Central Insecticides Laboratory. Learned Advocate would in this regard rely upon the decision of the Constitutional Bench of the Apex Court in case of **Smt. Somawanti and Ors. Vs. Atma Ram Chadha and Anr., reported in (1963) 2 SCR 774** and would submit that in said decision the Hon'ble Apex Court had *inter alia* observed that when evidence is made conclusive, is adduced, the Court has no option but to hold that the fact exists. Learned Advocate would submit that Sub-section (4) of Section 24 *inter alia* denoting that if the insecticides analysis report is sought to be controverted by the person concerned, then it would be open for such accused to request the learned Magistrate to send the sample of the insecticides which had been sent for testing for analysis and whereas upon learned Magistrate permitting the analysis by Central Insecticides Laboratory, then such report shall be conclusive evidence of the fact i.e. according to the learned Advocate, the said report of the Central Insecticides Laboratory shall be treated as final in exclusion of anything with regard to the same i.e. in other words, the report of the Central Insecticides Laboratory shall be treated as being final report in question as against the contrary report of the Insecticides Analyst. Learned Advocate would submit that this being the position

and the report of the Central Insecticides Laboratory being in favour of the petitioner, the impugned Criminal Complaint based upon the report by the Regional Laboratory which report would stand covered by the conclusive evidence in the nature of the report of the Central Insecticides Laboratory, therefore, the impugned complaint deserves to be quashed and set aside.

5. These applications have been vehemently opposed by the learned APP Ms.Mehta, who would rely upon an affidavit-in-reply filed by the respondent No.2. Learned APP would submit that even the report of the Central Insecticides Laboratory may not be in favour of the present applicants. Learned APP as such has tried to make submissions on issue of facts and whereas to a specific query of this Court, more particularly to the intent of Section 24(4) read with the decision of the Hon'ble Apex Court, as relied upon by the learned Advocate for the applicants, learned APP would submit that the learned Supreme Court having settled the issue in the said decision a contrary view may not be possible for this Court to take.

6. Having heard the learned Advocates for the respective parties and having perused the documents on record, the only question which arises for consideration of this Court is that when the Central Insecticides Laboratory has given a report which would show that the sample is in conformity with the ingredients as mentioned in the specification of the

product in question would the report to the contrary by the Regional Laboratory have any bearing. In the considered opinion of this Court, more particularly relying upon the law laid down by the Hon'ble Apex Court, it would appear that the report of the Central Insecticides Laboratory would be final and whereas any report to the contrary would not have any bearing whatsoever on the issue more particularly since the statute itself denoting that the report of the Central Insecticides Laboratory shall be conclusive evidence of the fact. The Hon'ble Apex Court in case of **Smt. Somawanti and Ors.** (supra) at paragraph 18 and 19 has stated as thus:-

“18. A distinction is sought to be made between "Conclusive proof" and "conclusive evidence" and it is contended that where a law declares that a fact shall be conclusive proof of another, the Court is precluded from considering other evidence once such fact is established. Therefore, where the law makes a fact conclusive proof of another the fact stands proved and the Court must proceed on that basis. But, the argument proceeds, where the law does not go that far and makes a fact only "conclusive evidence" as to the existence of another fact, other evidence as to the existence of the other fact is not shut out. In support of the argument reliance is placed on [s. 4](#) of the Indian Evidence Act which in its third paragraph defines 'conclusive proof' as follows :

"When one fact is declared by this Act to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it".

This paragraph thus provides that further evidence is barred where,, under the [Indian Evidence Act](#), one fact is regarded as proof of another. But it says nothing about what other laws may provide. There are a number of laws which make certain fact& conclusive evidence of other facts: (see [Companies Act](#), 1956, [s. 132](#) ; the [Indian Succession Act](#), 1925, [s. 381](#) ; [Christian Marriages Act](#), 1872, [s. 61](#) ; [Madras Revenue Act](#), 1869, [s. 38](#) ; [Oaths Act](#), 1873, [s. \(11\)](#)). The question is whether such provision also bars other evidence after that which is conclusive evidence is produced.

