

288 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM No. M-16591 of 2014 (O&M)
DECIDED ON: MAY 16, 2016

M/S INDOFIL CHEMICAL COMPANY LTD & ORS

.....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. Karan Pathak, Advocate
for the petitioner.

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

JASPAL SINGH, J

Instant petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (for brevity 'Code') by M/s Indofil Chemical Company Ltd. and others seeking quashing of complaint No. 228-2 dated December 16, 2008 (Annexure P-8) filed under Sections 3 (K)(1), 17, 18, 29 and 33 of Insecticide Act, 1968 (for short 'Act') read with Rule 10 of 1970 and 27(5) of Insecticide Rules 1971 (Annexure P-8) as well as

summoning order dated December 16, 2008 (Annexure P-10) along-with all its consequential proceedings emanating therefrom.

The facts necessary for the disposal of instant petition are that on September 23, 2005, respondent-insecticide Inspector accompanied by Dr. Arjan Singh, Block Officer, Sri Muktsar Sahib visited the shop of M/s Pyare Lal, Ajay Verma, Shop No. 134-A, New Grain Market, Sri Muktsar Sahib for checking. A sample of Alphamethrin 10% EC insecticide was taken by Insecticide Inspector from the afore-said shop. Upon opening the pack of one liter insecticide, the Inspector took out 750 ml insecticide and converted into three bottles 250 ml each. One duly sealed bottle out of these three samples was given to Ajay Verma owner at the spot whereas, two remaining samples were taken to the office of Assistant Plant Protection Officer, Sri Muktsar Sahib. The insecticide was allegedly manufactured by petitioner No.1-company under batch No. B.G.M-011 on May 11, 2005 and was to expire of May 10, 2007. The samples so taken by the Insecticide Inspector were deposited with Dr. Kabal Singh, ADO, Sri Muktsar Sahib at the office of Chief Agriculture Officer, Sri Muktsar Sahib on September 24, 2005 who further entrusted the same for testing vide letter No. 101 dated October 14, 2005 of the Chief Agriculture Officer, Sri Muktsar Sahib to the Insecticide Laboratory, Bathinda. Vide report dated November 03, 2005, Insecticide Analyst reported that the sample standard is not as per ISI specification. Hence, the same was declared misbranded, as a result of the sample was 6.72% EC of active

ingredient, instead of 10% EC. Subsequent thereto, Chief Agriculture Officer served show cause notice along-with copies of test report to the dealer as well as manufacturer. Pursuant to the show cause notice received by the dealer only, he obtained the permission for re-testing of the sample as per provisions enshrined in Section 24(4) of the Act, which was sent to the Central Insecticide Laboratory (CIL), Faridabad vide letter No. 42 dated November 24, 2005. According, to the report of CIL the sample did not confirm to the relevant specification in the active ingredient content test. The active ingredient content was reported as 5.42% EC instead of 10% EC. Accordingly, CIL declared the said sample to be misbranded under Section 3(K)(1) of the Act vide its report dated December 13, 2005. Show cause notice was issued to the petitioners by Chief Agriculture Officer on November 17, 2006 alleging that sample of Alfamethrin 10% EC having batch BGM-011; expiry dated May 10, 2007 was manufactured by the petitioner-company and supplied to the dealer through invoice No. LO3/20600439 dated July 12, 2005 calling upon the petitioners to give response. A reply to the show cause notice was sent by the petitioners on November 27, 2006 to the Chief Agriculture Officer with a request to provide the copy of bill. The time was also sought to verify the alleged sale of misbranded sample to the dealer. Even, petitioner also notified its intention to adduce the evidence to controvert the Analysis report.

It has further been unfolded in the complaint that a written consent for initiating the proceeding against the accused under Section

31(1) of the Act was received from the Joint Director Agriculture (Plant Preservation) Punjab, Chandigarh dated February 23, 2007 and subsequent thereto, a complaint was lodged on December 16, 2008 in the Court of Chief Judicial Magistrate, Sri Muktsar Sahib.

On the strength of the allegations made in the complaint, petitioners and others were summoned vide impugned order (Annexure P-10).

Disheartened from the complaint as well as summoning order referred to above, petitioner approached this Court.

Challenging the complaint (Annexure P-8) as well as summoning order (Annexure P-10), learned Senior counsel for the petitioners 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 September 23, 2005 whereas, it was found to be misbranded vide report dated November 03, 2005. The report of the second sample was received from CIL on November 24, 2005 whereas the complaint was lodged/instituted on December 16, 2008 that is much after the expiry of three years from the receipt of the report of second sample from CIL.

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 petitioners.

Undeniably the sample was drawn on September 23, 2005, which was found misbranded firstly on dated November 03, 2005 and secondly on November 24, 2005 whereas the complaint was lodged/instituted on December 16, 2008. 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 (Annexure P-8) as well as summoning order (Annexure P-10) are liable to be quashed on this score alone.

There is another vital snag in this case that the violation of Section 24(3) of the Act, which provides right to the accused to rebut the conclusive nature of the evidence of Insecticide Analyst by notifying its

intention to adduce evidence in controversion of the report before the Insecticide Inspector or before Court where proceeding in respect of the samples is pending. Further the Court has been given power to send the sample for analysis and test by the Central Insecticide Laboratory of its own motion or at the request of the complainant or the accused. No proceeding was pending before any Court, when the accused was served with show cause notice followed by Insecticide Analyst report, the intention to adduce the evidence to controvert the Analysis report was necessarily required to be conveyed to the Insecticide Inspector, which was so done by the appellant and in this background Insecticide Inspector was obliged to institute complaint forthwith and produce sample and request the court to send the sample for analysis and test to the Central Insecticides Laboratory. In the case in hand the said right stood defeated by not sending the sample for analysis and report to the CIL. The shelf life of the sample of the insecticide had expired much prior to the filing of the complaint in the Court of Chief Judicial Magistrate, Sri Muktsar Sahib and for that reason no step was possible to be taken for its test and analysis by CIL. Valuable right of the petitioner having been defeated, thus, this Court is of the opinion that allowing this criminal proceeding against the petitioners to continue shall be futile and abuse of the process of Court.

Adverting to the facts of the case in hand, shelf life of the sample was expired on May 10, 2007 while complaint was instituted on December 16, 2008. 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 opt 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 petitioners.

As an upshot of the afore-said discussion, this Court is of the considered view that continuation of complaint (Annexure P-8) 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 (Annexure P-8) as well as summoning order (Annexure P-10) and all consequential proceedings emanating therefrom, are quashed qua petitioners.

MAY 16, 2016
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(JASPAL SINGH)
JUDGE