

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

Criminal Misc. No.M-2023 of 2018 (O&M)

Date of Decision: October 16, 2018

M/s Crop Chemicals India Ltd. & another

.....PETITIONER(s).

VERSUS

State of Punjab

....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. R.K. Girdhar, Advocate
for the petitioner (s).

Mr. Ramandeep S. Sandhu, Sr. D.A.G., Punjab.

SURINDER GUPTA, J.

Petitioners are seeking quashing of complaint No.74 dated 10.12.2015 filed by Insecticide Inspector Block Khamano, Distt. Fatehgarh Sahib against them and other accused for the offence punishable under Section 3(k)(i), 17,18,29 and 33 of the Insecticides Act, 1968 and summoning order dated 10.12.2015 passed by learned Chief Judicial Magistrate, Fatehgarh Sahib along with all consequent proceedings.

Learned counsel for the petitioner has sought quashing of the complaint on the ground that the same has been filed beyond the period of 3 years as per the provisions of Section 468 of Code of Criminal Procedure (for short, Cr.P.C.). In support of his contention, he has relied on the observations in case of *M/s Chandan Pesticides and another Vs. State of*

Panjab 2014 (3) RCR (Crl.)949; Om Parkash Aggarwal Vs. State of

Haryana 2015 (2) RCR (Crl.) 625 and State of Rajasthan Vs. Sanjay Kumar and others AIR 1998 S.C. 1919. Second limb of the argument of learned counsel for petitioner is that there is no allegation in the complaint that petitioner No.2 is responsible for the conduct of business of petitioner No.1 company, as such, his prosecution is not sustainable in the eyes of law.

Firstly, I take the point of limitation raised by learned counsel for the petitioners to find if the complaint has been filed beyond the period of limitation. As per the complaint, sample of Sulfosulfuron 75% WG was taken from Jagtar Singh, Secretary C.A.S.S. Limited, Panjkoh. It was sent to Insecticides Testing Laboratory, Amritsar and the report was received on 27.12.2010 of Senior Analyst ITL, Amritsar bearing No.268 dated 27.12.2010, whereby active ingredient content of Sulfosulfuron was found to be 55.75% WG as against 75% WG mentioned on the packing. The sample was found not confirming to IS Specification in active ingredient content requirement. On the request of Jagtar Singh, second sample taken on 09.12.2010 was sent to Central Insecticides Laboratory, Faridabad and the active ingredients of Sulfosulfuron were found to be 70.9% WG as against 75% WG mentioned on the packing. As per complainant, M/s Crop Chemicals India Ltd., petitioner No.1 is the manufacturer of the insecticides while remaining accused (accused No.1 to 4, 6&7) were arrayed as accused being dealer, distributor, manufacturer etc. The complaint was presented on 10.12.2015 i.e. after a period of 5 years of taking of sample.

The first question, which arise for consideration, is when the period of limitation starts in this case. Hon'ble Apex Court in case of ***State of Rajasthan Vs. Sanjay Kumar and others (supra)*** has observed that the

limitation in such cases commence from the date of report when knowledge of commission of offence came to the notice of the concerned authority. In this case, the commission of offence came to the notice of Insecticides Inspector on 27.12.2010 from report of Insecticides Testing Laboratory, Amrtisar and then on second report of Central Insecticides Laboratory, Faridabad dated 20.04.2011. As second sample was sent to Central Insecticides Laboratory, Faridabad on request of accused, the limitation for filing of the complaint starts from 20.04.2011.

Learned State counsel while referring to the provisions of Section 470 (3) Code of Criminal Procedure (for short, Cr.P.C.) has argued that on excluding the time required for obtaining sanction of the concerned authority, the complaint is within limitation. The complainant has stated in para 13 of the complaint about the reference of the matter for permission of launching prosecution, which reads as follows:-

“13. That the file was sent to the Director of Agriculture Punjab, Chandigarh for permission of launching prosecution vide letter No.5023 dated 2/2/2012 against the above and after a careful consideration of the case file and after applying his full mind the Joint Director of Agriculture, Plant Protection has granted his consent order of prosecution against the said accused u/s 27(5) of the Insecticide Rules 1971 vide their letter 423-25 (ADOPP) dated 1/4/2014 as required u/s 31(1) of the Act and then after completing the formalities, the complaint is prepared.”