19. The object of adducing evidence is to prove a fact. [The Indian Evidence Act](#), deals with the, question as to what kind of evidence is permissible to be adduced for that, purpose and states in [Section 3](#) when a fact is said to be proved. That section reads thus

'Evidence' means and includes-

(1) all statements which the court permits or requires to be made before it by witnesses, in, relation to matters of fact under, inquiry ; such statements are called oral evidence ;

(2) all documents produced for the inspection of the court ; such documents are called documentary evidence.

A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists."

Since evidence means and includes all statement which the court permits or requires to be made,. when the law says that a particular kind of evidence would be conclusive as to the existence of a particular fact it implies that that fact can be proved either or by evidence or by some other evidence which the Court permits or requires to be advanced. Where such other evidence is adduced it would be open to the Court to consider whether, upon that evidence, the fact exist or not. Where on the other hand, evidence which is made conclusive is adduced, the Court has no option but to hold that the fact exists. If that were not so, it would be meaningless to call a particular piece of evidence as conclusive evidence. Once the law says that certain evidence is conclusive it shuts out any other evidence which would detract from the conclusiveness of that evidence., In substance, therefore, there is no difference between conclusive evidence and conclusive proof. Statutes may use the expression 'conclusive proof' where the object is to make a fact non- justiciable. But the legislature may use some other expression such as 'conclusive evidence' for achieving the same result. There is thus no difference between the effect of the expression conclusive evidence' from that of 'conclusive proof', the aim of both being to give finality to the establishment of the existence of a fact from the proof of another."

7. The Hon'ble Apex Court had interpreted the term "conclusive proof" by holding that when evidence which has been made conclusive is adduced

the Court has no option but to hold that the facts exist. The Hon'ble Apex Court has further laid down the law that if these were not the position then it would be meaningless to call a particular piece of evidence as conclusive evidence. Hon'ble Apex Court has further held that once law denotes that certain evidence is conclusive, it shuts out any other evidence which would detract conclusiveness of that evidence.

8. Having regard to the law laid down by the Hon'ble Apex Court more particularly considering the present fact situation from the touchstone of law by the Hon'ble Apex Court, it appears that while the impugned complaints have been preferred by the respondent No.2 herein at a stage when the report of the Regional Laboratory had shown that the ingredients in the product, did not meet with the specifications as mentioned. It further appears that as per the scope of Section 24(4) of the Act, after the present applicants had appeared and had given a request for having the sample reanalysed by the Central Insecticides Laboratory, learned Magistrate had granted the same and whereas the learned Magistrate had also granted an application by the respondent No.2 whereby he had requested that even if the reanalysis were to be permitted then the same sample that had been drawn at the relevant point of time and which had been sent for analysis to the Regional Laboratory may be sent to the Central Insecticides Laboratory, which request also had been accepted. Thus, it appears that for the same sample which had been drawn while Regional Laboratory had given a

report, which would show that the sample did not meet the specifications Central Insecticides Laboratory in its report had opined that the sample does meet with the specifications.

8.1. Section 24(4) *inter alia* laying down that upon the report received from the Central Insecticides Laboratory which is signed by the Director of the Laboratory or any person in his behalf, then such report shall be conclusive evidence of the facts stated therein.

9. Having regard to the law laid down by the Hon'ble Apex Court, as discussed herein above, the intent of the statute being that the report of the Central Insecticides Laboratory would be the final report and whereas the facts stated therein with regard to the sample meeting with the specifications would be the final report on the facts and whereas the report of the Regional Laboratory in view of the finality attached to the report of the Central Insecticides Laboratory as appearing from the intent of Section 24(4) of the Act as referred to herein above, would become inconsequential.

10. Having regard to the discussion, reasoning and conclusion as referred to herein above, more particularly Section 24(4) of the Act with regard to the finality intended to be given to the report of the Central Insecticides Laboratory and furthermore having regard to the law laid down by the Hon'ble Apex Court with regard to the term "conclusive evidence of the facts" in the considered opinion of this Court, the

present applications deserve consideration.

11. In view of the above, the impugned Criminal Case No.4579 of 2001 and No.3808 of 2001 pending before the learned CJM, Bhavnagar and all proceedings incidental thereto shall stand quashed and set aside. The applications are allowed to the aforesaid extent. Rule is made absolute accordingly. Direct service is permitted.

V.V.P. PODUVAL

Sd/-
(NIKHIL S. KARIEL,J)

