

**In the High Court for the States of Punjab and Haryana
At Chandigarh**

CRM-M-40074-2019 (O&M)
Date of Decision:-5.2.2020

Deep Singh and others ... Petitioners

Versus

State of Punjab ... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Rakesh Verma, Advocate for the petitioners.

Ms. Rashmi Attri, Assistant Advocate General, Punjab,
assisted by Sh. Avtar Singh, Inspector Vigilance Bureau and
Sh. Sukhdev Singh, JDA (PP).

GURVINDER SINGH GILL, J.(Oral)

1. The petitioners have approached this Court seeking quashing of Complaint No.05 dated 9.1.2018 (Annexure P-1) titled as 'State Vs. M/s Gill Pesticides & Others' registered under Sections 3(k)(i), 17, 18, 29 and 33 of Insecticides Act, 1968 read with Rules 27(5) of Insecticides Rules, 1971 and also the summoning order dated 9.1.2018 (Annexure P-2) passed by learned Chief Judicial Magistrate, Moga.
2. A few facts, necessary to notice for disposal of this petition, are that Insecticide Inspector, Moga, Rachhpal Singh, inspected the premises of M/s Gill Pesticides, Jaito Khosa, District Moga and drew a sample of insecticide namely 'Tricontanol 0.05% GR (Brand Name-Biogold)', Batch No.RJ-040, manufacturing date May, 2011 and expiry date October, 2012 on 17.8.2011.

The aforesaid sample was got analyzed and as per Analyst's report dated 6.9.2011 (Annexure P-3), the same was found to be misbranded. Pursuant thereto a show cause notice was issued to the accused on 23.8.2011. Since a request for re-analysis of the second sample was made by the dealer, the same was got analyzed from Central Insecticides Laboratory, Faridabad and as per report dated 15.12.2011 (Annexure R-2) of the said laboratory, the sample was again found to be misbranded.

3. Since Section 31 of Insecticides Act, 1968 mandates that before launching prosecution sanction of State Government is to be obtained. It appears that Chief Agriculture Officer, Moga vide his letter No.7226 dated 7.7.2017 requested Joint Director of Agriculture (Plant Protection), SAS Nagar, Punjab for according sanction for the purpose of launching prosecution against the accused. The Joint Director of Agriculture (Plant Protection), SAS Nagar, Punjab vide letter dated 23.8.2017 (Annexure P-4) accorded sanction for prosecuting the accused including the petitioners, who are the manufacturers and representatives of the manufacturing firm.
4. Thereafter, upon receipt of necessary sanction (Annexure P-4), a complaint dated 9.1.2018 (Annexure P-1) was instituted in the Court of learned Judicial Magistrate 1st Class, Moga and summoning order dated 9.1.2018 (Annexure P-2) was passed on the same day, which has been challenged by way of filing the present petition.
5. The learned counsel for the petitioners has submitted that the offences as alleged in the complaint are all punishable with imprisonment for a maximum period of two years as per Section 29 of Insecticides Act, 1968 and that by virtue of provisions of Section 468 Cr.P.C., the Court could take cognizance of such offences only within a period of three years from the

date of commission of offence, which can be said to have been committed when the Public Analyst Report (Annexure P-3) was received, which was received on 6.9.2011. It has thus been submitted that since the complaint came to be instituted after more than six years of the aforesaid report, therefore, the learned Judicial Magistrate 1st Class could not have taken cognizance of the same and consequently the complaint as well as the summoning order and the entire proceedings pursuant thereto can not sustain in the eyes of law and deserve to be quashed.

6. Notice of motion had been issued in this case. Reply by way of affidavit of Sh. Rachhpal Singh, Agriculture Development Officer-cum-Notified Insecticide Inspector, Moga on behalf of respondent No.1 State of Punjab has already been filed.
7. The Chief Secretary, State of Punjab has filed his affidavit in compliance of direction issued on 25.9.2019. The learned State counsel has today filed short affidavit of Sh. Sukhdev Singh, Joint Director Agriculture, Department of Agriculture and Farmers Welfare, Punjab and a Status report by way of affidavit of Sh. Paramjeet Singh Virk, PPS, Assistant Inspector General of Police, Flying Squad, Vigilance Bureau, Punjab, S.A.S. Nagar, which are taken on record.
8. The learned State counsel has not been able to dispute the fact that the complaint in question came to be instituted after more than six years, whereas the limitation for taking cognizance as per Section 468 Cr.P.C. is 3 years. The learned State counsel has, however, submitted that the present case is such where provisions of Section 473 Cr.P.C. could be invoked so as to extend the period of limitation as there were compelling and justifying reasons for the delay in question and that the officials found responsible for

causing delay have been proceeded against and punishments have also been imposed upon them.

