

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

**CRM No. M-1439 of 2015
DECIDED ON: MAY 20, 2016**

BALRAM SINGH YADAV & ORS

.....PETITIONERS

VERSUS

STATE OF PUNJAB.

....RESPONDENT

AND

CRM No. M-37507 OF 2015

CHANDER KUMAR SABHARWAL

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

- 1. Whether Reporters of local papers may be allowed to see the judgment?**
- 2. To be referred to the Reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

**Present: Mr. R.S. Rai, Sr. Advocate with
 Mr. Gautam Dutt, Advocate
 for the petitioners in CRM No. M-1439 of 2015**

**Mr. Rakesh Verma, Advocate
for the petitioner in CRM No. M-37507 of 2015**

Mr. J.S. Sekhon, AAG, Punjab.

JASPAL SINGH, J

Vide this common order, I intend to dispose of two petitions bearing CRM No. M-1439 of 2015 filed by Balram Singh Yadav and others and CRM No. M-37507 of 2015 filed by Chander Kumar Sabharwal, as petitioners have sought the quashing of complaint No. 155-2 dated July 20, 2012 titled as ***State v. M/s S.K. Pesticides and others***, under Section 3(k)(1), 17, 18, 29 and 33 punishable under Section 29 of the Insecticides Act, 1968 and Rule 27(5) of Insecticides Rules, 1971 pending in the Court of learned Sub Divisional Judicial Magistrate, Jalalabad as well as summoning order dated July 20, 2012 and order dated November 03, 2014.

The facts necessary for the disposal of instant petitions are that on December 31, 2008, respondent-complainant accompanied by Hans Raj, Agriculture Sub Inspector, Jalalabad (W) visited the shop of M/s S.K. Pesticides and Fertilizers, Bagheke Morh, Jalalabad (W) for checking. The inspection in the shop was carried on the stock register in respect of Piroxofop-propinyl (Clodinafop-Propargyl) 15% WP. It was noticed from the stock register that there were 160 gms x 25 packets (Units) of Piroxofop-propinyl (Clodinafop-Propargyl) 15% WP in 160 gms (16 gms x 10 gms) packing manufactured by M/s Crop Health Products Ltd. Jammu (J&K) and marketed by M/s Godrej Agrovat Ltd. Mumbai which were lying in his premises. Then one packet weighing 160 gms of Piroxofop-propinyl (Clodinafop-Propargyl) 15% WP bearing Batch No. CH/SJ/07-113 having manufacturing date November 2007 and expiry date October 2009 was taken at random for the purpose of analysis which was further put in three polythene bags separately weighing 16 gms.

pouch each, which were clean and dry and were lying with him. Then these polethene bags were tied tightly and put in three separate cloth bags. Then the seizures memos Form no. XX and XXI were prepared which were signed by the complainant and seal was put on the seizure memos i.e. Form No. XX and XXI. Form No. XX was also signed by Surinder Kumar representative of the firm. Form No. XXI were also put in both cloth bags. Its test was conducted on February 05, 2009, thereafter report undated was received. The report of the second sample was received on March 30, 2009 and complaint was lodged after obtaining orders from Joint Director, Agriculture on July 20, 2012.

On the strength of the allegations made in the complaint, petitioner(s) was summoned vide impugned order(s).

Disheartened from the complaint as well as summoning orders referred to above, petitioner(s) approached this Court.

Challenging the complaint No. 155-2 dated July 20, 2012 as well as summoning orders dated July 20, 2012 and November 03, 2014, learned Senior counsel for the petitioner(s) has contended that the procedure and the manner in which the sample is to be taken is mandatory in nature but it has not been followed by the Insecticide Inspector in its letter and spirit. Moreover, launching of prosecution by virtue of complaint in question is violative of provisions contained in Section 468 of the Code and is barred by limitation. Sample in this case was drawn on December 31, 2008 whereas, its test conducted on February 05, 2009 was found to be misbranded. The report of the second sample was received from CIL on March 30, 2009 whereas, the complaint was lodged/instituted on July 20, 2012 that is much after the expiry

of three years from the receipt of the report.

The maximum punishment for the present offence(s) is only two years whereas the complaint was lodged after a delay of more than three years. As such the same is barred by limitation, as per provisions contained in Section 468 of the Code.

To fortify this contention, learned Senior counsel has relied upon the judgments of Hon'ble Apex Court rendered in the cases of **State of Rajasthan v. Sanjay Kumar; 1998 (3) RCR (Criminal) 846** and **M/s Anand Trading Co. and another v. State of Punjab; 2010 (3) RCR (Criminal) 662.**

Per contra, learned State counsel is unable to dispute the afore-said submissions made by learned Senior counsel for the petitioner(s).

Undeniably the sample was drawn on December 31, 2008, which was found misbranded firstly on February 05, 2009 and secondly on March 30, 2009, whereas the complaint was lodged/instituted on July 20, 2012. The maximum punishment for the offence(s) complained of is two years but the complaint in this case was lodged after a delay of more than three years, which is unhesitated can be held to be barred by limitation, as per provisions contained in Section 468 of the Code. Thus, complaint No. 155-2 dated July 20, 2012 titled as **State v. M/s S.K. Pesticides and others**, pending in the Court of learned Sub Divisional Judicial Magistrate, Jalalabad as well as summoning order dated July 20, 2012 and order dated November 03, 2014 are liable to be quashed on this score alone.

Adverting to the facts of the case in hand, the complaint was instituted on July 20, 2012 that is much after the expiry of three years. Thus, by

that time the shelf life of the sample has already expired. Valuable statutory defence available to the accused was lost by delayed institution of prosecution. It was obligatory upon the prosecution to lodge the complaint expeditiously, so that the right of the accused is not lost due to the expiry of sample. In the present case the respondent has opted to file a complaint after more than three years of the drawing of sample during which the sample expired which has resulted into a grave prejudice to the petitioner(s).

As an upshot of the afore-said discussion, this Court is of the considered view that continuation of complaint No. 155-2 dated July 20, 2012 titled as *State v. M/s S.K. Pesticides and others*, would be nothing but sheer wastage of time and it would be a futile exercise to continue with the proceedings.

Accordingly, instant petition is allowed and complaint No. 155-2 dated July 20, 2012 titled as *State v. M/s S.K. Pesticides and others*, under Section 3(k)(1), 17, 18, 29 and 33 punishable under Section 29 of the Insecticides Rules, 1971 pending in the Court of learned Sub Divisional Judicial Magistrate, Jalalabad as well as summoning order dated July 20, 2012 and order dated November 03, 2014 and all consequential proceedings emanating therefrom, are quashed qua petitioner(s).

MAY 20, 2016
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(JASPAL SINGH)
JUDGE