

Sr. No.205

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

**CRM-M-9579-2017
Date of decision:11.10.2018**

M/s Zimidara Kheti and another

.....Petitioner(s)

versus

State of Punjab

.....Respondent(s)

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Arun Chandra, Advocate
for the petitioners.

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

Rajbir Sehrawat, J(Oral)

Present petition has been filed seeking quashing of Complaint No.RBT01 dated 24.08.2015/12.12.2016, registered under Sections 3(k)(i), 17,18,29 and 33 of the Insecticides Act, 1968 read with Rule 27(5) of the Insecticide Rules 1971 and the summoning order dated 08.04.2016 passed by Chief Judicial Magistrate, Moga.

The petition has been filed with averments that on 21.06.2007, one farmer Jasmail Singh, resident of Village Badhni Kalan, had moved an application before the Chief Agriculture Officer, Moga to take action against the petitioners with the allegation that he had purchased 'Topline' spray from the Zimidara Kheti Sewaa Centre, the petitioner No.1. However, this insecticide had not been found to be effective. The above said Jasmail Singh also alleged that the petitioners firm had not issued any receipt regarding the purchase of the above said insecticide. This Complaint of the farmer, Jasmail Singh was marked to the Agriculture/Insecticide Inspector.

However, no action was taken on that. But thereafter, the Insecticide Inspector, Kuldeep Singh inspected the shop of the petitioners on 25.06.2007 and found the insecticide named Cholorropyriphos 20%EC (Brand Name-Topline) in the stock of the petitioners, as per the Stock Register of the firm. The said Inspector purchased 5 litre of this insecticide from the petitioner firm, as a sample, in a sealed and brand original container. Accordingly, the Form XX was prepared by the above said Insecticide Inspector, Kuldeep Singh, mentioning the details of manufacturer, batch No., date of the manufacture and the date of expiry of the product. In Form XX itself; it was written that the sample was taken as sealed and in original container. After taking the sample, the same was sent for analysis to Government Analyst, Amritsar. The sample was found to be misbranded. The Government Analyst, Amritsar; had sent the Report to this effect; which was received on 26.06.2007, the very next day. On having been put to notice, the petitioners had opted for analysis of the second sample. However, the second sample was also found misbranded, and the report to this effect was received from the Central Insecticide Laboratory, Faridabad on 21.01.2008. Thereafter, the sanction for prosecution was applied for on 12.01.2010. Accordingly, the sanction for prosecution was also received in the office of Chief Agricultural Officer, Moga on 17.09.2010. Thereafter, the complaint was filed against the present petitioners, who are the dealer, as well as against the manufacturer, on 24.08.2015. Although the Complaint also included Section 420 IPC, however, the Trial Court did not find the offence under Section 420 IPC to be made out from the material in the case, therefore, the summoning order dated 08.04.2016 was issued against the petitioners under the provisions of

Insecticide Act and Rule framed thereunder only. It is this Complaint and the summoning order which is being challenged by the petitioners through the present proceedings.

The main argument of learned counsel for the petitioners is that under Section 29 of the Insecticide Act, the maximum punishment under any section of the Insecticide Act is of imprisonment for 02 years. Therefore, as per Section 468(3) of Cr.P.C; the limitation for filing the complaint under Insecticide Act; would be 03 years. It is further contended that as per 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**, the limitation for filing of the complaint would start from the date of receipt of the report of Government Analyst. In the present case, the report of the Government Analyst was received on 26.06.2007. Even the second sample was found misbranded on 28.01.2008. Thereafter, the Chief Agriculture Officer and the Complainant, Insecticide Inspector, went in slumber and did not even apply for sanction of prosecution. The sanction of prosecution was applied for by the Complainant after 02 years only on 12.01.2010. As per the record, the sanction for prosecution was duly received on 17.9.02010. In the mean-time, even the license of the present petitioners, under Insecticide Act, was canceled by the department on 26.11.2007. However, no complaint was filed by the Insecticide Inspector against the petitioners. Ultimately the complaint against the petitioners was filed only on 24.08.2015, which is much beyond the period of 03 years. Hence the complaint is time barred, *per se*. Such a huge delay has altogether prejudiced the defense of the petitioners due to limitations of human memory. It is further contended by learned counsel for the petitioners that

Section 468 Cr.P.C. prohibits the Court from taking cognizance of the offence, if the same is not brought to the Court within a period of limitation. Hence in the present case, taking of the cognizance by the Court itself stands vitiated. Accordingly, it is contended that the summoning order passed against the petitioners can not be sustained. The counsel has further relied upon the judgment of the Hon'ble Supreme Court rendered in **2015(3) RCR(Criminal) 661; Sirajul and others vs. State of UP** and another to contend that if the complaint is filed despite statutory bar then the complaint is liable to be quashed without much inquiry. Learned counsel has also relied upon the judgment of this Court rendered in **CRM-M-6332-2018, Sohan Singh and others versus State of Punjab, decided on 29.08.2018**, to contend that in similar circumstances the complaint and the summoning orders were quashed by this Court.

