

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

CRM-M-34322-2019 (O&M)

Date of decision : 25.09.2019

M/s Sumitomo Chemicals India Private Limited and others

...Petitioners

Versus

State of Punjab through Insecticide Inspector, Batala

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ashim Aggarwal, Advocate for the petitioners.

Mr. Bhupender Beniwal, AAG, Punjab.

ANIL KSHETARPAL, J.

During the course of hearing of the present petition, a very sad state of affairs in discharge of duties by the officials working in the Department of Agriculture, Punjab has come to the notice of this Court.

As many as 76 complaints have been filed beyond the time prescribed alleging in violation of provisions of Insecticides Act, 1968 and Rules framed thereunder which are likely to fail only on this ground. Prima facie criminal negligence which adversely affect the society at large is established on the part of officials of the department of agriculture has come to light.

Various petitions have been filed under Section 482 Cr.P.C. by the Manufacturers/Distributors/Dealers (accused in the criminal complaints for violation of provisions of the Insecticides Act, 1968 and the Insecticides

Rules, 1971) alleging that the complaints so filed are beyond time as permissible for taking cognizance of an offence under Section 468 of the Code of Criminal Procedure.

At this stage, it will be relevant to note that offences under the Insecticides Act, 1968, for violation of various provisions, the maximum punishment prescribed is two years for first offence (first offender). Hence, as per Section 468 of Cr.P.C., the maximum period in which the Court is required to take cognizance is three years as provided under Clause (c) of Sub Section 2 of Section 468. For the purpose of cognizance under Section 468, the date on which the complaint was filed before the Magistrate is to be taken into consideration.

Keeping in view the aforesaid facts, on 22.08.2019, following order was passed:-

“This is another case where assertions are that the complaint filed by the official respondents is beyond time. It has been noticed that the Government officials do not take appropriate steps and intentionally delay the filing of the complaint forcing the Court to interfere.

Let a copy of the petition be handed over to Mr. Sandeep Kumar, Deputy Advocate General, Punjab, learned counsel appearing on behalf of the State.

Principal Secretary of the concerned Department is directed to file affidavit as to why the complaints are filed after the expiry of time and what action has been taken against the officials who were responsible for such delay.

Adjourned to 05.09.2019.”

On 05.09.2019, counsel appearing for the State expressed his helplessness on the ground that no one from the Department has come

forward either to file the affidavit as directed or assist. Accordingly, Secretary of Department was requested to remain present on the next date of hearing. On 13.09.2019, i.e. the next date, this Court passed following order:-

“It is unfortunate that the State officials working in the Department of Agriculture, do not take timely action, i.e., lodging their complaint as provided under the Insecticide Act and the Rules framed thereunder. This Court is flooded with such petitions filed by the manufactures and dealers under Section 482 Cr.P.C. for quashing of the complaints on the ground that the complaints filed are beyond time as provided under Section 468 Cr.P.C.

Keeping in view the aforesaid fact, on 22.08.2019, the following order was passed:-

“This is another case where assertions are that the complaint filed by the official respondents is beyond time. It has been noticed that the Government officials do not take appropriate steps and intentionally delay the filing of the complaint forcing the Court to interfere.

Let a copy of the petition be handed-over to Mr.Sandeep Kumar, Deputy Advocate General, Punjab, learned counsel appearing on behalf of the State.

Principal Secretary of the concerned Department is directed to file affidavit as to why the complaints are filed after the expiry of time and what action has been taken against the officials who were responsible for such delay.

Adjourned to 05.09.2019.”

In deference to the aforesaid order, Mr.Kehan Singh Pannu, Secretary to Government of Punjab, Department of

Agriculture and Farmers Welfare, Punjab is present in the Court and admit that such delay has happened in 76 such cases in the recent past. This Court is shocked that due to the inaction on the part of the Government officials, have delayed in filing such complaints. The Secretary present in the Court has assured that in future such lapse would not happen. However, the assurance given to this Court is not acceptable. The Secretary is directed to file an affidavit giving details of the cases filed after the lapse of period prescribed under Section 468 Cr.P.C. and action proposed to be taken against those defaulting officials.

Learned State counsel prays for time to file a detailed affidavit in response to the petition.

Adjourned to 18.09.2019.

Meanwhile, proceedings before the learned Magistrate shall remain stayed till the next date of hearing.”

The contents of the affidavit filed by the Secretary of the Department were taken note of since it was admitted that as many as in 76 cases, the complaints have been filed beyond the period prescribed under Section 468 Cr.P.C. The case was adjourned on the request of learned counsel for the State to file detailed affidavit. On 18.09.2019, detailed affidavit was filed in which the facts which have been noticed above were admitted but it was stated that a new standard procedure has been laid down and in future the efforts shall be made to ensure timely filing of such cases and their proper monitoring. Relevant part of the affidavit is extracted as under:-

“(A) A new standard procedure has been laid by the Government for filing complaints in misbranded

insecticides. This time schedule totaling 198 days is being strictly adhered to by field functionaries and the cases are now filed well within limitation period.

(B) In order to ensure the timely filing of such cases and their proper monitoring, the department is in the process of development of information technology portal.”

Taking note of the fact that in large number of cases, such inaction on the part of officials/officers of the Agriculture Department prima facie amounts to criminal negligence, the Principal Secretary of the Department was requested to remain present. It was also noted that no reply on merits has been filed in response to the present petition till date. Orally, it was submitted that application for extension of time as prescribed under Section 473 Cr.P.C. has been filed in the Court, however, no copy was produced.

Today, the Principal Secretary of the Department has appeared in the Court. He has assured the Court that in future efforts shall be made to ensure that such mistakes are not be repeated.

FACTS:-

Insecticide Inspector took the samples of the insecticides on 18.07.2012. One sample was sent to Senior Analyst, Insecticide Testing Laboratory, Bathinda on 24.07.2012. After analysis, Laboratory sent the report that the sample of insecticide was found misbranded on 16.08.2012. Thereafter, Dealer firm M/s Jagdish Traders Main Bazar, Shri Hargobindpur, District Gurdaspur requested for sending second sample which was sent to the Central Insecticide Laboratory (CIL), Faridabad. The report of re-analysis was received from the Central Insecticide Laboratory

on 18.12.2012. After sending show cause notice to the concerned, case file was sent to the Joint Director Agriculture vide letter No.4097 dated 19.07.2016 for getting sanction for lodging prosecution by instituting a criminal complaint against manufacturing company Dealer firm and other responsible persons. Sanction was received on 10.04.2017. The complaint was filed on 15.06.2017. Thus, even if the period for obtaining sanction is excluded, it is undisputed that the complaint as filed is not within the time prescribed under Section 468 Cr.P.C.. From the reading of the complaint, it is apparent that the prosecution/complainant has not even made an attempt to pray for extension of period of time as envisaged in Section 473 Cr.P.C. either by filing a separate application or in the complaint filed in the Court.

In view of the aforesaid, this Court is compelled to quash the criminal prosecution initiated being beyond the time prescribed. Hence, petition allowed.

However, before parting, let a copy of this order be sent to the Minister Incharge, The Chief Secretary as well as to the Director General, Vigilance of State of Punjab to look into the matter and take appropriate steps.

25.09.2019*Pawan***(ANIL KSHETARPAL)
JUDGE****Whether speaking/reasoned:- Yes/No****Whether reportable:- Yes/No**