

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

CRM-M-43568-2018(O&M)
Date of decision:30.04.2019

M/s Shiv Sambhu Sales Corporation 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 dealers, 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) passed by JMIC, Talwandi Sabo.

The petition has been filed with averments that on 07.07.2012, Dharminderjit Singh, Insecticide Inspector, Maur, District Bathinda visited the premises of petitioner No.1 and drew samples of insecticide, namely, Cartap Hydrochloride 4% GR, bearing Batch No.C-1, manufacturing date May, 2012 and expiry date April, 2014, manufactured by M/s Vikas Organic Industries Corporation, Panjgrain Kalan, District Faridkot and supplied by petitioner No.3 i.e M/s Indo Shine Chemicals, Mansa to petitioner No.1. 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. Subsequently, sanction for prosecution was 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. Thus the 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 for taking cognizance by the Magistrate, therefore, the complaint and the consequent proceedings deserve to be quashed.

Learned counsel for the petitioners has further referred the judgment passed in CRM-M-6332-2018 dated 29.08.2018(Annexure P-5), by this Court, whereby this very complaint has been quashed qua the co-accused on the ground of limitation.

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 07.04.2017 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 reply by way of affidavit of Dharminderjit Singh, Agriculture Development Officer, Bathinda. The relevant para of the reply is reproduced hereinbelow:-

“9. That the contents of para no.9 are admitted being correct to the extent that Chief Agriculture Officer, Bathinda applied for sanction on 20.02.2017. The same was accorded by the competent authority i.e. Joint Director Agriculture(Plant Protection) on 07.04.2017 and received in the office of Chief Agriculture Officer, Bathinda on 17.04.2017. It is further submitted that the file was handed over to the complainant on 28.04.2017 and remaining documents on 02.01.2018. After getting vetted, the complaint was filed on 12.01.2018. It is respectfully prayed that the complaint is link evidence case, can only be filed with all documents.

10. xxxx

11. xxxx

(i) xxxx

(ii) xxx

(iii) That the delay in filing the complaint was due to official process. An application under section 473 Cr.P.C for extending the period of limitation and for taking cognizance of the offences have been filling with the complaint in the Hon'ble court of SDJM, Talwandi Sbo.”

A bare perusal of the above said pleading of the complainant,

submitted for furnishing explanation for dealy 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 same. 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.

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 Dharminderjit Singh, the manufacturer of

the spurious insecticide have got scot free. Although Inspector Dharminderjit Singh have tried to apportion a part of delay to Chief Agricultural Officer, Bathinda, 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, Dharminderjit Singh. The copy of sanction for prosecution is duly endorsed to the Complainant, Dharminderjit 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, Bathinda. 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, Dharminderjit Singh, for making the Courts to waste their time on the complaint. Accordingly, the Insecticide Inspector, Dharminderjit 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, Bathinda, within a period of 15 days.

Let the copy of this Order be sent to the Director Agriculture, Punjab for necessary compliance. The Director Agriculture shall ensure that the above-said Dharminderjit 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.

30th April, 2019

Shivani Kaushik

**[RAJBIR SEHRAWAT]
JUDGE**

Whether speaking/reasoned *Yes/No*

Whether Reportable *Yes/No*