

Sr. No.

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

CRM-M-64455-2018(O&M)

Date of decision:30.04.2019

K.D.Pathak 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 the manufacturer, seeking quashing of Complaint No.197 dated 23.04.2018, 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 23.04.2018 passed by SDJM Talwandi Sabo, District Bathinda.

The petition has been filed with averments that on 03.09.2010, Surinder Kumar, Insecticide Inspector, Raman, District Bathinda visited the shop premises of dealer M/s Bilas Chand Satish Kumar, Raman Mandi, District Bathinda and drew a sample of insecticide, namely, Acetamiprid 20% SP, bearing Batch No. JC37, manufacturing date 10.08.2009 and expiry date 09.08.2011 and manufactured and supplied by M/s Jai Chemicals i.e. a registered and licensed manufacturing company. Accordingly, the Form XX was prepared by the above said Insecticide Inspector, Surinder Kumar, mentioning the details of manufacturer, batch No., date of the manufacture and the date of expiry of the product.

After taking the sample, one part was sent for analysis to the State Insecticide Testing Laboratory, Ludhiana. The sample was found to be misbranded. The State Insecticide Testing Laboratory, Ludhiana; had sent the Report to this effect; which was duly received on 22.09.2010, in the office of Chief Agriculture Officer, Bathinda. On having been put to notice, the petitioners had opted for re-analysis of the second part of the 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 13.01.2011. Thereafter, the sanction for prosecution was applied for on 22.09.2011. Accordingly, the sanction for prosecution was granted on 09.03.2012 and received by Chief Agricultural Officer, Bathinda on 16.03.2012. Thereafter, the complaint was filed against the present petitioners on 23.04.2018. The summoning order dated 23.04.2018 (Annexure P-2) 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 the 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 State

Insecticide Testing Laboratory, Ludhiana was received on 22.09.2010. Even the second part of the sample was found misbranded on 13.01.2011. Thereafter, the Chief Agriculture Officer and the Complainant, Insecticide Inspector, went in slumber and did not even apply for sanction of prosecution. The sanction for prosecution was applied for, by the Complainant on 09.03.2012. As per the record, the sanction for prosecution was duly received on 16.03.2012. However, no complaint was filed by the Insecticide Inspector against the petitioners. Ultimately the complaint against the petitioners was filed only on 23.04.2018, 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 the 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 State Insecticide Testing Laboratory, Ludhiana, the active ingredients of the insecticide in the container was found to be 11.56% as against the prescribed 20%. 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 up during arguments in the present proceedings also, therefore, the Insecticide Inspector, Surinder Kumar 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 Surinder Kumar, who is present in Court today, has filed an affidavit in which he has given the explanation for the delay in filing the complaint as under:-

“8. That content of para no.8 are correct being matter of record. The complaint has been filed in the Ld. Trial Court, after obtaining the sanction from the competent authority, after following the procedure and the delay, if any, is a procedural & due to multifarious duties of the complainant and is not willfull nor intentional, rather it was done due to shortage

of the staff.

9. xxxx

(i) That the complaint was filed along with application u/s 473 Cr.P.C. for extension of time. The said application has been impliedly accepted and the period of limitation stand extended and as the Ld. Trial court has taken cognizance of complaint and has summoned the petitioners/accused.”

A bare perusal of the above said affidavit of Insecticide Inspector Surinder Kumar 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 multifarious duties placed on the complainant and to the procedural requirements.

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 Chief Agricultural Officer, Bathinda had been received by the complainant on 22.09.2010. Even the sanction for prosecution, though applied too belatedly on 22.09.2011, was granted on 09.03.2012 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)***, the 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 Public Analyst. However, the complaint has been filed after 07 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. In any case the summoning order does not reflect any condonation of delay by the Court.

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 07 years, except to make a lame excuse and to make an attempt to apportion part of the delay to the procedural steps and to the excessive workload assigned to the complainant. 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 petition is ***allowed*** and the Complaint No.197 dated 23.04.2018 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 23.04.2018 (Annexure P-2) 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. 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, the unscrupulous manufacturer has got scot free. Insecticide Inspector Surinder Kumar, has tried to apportion a part of delay to the procedural aspects and to excessive workload upon him. However, the facts on record of the case show a clear-cut deliberate delay on the part of Complainant, Surinder Kumar. The copy of sanction for prosecution is duly endorsed to the Complainant, Surinder Kumar 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 procedural steps and his multifarious duties. 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, Surinder Kumar, for making the Courts to waste their time on the complaint. Accordingly, the Insecticide Inspector, Surinder Kumar 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, Punjab shall ensure that the above-said Surinder Kumar 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*