The next argument of learned counsel for the petitioners is that admittedly, the sample in the case was taken only as a sealed sample in original packaging. Therefore, the petitioners would be fully entitled to the protection granted to the dealer under Section 30(3) of the Insecticide Act. Hence, the prosecution against the petitioners itself is not maintainable. Learned counsel has relied upon the judgment of this Court rendered on this point in **CRM-M-25377-2017, Darshan Singh and another versus State of Punjab, decided on 06.10.2018**.

Learned counsel for the petitioners has further contended that in the same complaint; even the manufacturer was arrayed as an accused. However, vide Order dated 24.10.2017, the manufacturer has already been discharged in the complaint; on the ground that the complaint was filed beyond the period of limitation. Therefore, it is submitted by the counsel

for the petitioners that, since the manufacturer has already been discharged on the same law point of limitation, therefore, by any means, the present complaint and the subsequent proceedings; in the form of summoning order; against the petitioners can not be sustained anymore.

On the other hand, State counsel has filed reply to the petition. The details regarding the dates of taking sample, receipt of the reports, applying for prosecution for sanction and the date of receipt of sanction for prosecution has not been disputed in the reply. It is further pleaded that as per the report of the Government Analyst, the active ingredients of the insecticide in the container was found to be 13.48% as against the prescribed 20%. Since the sample was found misbranded, therefore, the complaint has rightly been filed against the present petitioners. Beyond that; no explanation has been furnished qua the fact as to why the complaint was not filed within the period of limitation. Still further, even this fact has not been denied that the sample was taken in a sealed container, in its original packaging.

Supporting the complaint, learned counsel for the respondent State submitted that the delay in filing the complaint is unintentional.

Since the argument on limitation had come at the earlier stage of the present proceedings also, therefore, the Insecticide Inspector, Kuldeep Singh was asked to file an affidavit submitting his explanation, if any, for not filing the complaint within the period of limitation. Accordingly, the Insecticide Inspector Kuldeep Singh, who is present in Court today, has filed an affidavit in which he has given the explanation for the delay in filing the complaint as under:-

“2. That in the present case sample was drawn

from the premises of the petitioner on 25.6.2007 and the sample was found misbranded on 26.6.2007 and again misbranded on 31.1.2008 and licence of Firm was cancelled on 26.11.2007. Thereafter, the present complaint was filed on 24.8.2015 in the competent court of law, having its jurisdiction.

3. XXX

4. That the present complaint was filed under Section 420 IPC also as there was a complaint of one farmer Jasmail Singh on 21.06.2007 with the department. The CAO Office, Moga has applied sanction on 12.1.2010, which was granted on 17.9.2010.

5. XXX

6. That undoubtedly, some delay has occurred in filing the complaint mentioned in the petition. It is being stated with responsibility that there is no question of any malpractice or ill-will in the case in hand. Moreover, while of the delay can not be attributed to the deponent as the deponent received the complete file from the ADO(Enforcement) on 17.6.2015 and filed the complaint on 24.8.2015 i.e. approximately two months thereafter. A

copy of receipt dated 17.6.2015 vide which the deponent had received the above said file from ADO(Enforcement) is annexed herewith as Annexure R-1. Nonetheless, the deponent tenders as unconditional apology for the delay in taking action in the case in hand. The deponent also assures this Hon'ble Court that the deponent would be extremely careful in the future with regard to his official obligations. This case is only blot on the clean career of the deponent and would put to ransom all the hard work and labour of the deponent which he has rendered throughout his career. Towards the fag end of his career, the deponent wishes to take his retirement as an honest, dedicated and hardworking officer.”

A bare perusal of the above said affidavit of Insecticide Inspector Kuldeep Singh shows that no specific explanation is given for the delay in filing the complaint, instead, he has tried to apportion the part of delay to the ADO Enforcement/Chief Agricultural Officer, Moga.

Having heard the learned counsel for the parties, this Court finds adequate substance in the argument raised by learned counsel for the petitioners. A bare perusal of the facts of the case on record shows that the report of the Government Analyst had been received by the complainant on 26.06.2007. Even the sanction for prosecution, though applied too belatedly

on 12.01.2010, was received on 17.09.2010 itself. Hence as per the mandate of Section 468(3) of Cr.P.C; and judgment of Supreme Court in the case of ***State of Rajasthan(Supra)*** complaint in the present case could have been filed, at the best, within a period of 03 years from the date of receipt of report of the Government Analyst. However, the complaint has been filed after 08 years from the said date. Hence, the complaint in the present case is hopelessly time barred.