Permission of the competent authority before filing of the complaint as per provisions of Section 31(1) of Insecticides Act was required. As per complaint, reference for permission was made on

02.02.2012 and the permission was received on 01.04.2014. The period from 02.02.2012 to 01.04.2014 i.e. about 2 years 2 months when excluded from the period of receipt of second report from Central Insecticides Laboratory, Faridabad and date of filing of the complaint show that the complaint has been filed within the period of limitation.

In the citations referred by learned counsel for the petitioners *M/s Chandan Pesticides and another Vs. State of Panjab (supra); Om Parkash Aggarwal Vs. State of Haryana (supra) and M/s Swastik Pesticides Pvt. Ltd. and others Vs. State of Punjab (CRM-M-27699-2012 decided on 22.05.2018)*, the plea of deduction of period taken by the competent authority to provide the sanction for the prosecution was not discussed.

Section 470 sub-Section (3) Cr.P.C. reads as follows:-

“(3). Where notice of prosecution for an offence has been given, or where, under any law for the time being in force, the previous consent or sanction of the Government or any other authority is required for the institution of any prosecution for an offence, than, in computing the period of limitation, the period of such notice or, as the case may be, the time required for obtaining such consent or sanction shall be excluded.”

As per the above provision, the time on which application was made for obtaining the sanction and date of receipt of the order of the competent authority shall be excluded from the period of limitation and this bring the complaint filed on 10.12.2015 within period of limitation from the date of report of Central Insecticides Laboratory, Faridabad. Even if, period of limitation of 3 years as per provision of Section 468 Cr.P.C. be counted

from the day, the report of Insecticides Testing Laboratory, Amritsar dated 27.12.2010, the complaint has been filed within limitation, as such, this argument of learned counsel for the petitioners that the complainant has been filed beyond period of limitation, has no merits and is discarded.

Now, I take the second argument of learned counsel for the petitioner that petitioner No.2 though has been sued as Director and responsible person of the company which manufactured the insecticides, but in the complaint, there is no recital to this effect. In this regard, it will be relevant to refer to the provisions of Section 33 of Insecticides Act, which reads as follows:-

“33. Offences by companies.-(1) Whenever an offence under this Act has been committed by a company, every person who at the time of the offence was committed was in charge of, or was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment under this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect, on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be

deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation – For the purpose of this section:-

- (a) “company” means any body corporate and includes a firm or other association of individuals; and
- (b) “director”, in relation to a firm, means a partner in the firm.”

In the case of *State of NCT of Delhi Vs. Rajiv Khurana 2010*

(3) RCR (Criminal) 912, it was observed by Hon'ble Apex Court in para 21 as follows:-

“21. The legal position which emerges from a series of judgments is clear and consistent that it is imperative to specifically aver in the complaint that the accused was in charge of and was responsible for the conduct of business of the company. Unless clear averments are specifically incorporated in the complaint, the respondent cannot be compelled to face the rigmarole of a criminal trial.”

As per provisions of Section 33 (2) Insecticides Act, a Director, Manager, Secretary or other officer of the company can be prosecuted only if it is proved that the offence has been committed with his consent or connivance or attributable to any neglect on his part. The complainant is required to state in the complaint as to how the person being prosecuted in his capacity as Director or Manager or Secretary or other officer of the company, was responsible as per provisions of Section 33(2) of Insecticides Act. The mere mentioning name of any person as accused is not suffice to summon him to face the trial. The trauma, harassment and hardship of criminal proceeding is as serious as ultimate punishment and it is not

proper to subject all and sundry to be impleaded as accused in a complaint

against a company until or unless there is specific averment that the person arrayed as accused is responsible for commission of the offence.

