

**CRM-M-4008-2019 and
CRM-M-6737-2019**

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

Date of Decision:19.11.2019

1. CRM-M-4008-2019

Raj Kumar Gupta and others

... Petitioners

Versus

State of Punjab

... Respondent

AND

2. CRM-M-6737-2019

M/s Sangrur Agro and another

... Petitioners

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Rakesh Verma, Advocate,
for the petitioners in both the petitions.

Mr. S.S.Cheema, AAG, Punjab.

HARNARESH SINGH GILL, J.

This order shall dispose of the above mentioned two petitions as the same have arisen out of one complaint and point for determination in both these petitions is one and the same.

Both these petitions have been filed under Section 482 of the Code of Criminal Procedure, 1973 (for brevity, 'Cr.P.C.') for quashing of the

complaint case No.67 dated 09.05.2018, under Section 29 of the

**CRM-M-4008-2019 and
CRM-M-6737-2019**

Insecticides Act, 1968, titled as 'State vs. M/s Sangrur Agro and others', pending before the Court of the learned Chief Judicial Magistrate, Sangrur, the summoning order dated 17.11.2018 (Annexure P-2) and all the consequential proceedings arising therefrom qua the petitioners (in both the petitions), on the ground that the complaint had been instituted after 04 years, 08 months and 04 days of the receipt of Analyst Report, and the same is time barred.

In CRM-M-4008-2019, petitioner No.1 is the Managing Director of M/s Thakar Chemicals Limited i.e. petitioner No.3, whereas petitioners No.2, 4 and 5 are the office bearers of the said firm.

In CRM-M-6737-2019, petitioner No.2 is the proprietor of M/s Sangrur Agro i.e. petitioner No.1.

Brief facts of the case are that as per the Punjab Govt. Notification dated 30.10.1991, the complainant was notified as Insecticide Inspector and appointed at Sangrur vide Punjab Govt. letter dated 19.09.2012. He was authorized to file the present complaint under clause 27(5) of the Insecticides Rules, 1971 and is a public servant under Section 21 of the IPC. The Chief Agriculture Officer, Sangrur, had issued licence No.SAG-376 valid upto 31.12.2013, in the name and style of M/s Sangrur Agro, for the purpose of selling, exhibiting for sale and stocking the insecticides/weedicides through its proprietor-Amar Nath. Vide clause 3(k) (i), 17, 18, 29 and 33 of the Insecticides Act, 1968, the aforesaid dealer, distributor and manufacturer was under a legal obligation to observe all the provisions contained in the Insecticides Act, 1968 and Insecticide Rules,

**CRM-M-4008-2019 and
CRM-M-6737-2019**

1971. On 20.08.2013 at about 12.30 P.M., the complainant inspected the premises of M/s Sangrur Agro in the presence of Dr. Varinder Singh Agriculture Officer, Sunam, and issued notice to draw the sample and took one piece of 1 kg packing of Acephate 75% SP and draw the loose sample from 1 kg packing in three portions (each 250 gm x 3 of volume) and draw the sample as per the Insecticides Act, 1968. Out of them, one sample was given to Amar Nath and the sample was purchased against bill dated 20.08.2013 for Rs.350/- and the remaining two parcels (all duly sealed) were deposited with the Chief Agriculture Officer. Out of the two samples, one was sent to the Senior Analyst, ITR, Bathinda, for analysis and the test report was received on 05.09.2013 from the Senior Analyst with the remarks that the sample was not conforming to IS specifications containing only 66.80% SP active ingredient against 75% SP as printed on the label of container and therefore, the same was declared as misbranded. Thereafter, a show cause notices were issued to M/s Sangrur Agro, Sangrur, through Amar Nath and Inder Surekha, alongwith the analysis report to which they submitted their reply resisting and rejecting the contents of the test report and showed the intention for re-analysis of the second sample from any Central Insecticide Lab.

Thus, as per Section 24 of the Insecticides Act, 1968, the petitioners were allowed for re-analysis and the second sample had been sent to the Central Insecticides Testing Laboratory, Faridabad. The said sample was also declared having found 67.00 % SP instead of the required 75% SP as per the label. Therefore, the petitioners were found responsible

**CRM-M-4008-2019 and
CRM-M-6737-2019**

for violating the provisions of Section 3(k) (i) read with Section 33 of the Insecticides Act, 1968 and the petitioners were liable to be punished under Section 29 of the Insecticides Act, 1968 and Rules 1971.

Since it was found that all the petitioners had collectively worked for the manufacturing and sale of the misbranded pesticide and were, thus, liable to be punished under Section 29 read with Section 3(k) (i), 17, 18 and 33 of the Insecticides Act, 1968 and the act of manufacturing and selling of the misbranded insecticide on behalf of the firm by the petitioners, was also liable to be punished under Section 29 of the 1968 Act read with Section 3(k) (i), 17, 18 and 33.

Thereafter, necessary sanction required under Section 31(1) of the Insecticides Act, 1968, for prosecuting the petitioners, was granted by the Joint Director Agriculture, Plant Protection, on 02.06.2017, whereupon the complaint was filed.

I have heard learned counsel for the parties and with their able assistance, have gone through the record.

Learned counsel for the petitioners has argued that the sample was drawn on 20.08.2013 and the report of public analyst is dated 05.09.2013, but the complaint was instituted on 09.05.2018 i.e. after a period of 04 years, 08 months and 04 days. He has further argued that the offences are punishable upto 02 years, hence, the present complaint is not maintainable in view of the bar contained in Section 468 Cr.P.C. There is no application of mind by the Court below while passing the summoning order.