9. I have considered rival submissions addressed before this Court.
10. The present case is a case where there has been gross laxity on part of the officials concerned in doing the needful, who have not taken the necessary steps for ensuring that the prosecution is launched within the prescribed time frame.
11. Since, the complaint in question came to be instituted after more than six years from the date when the report of public analyst was received, i.e. after expiry of period of limitation for taking cognizance, continuance of the proceedings based on such complaint would amount to abuse of process of law. Consequently the complaint as well as the summoning order and all the proceedings arising out of the complaint in question deserve to be quashed. The present petition, as such, is accepted and Complaint No.05 dated 9.1.2018 (Annexure P-1) titled as 'State Vs. M/s Gill Pesticides & Others' registered under Sections 3(k)(i), 17, 18, 29 and 33 of Insecticides Act, 1968 read with Rules 27(5) of Insecticides Rules, 1971 and also the summoning order dated 9.1.2018 (Annexure P-2) passed by learned Chief Judicial Magistrate, Moga are hereby quashed.
12. Pursuant to directions issued by this Court 25.9.2019, the Chief Secretary of State of Punjab, in his affidavit dated 16.10.2019, has informed that upon collecting requisite information, it has been found that there were 76 cases where the complaints had not been filed during the stipulated period of limitation and that in all the 76 cases the concerned officials, who are mainly Insecticides Inspectors, have been proceeded against departmentally and punishments of stoppage of 1 to 3 increments without cumulative effect have

been imposed and regular inquiries have also been initiated against two Insecticide Inspectors. The details of said punishments as imposed have been mentioned in Annexure R-1 annexed with the said affidavit.

13. The Chief Secretary has further informed that in order to ensure that such lapses do not occur in future, a new standard procedure has been laid by the Government for speeding up the filing of complaints in misbranded insecticides. The said standard procedure i.e. Annexure R-2 reads as follows:

Procedure of Time schedule for action on misbranded insecticide samples

Sr. No.	Action	Time Limit (Maximum)
	Part A : Time Schedule for action on misbranded sample found after first analysis	
1.	Issue of Show Cause notice along with first analysis report of the misbranded insecticide sample along with cancellation of the license (Procuring the name of responsible persons along with their affidavits for responsibility)	15 Working Days
2.	Receipt of reply of show cause notice (from the date of issue of notice)	15 Days
3.	Re-issue of show cause notice (on need basis)	3 Working Days
4.	Receipt of reply of second show cause notice (from the date of issue of notice)	15 Days
5.	Issue of letter for personal hearing after reply of notice	3 Working Days
6.	Period for personal hearing	15 Days
7.	Sample sent for retest after personal hearing (On the request for retest)	15 Days
	Total Days	81 Days

Sr. No.	Action	Time Limit (Maximum)
	Part B : Time Schedule for prosecution in case of misbranded sample after reanalysis	
1.	After receipt of reanalysis report:- a) Issue of Show Cause Notice along with second analysis report. b) Supply of complete record by Chief Agriculture Officer (CAO) to the concerned Insecticide Inspector.	5 Working Days

2.	a) Receipt of reply of show cause notice (from the date of issue of notice) b) Apply for written consent to CAO by Insecticide Inspector after the receipt of complete records	15 Days
3.	Re-issue of show cause notice (on need basis)	3 Working Days
4.	a) Receipt of reply of second show cause notice (from the date of issue of notice) b) Letter sent for written consent by CAO to Head Office after receipt of complete case from Insecticide Inspector	15 Days
5.	Letter Sent to DDA (LCPP) by JDA (PP) for verification of responsible persons after receipt of complete case from CAO	7 Working Days
6.	Verification letter sent back to JDA (PP) by DDA (LCPP) after the receipt of letter from JDA (PP)	7 Working Days
7.	Issue of written consent after receipt of verification (if the case is complete)	15 Working Days
8.	Submission of complaint for vetting by Insecticide Inspector to district attorney after the receipt of written consent	30 Days
9.	Vetting by District Attorney office after the receipt of complete case	10 Working Days
10.	Submission of complaint in the Hon'ble court by Insecticide Inspector after vetting	10 Working Days
	Total Days for Prosecution	117 Days
	Total (A+B)-198 Days	

14. The aforesaid steps can be appreciated but it needs to be ensured that the aforesaid schedule is duly adhered to by the authorities concerned. It has been informed that the aforesaid schedule has been circulated to all the Chief Agriculture Officers of all the districts.
15. The Chief Secretary to examine the feasibility of having some portal on the website of department concerned where the particulars of all cases of drawing of samples can be duly uploaded immediately when samples are drawn, so that the progress of the proceedings conducted thereafter including sending the sample to Analyst, receiving the report of such analysis, issuance of show-cause notice, re-analysis, sanction for prosecution etc. can be uploaded and be effectively monitored on the basis of reports

generated from such software/portal. Such software can have provision of auto-generation of SMS/email etc. to authorities concerned so as to remind them about the current status of such cases where time as per standard procedure is running out.

16. The learned State counsel has today filed status report by way of affidavit of Sh. Paramjeet Singh Virk, PPS, Assistant Inspector General of Police, Flying Squad, Vigilance Bureau, Punjab, S.A.S. Nagar, wherein it has been deposed that vigilance inquiry is being conducted in respect of the aforesaid 76 cases, in which there was inordinate delay in instituting the complaints so as to determine as to who is responsible for causing the delay in instituting the complaints beyond the prescribed period of limitation. It has been deposed therein that a period of another three months is required to complete the inquiry in the matter.
17. While the petition stands disposed off as far as the relief claimed by petitioners is concerned, the learned State counsel shall, however, furnish a fresh status report upon expiry of three months from today, in respect of the vigilance inquiry being conducted by Sh. Paramjeet Singh Virk, PPS, Assistant Inspector General of Police, Flying Squad, Vigilance Bureau, S.A.S. Nagar, Punjab.

5.2.2020

pankaj

**(Gurvinder Singh Gill)
Judge**

Whether speaking /reasoned Yes / No

Whether Reportable Yes / No