

Sr. No.246

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

**CRM-M-6332-2018(O&M)
Date of decision:29.08.2018**

Sohan Singh and others

.....Petitioners

versus

State of Punjab

.....Respondent

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

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

Mr. K.S.Aulakh, DAG, Punjab.

Rajbir Sehrawat, J(Oral)

This is a petition seeking quashing of the Complaint No.26 dated 12.01.2018 under section 3(k)(i),17,18,29,33 of Insecticides Act, 1968 read with Rules 27(5) of Insecticides Rules, 1971(Annexure P-1) and the Summoning Order dated 12.01.2018(Annexure P-2) and all consequential proceedings arising therefrom; qua the petitioners.

The brief facts of the case are that petitioner No.2 is a manufacturing firm having license to manufacture the insecticides under the Insecticides Act, 1968. Petitioner No. 1, the proprietor of the firm and petitioner No. 3 is the employee of the firm. It is pleaded in the petition that on 07.07.2012 samples of insecticide, namely, Cartap Hydrochloride 4% GR, Batch No.C-1, was taken by the Insecticide Inspector, Maur, Distt.

Bathinda. The sample was sent for analysis to the Public Analyst on 09.07.2012. As per the report of the Public Analyst the same was found to be misbranded. Accordingly, the report was made by the Public Analyst on 17.07.2012; which was duly received in the office of Chief Agriculture Officer, Bathinda. However, the above said authority did not file the complaint at that time. Subsequently, sanction for prosecution is applied for by the Chief Agriculture Officer, Bathinda on 20.02.2017. The same was granted by the Sanctioning Authority on 17.04.2017. Thereafter, the above said complaint has been filed by the Insecticide Inspector on 12.01.2018. In this complaint, the present petitioners have been summoned to face the trial under Sections 3(k)(i), 17, 18, 29 and 33 of Insecticides Act, 1968. Challenging this Complaint and the Summoning Order, the present petition has been filed.

Learned counsel for the petitioners has contended that even as per the admitted fact the date of taking sample is 07.07.2012. Date of report of Public Analyst is 17.07.2012. The Complaint has been filed on 12.01.2018. This Complaint is hopelessly time barred, being much beyond the limitation as prescribed under Section 468 of Cr.P.C. It is contended that the maximum punishment for the offences alleged in the Complaint is two years. Therefore, the Complaint, by any means could have been filed within a period of three years. Since the Complaint has not been so filed within limitation, therefore, the Magistrate could not have taken the cognizance of the offence being statutorily barred under Section 468 of Cr.P.C. Hence even the Summoning Order passed by the Magistrate stands vitiated.

To support his contention, learned counsel for the petitioners

has relied upon the judgment of the Hon'ble Supreme Court rendered in **1998(3)R.C.R.(Criminal)846** titled as **State of Rajasthan vs. Sanjay Kumar** to contend that limitation in such cases would start running from the date of receipt of the report of Public Analyst. Further learned counsel for the petitioners has relied upon another judgment of the Hon'ble Supreme Court rendered in **2015(3) R.C.R.(Criminal)661** titled as **Sirajul and others vs. The State of U.P.&Anr.** to contend that in case of statutory bar of taking cognizance after a particular prescribed period of limitation, the complaint can be quashed without much inquiry if the complaint is not filed within the limitation. Accordingly, it is contended by learned counsel for the petitioners that since the complaint is much time barred and there is statutory bar of taking cognizance by the Magistrate, therefore, the complaint and the consequent proceedings deserve to be quashed.

On the other hand learned State counsel, being instructed by Insecticide Inspector, Dharminderjit Singh, contends that although the complaint is filed after 05 years, however, with the Complaint an application has been filed and the explanation has been given by the department for the delay and prayer for extension of time for filing the complaint has been made. Accordingly, the Magistrate has rightly issued the summoning order against the petitioner. It is further contended by learned counsel that the sanction to file the Complaint was received on 17.04.2017 and accordingly, the complaint has been filed on 12.01.2018, which comes within the prescribed period of three years.