On perusal of the complaint, Annexure P1, I find that about the manufacturer of the insecticides averments have been made in para 12, which reads, as follows:-

“12. That the insecticide in question was manufactured by accused No.5 M/s Crop Chemicals India Ltd., Sambha (J&K) and marketed by accused No.2 Markfed Agro Chemicals, Mohali, who were informed vide letter No.5875, 5873 dated 01/02/2011. The reply of the dealer, distributor and manufacturer was received by the Chief Agriculture Officer. Thus the accused No.1,2,3,4,5,6,7 by manufacturing, distributing and selling sulfosulfuron 75% WG (sulfosulfuron 70.9% WG actual) which does not confirm to the standard prescribed as per the requirements of the registration of Insecticides has contravened Section 3(k) (i), 17,18,29 and 33 of the Act and rules made there under.”

The complainant has nowhere alleged in the complaint that offence has been committed with the consent or connivance or is attributable to any neglect on the part of petitioner No.2 Chander Mohan Goyal in his capacity as Director of the company. In case of ***Om Parkash Aggarwal Vs. State of Haryana (supra)***, a Coordinate Bench of this Court has held in para 10, as follows:-

“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.”

Similar observations were made by another Coordinate Bench in case of ***Surinder Singh Kooner Vs. State of Punjab 2015 (4) RCR (Criminal) 996***, in para 17, which reads as follows:-

“17. In view of aforesaid, this Court is of the considered opinion that prosecution against petitioner is based upon the averments in the complaint which are short of mandatory requirement and, therefore, vicarious liability upon petitioner cannot be fastened merely by citing him to be Director of the Company.”

In case of ***P.D. Garg and others Vs. State of Punjab 2014 (2) RCR (Criminal) 945***, a Coordinate Bench of this Court has observed as follows:-

“The sole issue arising in the present case is no longer resintegra. The Hon'ble Supreme Court in ***State of NCT of Delhi Vs. Rajiv Khurana, 2010(3) RCR(Criminal) 912*** has considered the scope of Section 33 of the Act and having referred to previous decisions in ***Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi & Others 1983(1) RCR(Criminal) 73***, ***State of Haryana Vs. Brij Lal Mittal & Others, 1998(2) RCR(Criminal) 608***, ***K.P.G. Nair Vs. Jindal Menthol India Ltd., 2001 (10) SCC 218***, ***Katta Sujatha (Smt.) Vs. Fertilizers & Chemicals Travancore Ltd. & another, 2002(4) RCR (Criminal) 502***, ***Sabitha Ramamurthy and another Vs. R.B.S. Channabasavaradhya, 2006(4) RCR(Criminal)***

296 and *K.K. Ahuja Vs. V.K. Vora and another, 2009(3)*

RCR (Criminal) 571 held as follows :-

“The ratio of all these cases is that the complainant is required to state in the complaint how a Director who is sought to be made an accused, was in charge of the business of the company or responsible for the conduct of company's business. Every Director need not be and is not in charge of the business of the company. If that is the position with regard to a Director, it is needless to emphasis that in the case of non-Director officers, there is all the more necessary to state what were his duties and responsibilities in the conduct of business of the company and how and in what manner he is responsible or liable.”

The legal position as enunciated by the Hon'ble Apex Court is that it would be imperative to specifically aver in the complaint that the accused was/were in charge of and was/were responsible for the conduct of business of the company. It has further been held that unless clear averments are specifically incorporated in the complaint, the accused cannot be compelled to face the rigmarole of a criminal trial.”

In view of the settled legal proposition as discussed above, I find merits in the submission of learned counsel for the petitioners that summoning and prosecution of petitioner No.2, in the absence of averment in complaint that he was in-charge of and was responsible for conduct of business of company, is not sustainable in the eyes of law. This petition is partly accepted. The complaint filed by Insecticides Inspector is held to have been filed within the period of limitation. However, the same along

with all consequential proceedings is quashed qua petitioner No.2 only.
Petition filed for and on behalf of petitioner No.1 is, however, dismissed.

October 16, 2018
Sachin M.

(SURINDER GUPTA)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>