

In the High Court of Punjab and Haryana at Chandigarh

**CRM-M No. 36938 of 2016
Date of Decision: 06.12.2019**

M/s Singla Kheti Sewa Centre and others

.....Petitioners

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

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

Mr. Sarabjit Singh Cheema, AAG, Punjab.

HARNARESH SINGH GILL, J.

This petition has been filed for quashing of complaint No. 4432/16 dated 18.4.2016 under Sections 3 (k) (i), 17, 18, 29 and 33 of Insecticides Act, 1968 ('Act' for short) read with Rule 27(5) of the Insecticide Rules 1971 titled 'State versus M/s Singla Kheti Sewa Centre, Malaud and others' (Annexure P-1) and all the consequent proceedings arising therefrom including the summoning order dated 18.4.2016 (Annexure P-2).

I have heard the learned counsel for the petitioners and the learned State counsel and with their able assistance, I have gone through the impugned order.

It is argued by the learned counsel for the petitioners that as per the provisions of Section 29 of the Act, maximum punishment for the present offence is two years with or without fine of Rs. 50,000/- and the

from the date of inspection and is, thus, barred by limitation which are based on the provisions of Section 468 of the Code of Criminal Procedure. Further the prosecution had applied for grant of sanction on 4.2.2015 which was granted on 11.1.2016 and even if that period is excluded, the present complaint was filed after a long delay.

On the other hand, learned State counsel has submitted that as per Section 470 (3) Cr.P.C, in computing the period of limitation, the time required for giving notice after receiving the sanction/written consent shall be excluded and in the present case, the sanction/written consent under Section 31 of the Act was given on 8.1.2016 (Annexure P-5) and, the delay is, thus, procedural and occurred due to heavy rush of work.

In the case of *State of Rajasthan versus Sanjay Kumar 1998 AIR (SC) 1919*, the Hon'ble Apex Court in para 9 and 13 has observed as under:-

“9. Now we shall see which clause of sub-section (1) of Section 469 is attracted to the facts of the case. For this purpose it will be necessary to revert to the facts of this case. The essence of the offences charged is manufacture of adulterated, sub-standard, misbranded, spurious drugs within the meaning of the relevant provisions of the Act and/or storage, distribution and sale of such drugs in contravention of the provisions of the Act. On the date of collection of samples from respondent No.16, on February 29, 1988, it could not have been said that any offence was committed as selling of drugs per se is no offence and the quality of the drugs was not known to the Drugs Inspector, the complainant on that date. It is only, when the report of the Government Analyst was received, that it came to light that the provisions of the Act are violated and offence is committed. So on the facts of this case it cannot be said that Clause (a) of Section 469(1) is attracted.

That the drugs which were offered for sale were sub-standard/adulterated, within the meaning of the Act, came to the knowledge of the Drugs Inspector only on July 2, 1988 when the report of the Government Analyst was received by him; and therefore, clause (b) of Section 469(1) will be attracted.

x x x x x x

13. For the above reasons, in the instant case, the limitation for the purpose of Section 468(2) (c) will commence from July 2, 1988, the date of knowledge of the commission of offence to the concerned officer under Section 469(1) (b) but not from February 29, 1988 (the date of collection of samples by the Drugs Inspector) and as the complaint was filed on June 28, 1991 which is within three years so the complaint is not barred by limitation under Section 468(2) (c). The High Court has missed this germane aspect erroneously took the date of commencement of the limitation as February 29, 1988, the date on which the samples were collected by the Drugs Inspector from accused No. 16. It is thus clear that the High Court has committed illegality in so computing the period of limitation, which results in miscarriage of justice.”

In the present case, the sample was drawn on 4.8.2011 and was found misbranded on 8.8.2011 and again found misbranded on 2.2.2012. The prosecution had applied for grant of sanction on 4.2.2015 and the same was accorded on 8.1.2016 (Annexure P-5). Now as per the provisions of Section 29 of the Act, maximum punishment is two years and the present complaint has been filed after the elapse of considerable period which is barred by limitation as per provisions of Section 468 Cr.P.C.

Section 468 Cr.P.C. is reproduced hereunder for ready reference:-

468. Bar to taking cognizance after lapse of the period of limitation.

1. *Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub- section (2), after the expiry of the period of limitation.*
2. *The period of limitation shall be-*
 - (a) *six months, if the offence is punishable with fine only*
 - (b) *one year, if the offence is punishable with imprisonment for a term not exceeding one year;*
 - (c) *three years, if the offence is punishable with imprisonment for term exceeding one year but not exceeding three years.*
- 3 *For the purposes of this section, the period of limitation in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.]*

Section 469 Cr.P.C. is regarding commencement of limitation

which reads as under:-

469. Commencement of the period of limitation.

- (1) *The period of limitation, in relation to an offender, shall commence,-*
 - (a) *on the date of the offence; or*
 - (b) *where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier; or*
 - (c) *where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier.*
- (2) *In computing the said period, the day from which such period is to be computed shall be excluded.”*

Reply by way of affidavit of Notified Insecticides Inspector, Dehlon was filed wherein it has been admitted that maximum punishment is upto two years. In reply, the officer has tried to explain the delay part that initially incomplete consent/sanction was granted on 10.5.2013 and 12.11.2013 but later necessary correction was sought and entire period spent for taking sanction/consent was 03 years and 05 months and if this period is excluded then there is no delay in filing the complaint.

This plea cannot be accepted. Even the competent authority has taken three years and five months to grant sanction and this complaint has been filed beyond the period of limitation.

The Co-ordinate Bench of this Court in ***Crl. Misc. No. M-22053 of 2013*** titled ***M/s P.B.Pesticides and another versus The State of Punjab and others decided on 24.2.2014***, set aside the complaint on similar circumstances.

Accordingly, this petition is allowed. Complaint No. 4432/16 dated 18.4.2016 under Sections 3 (k) (i), 17, 18, 29 and 33 of the Act read with Rule 27(5) of the Insecticide Rules 1971 titled 'State versus M/s Singla Kheti Sewa Centre, Malaud and others' (Annexure P-1) and all the consequential proceedings, arising therefrom including the summoning order dated 18.4.2016 (Annexure P-2), are quashed qua the petitioners.

(HARNARESH SINGH GILL)
JUDGE

December 06, 2019
Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : Yes