Having heard the learned counsel for the parties, this Court is of the considered opinion that the submissions made by learned counsel for the petitioners merit acceptance. The pleading and record of the case

would show that the sample in this case was taken on 07.07.2012. The report of the Public Analyst was received in the office of the Chief Agriculture Officer, Bathinda on 17.07.2012. Therefore, in terms of the above said judgment of the Hon'ble Supreme Court, rendered in ***State of Rajasthan(supra)***, the limitation for filing the complaint in this case starts from 17.07.2012. The offence under the sections for which the petitioners are sought to be prosecuted; can invite maximum punishment of two years. Therefore, in view of the bar created by Section 468 of Cr.P.C. the Trial Court could not have taken the cognizance of the offence beyond a period of three years. Although the State Counsel has drawn attention of this Court towards the application moved by the complainant for extension of the time, however, a bare perusal of the order of the Trial Court shows that this application has not even been considered by the Court while taking cognizance in this case. De hors the prayer made in the application, the Summoning Order has been passed. There is no order of extension of time by the Court. Hence the Summoning Order and the Complaint, on the face of it; are not in accordance with law. Therefore, in view of the judgment of the Hon'ble Supreme Court rendered in ***Sirajul and others(supra)***, the complaint and the consequent Summoning Order, both, are liable to be quashed.

Much reliance has been placed by learned Stated counsel on the application moved by the complainant for extension of time, as permitted by Section 473 of Cr.P.C. To buttress his argument, learned State counsel has relied upon the explanation given in the application moved for condonation of the delay which has occurred in filing the complaint. The relevant para of the application is reproduced hereinbelow:-

“5. That the office of Chief Agriculture Office, Bathinda applied for sanction for the prosecution of the accused with the Joint Director, Agriculture(Plant protection) Punjab and the sanction for prosecution of the accused was granted by the competent authority on 7.4.2017. And it was received in the officer of the Chief Agriculture Office on 17.04.2017.

6. That the entire file remained in custody of the concerned official of the office of Chief Agriculture Office, Bathinda and was never entrusted to the complainant for filing the complaint.

7. That the file was handed over to the complainant on 28.04.2017 and the remaining documents(Form no.XX, insecticide purchase bill and letters through which sample was sent from AO Maur to CAO Bathinda, AO Maur to APPO Bathinda and from CAO Bathinda to lab) were handed over to the complainant on 02.01.2018. Thereafter the complainant completed the entire file and got prepared the complaint.”

A bare perusal of the above said pleading of the complainant, submitted for seeking explanation of time show that, in fact, there is no

explanation furnished by the complainant in this case for the delay which has occurred in filing the complaint. The explanation of the delay is given only from the date of applying for sanction for filing complaint, dated 20.02.2017 till the date of grant of sanction, i.e., 17.04.2017. However, there is not even any pleading as to what is the explanation for the period from 17.07.2012 till 20.02.2017.

In view of the above, even if the Trial Court would have so considered fit to apply its mind to extend the time, there would not have been any material before the Trial Court to extend the time. The prayer made by the Complainant; for extension of time, is without any basis being disclosed on the record of the case. Hence even the application and prayer for extension of the time is insignificant qua the case of the petitioner.

In view of the above, the present petition succeeds. The Complaint No.26 dated 12.01.2018 under section 3(k)(i),17,18,29,33 of Insecticides Act, 1968 read with Rules 27(5) of Insecticides Rules, 1971 (Annexure P-1), the Summoning Order dated 12.01.2018(Annexure P-2) and all the consequential proceedings arising therefrom, are quashed.

29th August, 2018

Shivani Kaushik

**[RAJBIR SEHRAWAT]
JUDGE**

Whether speaking/reasoned *Yes/No*

Whether Reportable *Yes/No*