

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-3028-2012 (O&M)

Date of Decision: February 18, 2015

Om Parkash Aggarwal

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr. Rakesh Verma, Advocate, for the petitioner.

Mr. Pawan Jhanda, AAG, Haryana.

NARESH KUMAR SANGHI, J (Oral)

The present petition has been filed by Om Parkash Aggarwal, Director-M/s Jai Shree Rasayan Udyog Ltd. 501, Gopal Heights, Netaji Subhash Place, Delhi, for quashing of criminal complaint No.169 dated 05.05.2007, for the offence punishable under Section 29 of Insecticide Act, 1968 read with Insecticide Rules 1971 (Annexure P1) as well as the summoning order dated 05.05.2007 (Annexure P2) passed by learned Chief Judicial Magistrate, Palwal.

Learned counsel contends that the learned trial Court has taken cognizance on a time barred complaint. The maximum sentence of imprisonment which can be awarded for violation of Section 29 of Insecticide Act, 1968 is for two years; the sample was concededly drawn on 31.12.2002 and report from the Senior Analyst State Quality Control Lab (Insecticide) Karnal, was

received on 31.01.2003, whereby the sample was declared as misbranded but the complaint was presented before the learned Area Judicial Magistrate on 05.05.2007 i.e. after a lapse of more than 4 years. He further contends that the petitioner was allegedly a Director of M/s Jai Shree Rasayan Udyog Ltd. 501, Gopal Heights, Netaji Subhash Place, Delhi, but, it has nowhere been disclosed in the impugned complaint (Annexure P1) that the petitioner was incharge and responsible for day-to-day business of the said Rasayan Company and as such he cannot be prosecuted. Learned counsel has placed reliance on decisions in **State of Rajasthan Vs. Sanjay Kumar 1998 (3) RCR (Criminal) 846 (SC); M/s Kheti Sewa Centre, Ludhiana Vs. State of Punjab 2003(1) RCR (Criminal) 310 (P&H); M/s P.B. Pesticides and another vs. State of Punjab and others 2014 (2) RCR (Criminal) 942 (P&H);** an unreported judgment of this Court in the matter of **Neeta Nilesh Shah and another vs. State of Punjab and others** in CRM-M-17786 of 2011 (decided on 04.12.2012); **State of NCT of Delhi vs. Rajiv Khurana 2010 (3) RCR (Criminal) 912 (SC); S.K. Jindal vs. State of Haryana 2005(4) RCR (Criminal) 68 (P&H)** and **P.D. Garg and others vs. State of Punjab 2014(2) RCR (Criminal) 945 (P&H).**

Learned counsel for the State assisted by Mr. Naresh Kumar, Sub-Divisional Officer (Agriculture) Palwal, very fairly concedes that the samples were drawn on 31.12.2002 and thereafter the report from the chemical Examiner was received on 31.01.2003. However, the complaint was filed on 05.05.2007 after obtaining necessary sanction from the Director Agriculture and as such, there was delay in filing the complaint which be

condoned and the petitioner be directed to be prosecuted.

To rebut the submission of the learned counsel for the State, it was contended by the counsel for the petitioner that the Director had accorded the sanction for prosecution of the petitioner and his co-accused vide his order dated 30.04.2003 (Annexure P-3) and even thereafter, the complaint was not filed within the limitation prescribed under Section 468 Cr.P.C. and as such, learned trial Court was not competent to take cognizance.

I have heard learned counsel for the parties and with their able assistance, gone through the material available on record.

As per Section 29(i) of the Insecticide Act, 1968 the maximum sentence prescribed is for two years. As per Section 468 Cr.P.C., the maximum limitation for filing the complaint/prosecution for the offence which is punishable upto 2 years is 3 years.

Concededly, the report from the Analyst was received on 31.01.2003 and thereafter, the Director Agriculture had accorded the sanction for prosecution on 30.04.2003 and the complaint was presented before the learned Area Judicial Magistrate on 05.05.2007 i.e. beyond the period of 4 years and as such, the complaint was time barred. It has also been fairly conceded that no application for condonation as enshrined in Section 473 Cr.P.C. was presented before the learned Area Judicial Magistrate.

Learned Magistrate passed the summoning order which reads as under:-

“Complaint presented today. It be checked and registered. Notice of the complaint be

issued to the accused for 06.09.2007.”

In *Sanjay Kumar's case (supra)*, Hon'ble the Supreme Court held that the limitation to file a complaint starts from the date of receipt of report of the Public Analyst and not from the date of collection of sample by the Drug Inspector. Similar was the view expressed by this Court in the cases cited hereinabove.

There appears to be substance in the argument raised by counsel for the petitioner that merely arraying a Director in the array of the accused attached with the complaint will not be sufficient to prosecute a person. There is no weight in the complaint since it does not disclose as to how the petitioner was responsible for day-to-day affairs of the said company. In the matter of *Rajiv Khurana's case (supra)*, Hon'ble the Supreme Court held that no specific averments in the complaint that the Director being prosecuted by the complainant was incharge and responsible for day-to-day business of the company and as such he was not liable to be prosecuted.

In view of the above and taking into consideration the ratio of the judgments cited by the counsel for the petitioner, the present petition is accepted. The impugned complaint and the summoning order passed in pursuance thereto are hereby quashed qua the petitioner.

(NARESH KUMAR SANGHI)
JUDGE

February 18, 2015
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