

Sr. No.

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

CRM-M-8855-2014(O&M)

Date of decision:30.04.2019

Surinder Singh Kooner and others

..... Petitioners

versus

State of Punjab

.....Respondent

CRM-M-11219-2014(O&M)

Jarnail Singh and another

.....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)

This Order shall dispose of the aforementioned two petitions filed by the petitioners under Section 482 Cr.P.C as the same have arisen out of a common Complaint No.14 dated 29.01.2013, titled as “*State Vs. M/s Brar Brothers Kheti Store and Others*” 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 29.01.2013, passed by the S.D.J.M.,Zira, District Ferozepur.

However, for reference and brevity, the facts have taken from the petition bearing No. CRM-M-11219-2014.

These petitions have been filed by manufacturer and dealers, with averments that on 05.07.2007, Complainant, Jagsir Singh – Insecticide Inspector visited the shop of M/s Brar Brothers Kheti Store, Zira, District Ferozepur and drew a random sample of one insecticide Cartap Hydrochloride 4%G bearing Batch No.MJ070304, with Mfg. Date March, 2007 and Expiry Date February, 2009, manufactured and supplied by the company i.e. M/s Modern Insecticides Ltd., Ludhiana. After completing all necessary formalities and procedures, the sample sent to State Insecticide Testing Lab, Amritsar for chemical analysis and the same was found misbranded vide Analysis Report dated 17.07.2007. 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 22.01.2008. Thereafter, the sanction for prosecution was applied for on 22.05.2009. The same was granted on 15.10.2009. Thereafter, the complaint was filed against the present petitioners, who are the dealer, as well as against the manufacturer, on 29.01.2013. 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 offences 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 Public Analyst was received on 17.07.2007. 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 about 02 years only on 22.05.2009. As per the record, the sanction for prosecution was duly received on 15.10.2009. However, no complaint was filed by the Insecticide Inspector against the petitioners. Ultimately the complaint against the petitioners was filed only on 29.01.2013, 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 3.27% 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, Jagsir Singh was asked to file reply/explanation, if any, for not filing the complaint within the period of limitation. Accordingly, the Insecticide Inspector Jagsir Singh, has filed reply in which he has given his explanation for the delay in filing the complaint.

A bare perusal of the reply of Insecticide Inspector Jagsir Singh shows that no specific explanation is given for the delay in filing the complaint.

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 17.07.2007. Even the sanction for prosecution, though applied too belatedly

on 22.05.2009, was received on 15.10.2009 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 06 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 reply has been filed by the Insecticide Inspector, however, no explanation, whatsoever, has been given for the huge delay of about 06 years, except to make a lame excuse and to make an attempt to apportion part of the delay to the Chief Agriculture Officer, Ferozepur, 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 this, there is no legal justification, whatsoever, for continuing the proceedings against the petitioners.

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 petitions are ***allowed*** and the Complaint No.14 dated 29.01.2013 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 29.01.2013 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 Jagsir Singh, the manufacturer of the spurious insecticide have got scot free. Although Inspector Jagseer Singh have tried to apportion a part of delay to Chief Agriculture Officer,

Ferozepur, 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, Jagsir Singh. The copy of sanction for prosecution is duly endorsed to the Complainant, Jagsir 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 Agriculture Officer, Ferozepur. 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, Jagsir Singh, for making the Courts to waste their time on the complaint. Accordingly, the Insecticide Inspector, Jagsir 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, Ferozepur, 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, Punjab shall ensure that the above-said Jagsir 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 petitions stand disposed of qua the petitioners.

30th April, 2019

Shivani Kaushik

[RAJBIR SEHRAWAT]

JUDGE

Whether speaking/reasoned *Yes/No*

Whether Reportable *Yes/No*