

Sr. No.

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

**CRM-M-1358-2018(O&M)
Date of decision:30.04.2019**

Sanjay Gupta and others

..... Petitioners

versus

State of Punjab

..... Respondent

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

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

Mr. Prabhjot Singh Walia, AAG, Punjab.

Rajbir Sehrawat, J(Oral)

Present petition has been filed by manufacturer, seeking quashing of Complaint No.63 dated 4.10.2017, 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 04.10.2017 passed by JMIC, Malerkotla, District Sangrur.

The petition has been filed with averments that on 25.07.2013, Jaswinder Singh, Insecticide Inspector, Malerkotla, District Sangrur visited the shop premises of one dealer i.e. M/s Chowdhary Kissan Sewa Centre, Bhaini Kambhoan Tehsil malerkotla, District Sangrur and drew a sample of insecticide, namely, Cartap Hydrochloride 4% GR, bearing Batch No. ACS/CE/132, manufacturing date March, 2013 and expiry dated February, 2015. Thereafter, accordingly, the Form XX was prepared by the above said

Insecticide Inspector, Jaswinder Singh, mentioning the details of manufacturer, batch No., date of the manufacture and the date of expiry of the product. After taking the sample, the same was sent for analysis to Insecticide Quality Control Lab, Bathinda. The sample was found to be misbranded. The Insecticide Quality Control Lab., Bathinda; had sent the Report to this effect; which was received on 26.08.2013. On having been put to notice, the petitioners had opted for analysis of the second sample. However, the second part of the sample was also found misbranded, and the report to this effect was received from the Central Insecticide Laboratory, Faridabad on 27.12.2013. Thereafter, the sanction for prosecution was applied on 05.08.2016 and granted on 10.04.2017. Thereafter, the complaint was filed against the present petitioners, and the dealer on 04.10.2017. Therefore, the summoning order dated 04.10.2017 was issued against the petitioners under the provisions of Insecticide Act and Rule framed thereunder. 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 for the offence alleged against the petitioners is of imprisonment for 02 years. Therefore, as per Section 468(2) 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 Public Analyst. In the present case, the report of the Insecticide Quality Control Lab; Bathinda was received on 26.08.2013.

Even the second part of the sample was found misbranded on 27.12.2013. Thereafter, the Chief Agriculture Officer and the Complainant, Insecticide Inspector, went in slumber and did not even apply for sanction of prosecution. After much delay the sanction of prosecution was applied for by the Complainant and the same was received. However, no complaint was filed by the Insecticide Inspector against the petitioners. Ultimately the complaint against the petitioners was filed only on 04.10.2017, 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.

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 3.46% as against the prescribed 4%. 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.

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, Jaswinder 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 Jaswinder 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.

A bare perusal of the above said affidavit of Insecticide Inspector Jaswinder 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 Chief Agricultural Officer, Sangrur.

Learned State counsel has further submitted that since the petitioner had opted for testing of the second sample and accordingly, the second sample was also sent for testing. The report of the second sample was received on 16.12.2013. Thereafter, the corrected report, qua the correction of the Batch No., was finally received from laboratory on

03.04.2014. As counted from this date, the complaint has been filed within the time limit.

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 Public Analyst had been received by the complainant on 26.08.2013. Thereafter, for about 3 years the sanction for prosecution was not even applied. Even the sanction for prosecution, though applied too belatedly on 05.08.2016, was granted on 10.04.2017 itself. Hence as per the mandate of Section 468(2) 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 learned State counsel has argued that the limitation would start from report of Public Analyst qua second sample. However, this argument of State counsel is also not tenable in law. This proposition has already been dealt with by the co-ordinate Bench of this Court in the judgment rendered in CRM-M-8243-2017, dated 16.08.2018 and in another judgment dated 05.02.2019 passed in CRM-M-17705-2018, decided on 05.02.2019 wherein it was held that the limitation for the purpose of filing complaint has to be taken from the date of first report of the Public Analyst. The second report, if any, is totally meaningless for the purpose of calculation of the limitation. Hence this argument of learned counsel for the State also deserves to be rejected.

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 04 years, except to make a lame excuse and to make an attempt to apportion part of the delay to Chief Agriculture Officer, Sangrur, 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)***.

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.63 dated 04.10.2017 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 04.10.2017 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. In the present case also; due to huge and unexplained delay in filing the complaint by the complainant, Insecticide Inspector Jaswinder Singh, the manufacturer of the spurious insecticide have got scot free. Although Inspector Jaswinder Singh have tried to apportion a part of delay to Chief Agricultural Officer, Sangrur, 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, Jaswinder Singh. The copy of sanction for prosecution is duly endorsed to the Complainant, Jaswinder 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 Chief Agricultural Officer, Sangrur. 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, Jaswinder Singh, for making the Courts to waste their time on the complaint. Accordingly, the Insecticide Inspector, Jaswinder 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, Sangrur, within a period of 15 days.

Let the copy of this Order be sent to the Director Agriculture, Punjab for necessary compliance. The Direction Agricultural shall ensure that the above-said Jaswinder Singh deposits the amount within 15 days from the date of receipt of certified copy of this Order, and shall also inform the Registry of this Court qua compliance within one month thereafter.

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

30th April, 2019
Shivani Kaushik

[RAJBIR SEHRAWAT]
JUDGE

Whether speaking/reasoned *Yes/No*

Whether Reportable *Yes/No*