Although the Trial Court had the power to extend the period for filing of the complaint; beyond the period prescribed, under the provision of Section 473 Cr.P.C; however, the complainant had not even moved an application for such an extension of time.

Even in the present proceedings, though an affidavit has been filed by the Insecticide Inspector, however, no explanation, whatsoever, has been given for the huge delay of about 08 years, except to make a lame excuse and to make an attempt to apportion part of the delay to the ADO (Enforcement)/Chief Agriculture Officer, Moga, who is equally be liable for his inaction and the consequent delay in filing the complaint. This Court does not find the explanation furnished, even now, by the Insecticide Inspector, anywhere near to being satisfactory. Hence the complaint filed against the petitioners is held to be time barred.

Since taking of cognizance by the Court itself is prohibited; in case the complaint not filed within the prescribed period, therefore, the subsequent proceeding in the form of summoning, order also stands vitiated. This Court has already considered this aspect in the case of ***Sohan Singh and others(supra)***. The case of the present petitioner is further fortified by the fact that in the same complaint, the manufacturer, who is primarily

responsible for manufacturing of spurious insecticide, already stands discharged on the basis of complaint being time barred only. Learned State counsel has not brought on record anything to show that the State has even challenged that order in favour of the manufacturer. In view of this, there is no legal justification, whatsoever, for continuing the proceedings against the petitioners; who happens to be only a retailer of the product; found to be spurious.

The petitioners could not have been hauled up in the present case due to another reason also, i.e. that the sample taken from the petitioners was taken as a sealed container in original packing. This fact duly finds mention in the Form XX prepared by the Insecticide Inspector; on the spot at the time of taking of the sample. In view of this fact, the petitioners would be, otherwise also, entitled to the protection of Section 30 (3) of the Insecticide Act. On this point also, this Court has already quashed a complaint against a dealer in case of ***Darshan Singh and others(supra)***.

In view of the above, facts and circumstances, this Court finds that the initiation and continuation of a complaint and the consequent proceedings against the petitioners, are not legally justified and sustainable. Because of the delay caused by the complainant, the present proceedings have resulted in misuse of the process of law and in defeating the ends of justice. The petitioners can no more be kept subjected to the proceedings of the complaint. Accordingly the complaint and consequent proceedings arising therefrom, deserve to be quashed.

In view of the above, the present petition is ***allowed*** and the Complaint No.RBT01 dated 24.08.2015/12.12.2016 registered under Sections 3(k)(i),17,18,29 and 33 of the Insecticides Act, 1968 read with

Rule 27(5) of the Insecticide Rules 1971 and the summoning order dated 08.04.2016 are hereby *quashed*.

This Court has found that the modality of filing the complaint after a long delay is not restricted to the present case only. There have been instances earlier also, which has been dealt by this Court only, besides the other Benches of this Court as well, where the manufacturer and the dealer escapes the net of the penal law just because of the brazen delay caused by the departmental authorities in launching the prosecution against the manufacturer of the spurious insecticides and fertilisers. This kind of delay can not happen but for the enormous possibilities of the extraneous considerations with the departmental authorities. In the present case also; due to huge and unexplained delay in filing the complaint by the complainant, Insecticide Inspector Kuldeep Singh, the manufacturer of the spurious insecticide have got scot free. Although Inspector Kuldeep Singh have tried to apportion a part of delay to ADO(Enforcement) Moga, who also is not free from blame in this case, however, the facts on record of the case show a clear-cut deliberate delay on the part of Complainant, Kuldeep Singh. The copy of sanction for prosecution is duly endorsed to the Complainant, Kuldeep Singh as well, with a further direction to contact the prosecution department and to launch the prosecution within a week. So he can not hide behind the inaction of ADO(Enforcement), who shall be dealt with separately. The unexplained delay in filing the complaint has led to wastage of precious time of the Courts. Resultantly, this Court deems it appropriate to impose an exemplary cost upon the Complainant, the then Insecticide Inspector, Kuldeep Singh, for making the Courts to waste their time on the complaint. Accordingly, the Insecticide Inspector, Kuldeep

Singh is burdened with cost of Rs.1 lakh to be paid from his personal pocket. This cost is directed to be deposited with the District Legal Services Authority, Moga, within a period of 15 days.

With this, the present petition stands disposed of qua the petitioners.

11th October, 2018
Shivani Kaushik

[RAJBIR SEHRAWAT]
JUDGE

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