**CRM-M-4008-2019 and
CRM-M-6737-2019**

Learned State counsel, per contra, has argued that the petitioners were selling misbranded insecticide and had caused great harm not only to the purchasers/farmers, but the public at large and they had not filed revision petition against the summoning order.

After hearing the learned counsel for the parties, I am convinced with the arguments raised by the learned counsel for the petitioners.

At this stage, it would be relevant to reproduce Section 29 of the Insecticides Act, 1968.

“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 licence; 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 thereunder, shall be punishable—

(i) for the first offence, with imprisonment for a term which may extend to two years, or with fine which shall not be less than ten thousand rupees but which

**CRM-M-4008-2019 and
CRM-M-6737-2019**

may extend to fifty 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 which shall not be less than fifteen thousand rupees but which may extend to seventy-five thousand rupees, or with both.

(2) Whoever uses an insecticide in contravention of any provision of this Act or any rule made thereunder shall be punishable with fine which shall not be less than five hundred rupees but which may extend to five thousand rupees, or imprisonment for a term which may extend to six months, or with both.

(3) Whoever contravenes any of the other provisions of this Act or any rule made thereunder or any condition of a certificate of registration or licence granted thereunder, shall be punishable—

(i) for the first offence, with imprisonment for a term which may extend to one year, or with fine which shall not be less than five thousand rupees but which may extend to twenty-five thousand rupees, or with both;

(ii) for the second and a subsequent offence, with imprisonment for a term which may extend to two years, or with fine which shall not be less than ten thousand rupees but which may extend to fifty thousand rupees, 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."

**CRM-M-4008-2019 and
CRM-M-6737-2019**

The alleged offences are punishable upto two years, whereas the present complaint has been filed after 04 years, 08 months and 04 days of the receipt of analyst report. Therefore, the present complaint is hopelessly time barred and is not maintainable. The sample of the insecticide was drawn on 20.08.2013, whereas the report of public analyst is dated 05.09.2013 as received by the Chief Agriculture Officer, Sangur, and the present complaint was filed by the department on 09.05.2018. The limitation for the prosecution is to start from the date of receipt of public analyst report. The Hon'ble Supreme Court in ***State of Rajasthan Vs. Sanjay Kumar*** 1998(3) R.C.R. (Criminal) 846, has held that the limitation to file complaint starts from date of receipt of report of Public Analyst.

Section 468 Cr.P.C. prohibits the Court from taking the cognizance of the offence, if the same is not brought to the court within the period of limitation. Thus, the summoning order passed by the court below cannot be sustained. The Hon'ble Supreme Court in ***Sirajul & Others Vs. State of U.P. and Another*** 2015 (3) R.C.R. (Criminal) 661, has held that the cases covered by statutory bar of limitation are liable to be quashed without any further enquiry.

The contention raised by the learned State counsel that the sample had failed being misbranded and the same did not fall in relevant IS specifications and the active ingredients were found 67.00 % SP instead of required 75% as claimed on the label, has not been disputed. However, the bare perusal of the complaint filed by the Insecticides Inspector shows that no specific explanation is given for the delay in filing the complaint.

**CRM-M-4008-2019 and
CRM-M-6737-2019**

The other argument raised by the learned State counsel that the limitation would start from the report of public analyst qua the second sample, is not sustainable in the eyes of law. The said proposition has already been dealt with by the Coordinate Bench of this Court in the judgments dated 16.08.2018 passed in CRM-M-8243-2017 and dated 05.02.2019 passed in CRM-M-17705-2018, wherein it was held that the limitation for the the purpose of filing the complaint has to be taken from the date of the first report of the public analyst. The second report, if any, is totally meaningless for the purpose of calculation of the limitation. Hence, the arguments raised by the learned State counsel are rejected.

In view of the above facts and circumstances, this Court finds that the continuation of the complaint and the consequential proceedings arising therefrom against the petitioners in both the petitions, are not legally justified and sustainable because the delay of 04 years, 08 months and 04 days in filing the complaint, cannot be brushed aside. Rather, the present proceedings have resulted in the misuse of the process of law defeating the ends of justice. Accordingly, the complaint and all consequential proceedings arising therefrom, are liable to be quashed.

In view of the above, both the petitions are allowed and the complaint case No.67 dated 09.05.2018, under Section 29 of the Insecticides Act, 1968, titled as 'State vs. M/s Sangrur Agro and others', pending before the Court of the learned Chief Judicial Magistrate, Sangrur, the summoning order dated 17.11.2018 (Annexure P-2) and all the consequential proceedings arising therefrom qua the petitioners (in both the

**CRM-M-4008-2019 and
CRM-M-6737-2019**

petitions) are hereby quashed.

Before parting with this order, it is found that not only in this case, the complaint has been filed by the Agriculture Department, at a belated stage, but earlier also, a conclusion had been drawn that there was an unexplained delay in filing the complaint, which had led to the wastage of time of the courts. Thus, the complaint is liable to be dismissed with costs. Accordingly, the complaint is dismissed with costs of Rs.1 lakh to be paid by the officers/officials, who are responsible for causing the delay, which is to be decided by the Director Agriculture, Punjab, within one month from the date of receipt of copy of this order. Thereafter, the costs of Rs.1 lakh are to be deposited by the erring officers/officials with the District Legal Services Authority, Sangrur, within a period of 15 days.

Let a copy of this order be sent to the Director Agriculture, Punjab, for necessary compliance. The Director Agriculture, Punjab, shall ensure that the costs of Rs.1 lakh have been deposited within the stipulated period, and shall also inform the Registry of this Court qua compliance within one month thereafter.

19.11.2019
parveen kumar

(HARNARESH SINGH GILL)
JUDGE

Note: Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No