

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

(1) CRM-M-8243 of 2017.
Decided on:-August 16, 2018.

M/s Doaba Seed Store and another

.....Petitioners.

Versus

State of Punjab.

.....Respondent.

(2) CRM-M-5376 of 2018.

M/s Sumitomo Chemicals India Pvt. Ltd. & another

.....Petitioners.

Versus

State through Jagir Singh.

.....Respondent.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Rakesh Verma, Advocate
for the petitioners in CRM-M-8243 of 2017.

Mr. Naresh Kumar Manchanda, Advocate
for the petitioners in CRM-M-5376 of 2018.

Mr. Tanvir Joshi, AAG, Punjab.

HARI PAL VERMA, J.

This order shall dispose of the aforementioned two petitions filed by the petitioners under Section 482 Cr.P.C. as the same have arisen out of a common complaint No.65 dated 01.07.2016 titled as “*State Versus M/s Doaba Seed Store, Banga and others*” under Sections 3(k) (i), 17, 18, 29 and

33 of the Insecticides Act, 1968 (for short, the Act) read with Rule 27(5) of the Insecticides Rules, 1971 (for short, the Rules) as punishable under Section 29(1)(a) of the Act as well as summoning order dated 04.08.2016 passed by learned Chief Judicial Magistrate, SBS Nagar, vide which the petitioners have been summoned to face trial under Sections 3 (k) (i), 17, 18 and 33 of the Act read with Rule 27(5) of the Rules punishable under Section 29(1)(A) of the Act.

However, for convenience and clarity, the detailed order is being passed in the petition bearing No.*CRM-M-8243 of 2017*.

Briefly stated, petitioner No.1 M/s Doaba Seed Store, Mukandpur Road, Banga, District SBS Nagar is a licensee under the Act to sell various kinds of insecticides and pesticides of manufacturing companies registered with the Government of India as well as the Government of Punjab. On 18.07.2012, the complainant visited the shop of the petitioner-firm and drew a sample of one insecticide i.e. Cartap Hydrochloride 4% GR bearing Batch No.EHSC-1135 with manufacturing date 26.06.2011 and expiry date 25.06.2013. He withdrew 1 Kg insecticide material in three parts from a 5 KG. originally packed bag. The insecticide was manufactured and supplied by M/s Sumitomo Chemicals India Private Limited, Mumbai through its Depot situated at Ludhiana, which is a registered and licensed manufacturing company.

Out of three parts of the sample drawn by the complainant, one part was sent to the State Insecticide Testing Laboratory, Ludhiana for chemical analysis. However, on analysis, it was found to be misbranded vide Analysis Report dated 22.08.2012 issued by Senior Analyst, State Insecticide

Testing Laboratory, Ludhiana. Accordingly, a show cause notice was issued by the office of Chief Agriculture Officer, SBS Nagar to the petitioners. The reply submitted by the petitioners was not found satisfactory and accordingly, on 01.07.2016, the complaint (Annexure P-1) was filed in the Court of Chief Judicial Magistrate, SBS Nagar.

Vide impugned order dated 04.08.2016 passed by learned Chief Judicial Magistrate, SBS Nagar, the petitioners were summoned to face trial under Sections 3 (k) (i), 17, 18 and 33 of the Act read with Rule 27(5) of the Rules punishable under Section 29(1)(A) of the Act.

It is in these circumstances, the petitioners have filed the present petitions seeking quashing of complaint and the order of summoning passed by the Chief Judicial Magistrate, SBS Nagar.

Learned counsel for the petitioners have argued that the alleged offence committed by the petitioners is punishable under Section 29 of the Act for which they can be sentenced for a maximum period upto 2 years. However, in the case in hand, the analysis report was received on 22.08.2012, whereas, the complaint was filed on 01.07.2016 i.e. after a period of 3 years, 10 months and 9 days and, therefore, the prosecution of the petitioners is bad in law. In support of their contentions, learned counsel for the petitioners have relied upon **1998(4) RCR (Criminal) 578** titled as ***State of Punjab Versus National Organic Chemical Industries Limited***, **2015(2) RCR (Criminal) 625** titled as ***Om Parkash Aggarwal Versus State of Haryana*** and **1998(3) RCR (Criminal) 846** titled as ***State of Rajasthan Versus Sanjay Kumar***.

On the other hand, learned State counsel has argued that there are specific and well founded allegations against the petitioners and a *prima facie*

case under Sections 3 (k) (i), 17, 18 and 33 of the Act read with Rule 27(5) of the Rules punishable under Section 29(1)(A) of the Act is made out against them and the complaint is pending before learned Chief Judicial Magistrate, SBS Nagar. On 18.07.2012, a sampling party headed by Inspector-cum-Agriculture Development Officer along with Sushil Kumar, Agriculture Officer, Banga had visited the premises of the petitioner. The complainant inspected the stock register and verified the stock of the petitioner firm in respect of Cartap Hydrochloride 4% G.R. Batch No.EHSC-1135, manufacturing date 26.06.2011 and expiry date 25.06.2013 manufactured by M/s Sumitomo Chemicals India Private Limited. While exercising the power conferred upon the raiding party under Section 21(1)(A) of the Act, one bag of 5 Kgs. of Cartap Hydrochloride 4% G.R. Batch No.EHSC-1135 was selected. Three samples of 333 grams each were drawn in three polythene bags separately from the said 5 Kgs. bag. One sample was sent to the Senior Analyst Insecticides Testing Laboratory, Ludhiana and the active ingredient was found to be 3.23% against the required strength of 4% G.R. Therefore, the sample was declared misbranded. Thereafter, one copy of the analysis report in original was sent to the petitioner along with show cause notice dated 24.08.2012, as provided under Section 24(2) of the Act, which was duly acknowledged by the recipient/petitioner. In reply to the show cause notice, the petitioner requested the then Agriculture Officer for analysis of the reference sample from Central Insecticides Laboratory, Faridabad under Section 24(3) of the Act. The reference sample was, accordingly, sent to the Deputy (Chemistry), Central Insecticides Laboratory, Faridabad vide letter dated 06.11.2012 and the report was received on 07.11.2012 with the report

that the sample was not conforming to the relevant ISI specification in the content requirement. Thus, the sample was again found to be misbranded. Accordingly, the complaint was instituted in the Court of learned Chief Judicial Magistrate, SBS Nagar on 01.07.2016 and learned Chief Judicial Magistrate has summoned the petitioners to face trial vide order dated 04.08.2016.

I have heard learned counsel for the parties.

Section 29 of the Act deals with the offences and the punishment, which reads as under:

“29. Offences and punishment

1. *Whoever,*

- a) imports, manufactures, sells, stocks or exhibits for sale or distributes any insecticide deemed to be misbranded under sub-clause (i) or sub-clause (iii) or sub-clause (viii) of Clause (k) of Section 3 or;*
- b) imports or manufactures any insecticide without a certificate of registration; or*
- c) manufactures, sells, stocks or exhibits for sale or distributes an insecticide without a license; or*
- d) sells or distributes an insecticide, in contravention of Section 27; or*
- e) causes an insecticide, the use of which has been prohibited under Section 27, to be used by any worker; or*
- f) obstructs an Insecticide Inspector in the exercise of his powers or discharge of his duties under this Act, or the rules made there under, shall be punishable:*

(i) *For the first offence, with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees, or with both;*

(ii) *For the second and a subsequent offence, with imprisonment for a term which may extend to three years, or with fine, or with both.*

2. *Whoever uses an insecticide in contravention of any provision of this Act or any rule made there under shall be punishable with fine, which may extend to five hundred rupees.*

3. *Whoever contravenes any of the other provisions of this Act or any rule made there under or any condition of certificate of registration or license granted there under, shall be punishable:*

(i) *For the first offence, with imprisonment for a term which may extend to six months, or with fine or with both;*

(ii) *For the second and a subsequent offence, with imprisonment for a term which may extend to one year, or with fine or with both.*

4. *If any person convicted of an offence under this Act commits a like offence afterwards it shall be lawful for the Court before which the second or subsequent conviction takes place to cause the offender's name and place of residence, the offence and the penalty imposed to be published in such newspapers or in such other manner as the Court may direct."*

The aforesaid Sections provides that for the first violation, the accused can be imprisoned for a term which may extend to a period of two years or with fine, which shall not be less than Rs.10,000/- but may extend to Rs.50,000/- or with both, whereas for the second and a subsequent offence, the imprisonment may extend to a period of three years or with fine, which

shall not be less than Rs.15,000/-, but may extend upto Rs.75,000/- or with both.

The primary argument of learned counsel for the petitioners is that the very complaint filed by the complainant is barred by limitation.

In *Sanjay Kumar's case (supra)*, Hon'ble Supreme Court held that the limitation to file complaint starts from the date of receipt of report of Public Analyst and not from the date of collection of sample by the Drug Inspector. Similarly, this Court in *Om Parkash Aggarwal's case (supra)*, held that the limitation for filing a complaint under the Act is three years from the date of receipt of State Public Analyst Report and the complaint instituted after a period of three years is barred under Section 468 Cr.P.C.

In the case in hand, the sample was drawn on 18.07.2012 and the analysis report was received on 22.08.2012, whereas the complaint was filed in the Court on 01.07.2016, as is apparent from Annexure P-1. Therefore, this Court finds that there appears to be substance in the argument of learned counsel for the petitioners. Merely because the sample was sent for a second laboratory test on the request of accused is of no help for the complainant to delay the filing of the complaint. The petitioners cannot be held responsible for the delay, if any, as the same is solely at the behest of the complainant.

It would be pertinent to mention here that though the petitioners could have availed the remedy of revision, but when from the face of it, this Court finds that the complaint was filed by the complainant beyond the period of limitation, in case the said complaint is allowed to be continued, it would be a futile exercise. Therefore, this Court while invoking the provisions of Section 482 Cr.P.C. can entertain the present petition. In this regard, this

Court finds support from *Prabhu Chawla Versus State of Rajasthan and another 2016(4) RCR (Criminal) 270*, wherein Hon'ble Supreme Court has held that a petition for quashing the order of Magistrate is maintainable and the availability of remedy under Section 397 Cr.PC would not make a petition under Section 482 Cr.PC not maintainable.

Thus, for the reasons stated hereinabove, the present petitions are allowed and there being a statutory bar of limitation, this Court has no hesitation to quash the complaint dated 01.07.2016 (Annexure P-1) as well as the summoning order dated 04.08.2016 (Annexure P-3) passed by learned Chief Judicial Magistrate, SBS Nagar.

Photocopy of this order be placed on the file of other connected case.

August 16, 2018
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No