

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 2 OF 2023

1. Nirmal Seeds Pvt. Ltd.,
Bhadgaon Road, Pachora, Jalgaon,
Maharashtra 424201,
Through its representative
Mr. Mohan Suresh Paprikar
Age : 52 years, Occu. : Service,
R/o. Plot B-2, Vrundavan Park,
Bhadgaon Road, PO & Tal – Pachora,
Dist. Jalgaon.
2. Dilip Ramrao Deshmukh,
Age : 71 Years, Occu. : Director of
No. 1 Company,
R/o. Sarole (BK), Tal-Pachora, Dist. Jalgaon.
3. Jaysing Chandrasing Rajput,
Age : 71 Years, Occu. : Director of
No. 1 Company,
R/o. 25/26/27, Chintamany Colony,
Bhadgaon Road, Pachora, Dist. Jalgaon. .. Petitioners

Versus

1. The Union of India
Through its Secretary,
Ministry of Agriculture & Farmers
Welfare, Krishi Bhivan, New Delhi 110001.
2. S. S. Potdar, Insecticide Inspector & Deputy
Director (Chem.), Directorate of Plant
Protection, Quarantine & Storage,
Department of Agriculture, Co-operation
& Farmers Welfare, N. H. 4,
Faridabad – 121001. (Haryana) .. Respondents

Mr. Vinod Y. Bhide, Advocate for the Petitioners.
Mr. A. G. Talhar, D.S.G.I. for Respondent Nos. 1 and 2.

CORAM : KISHORE C. SANT, J.

DATED : 03rd MAY, 2023.

ORAL JUDGMENT :-

. Heard.

2. Rule. Rule made returnable forthwith by consent of the parties.

3. This writ petition challenges the order of issuance of process passed by the learned C.J.M., Jalgaon dated 06.06.2022 in Summary Case No. 1132/2022 which is wrongly typed as Summary Case No. 1132/2020 on the printed form. Pursuant to the order summons came to be issued on 12.10.2022 directing the petitioners to appear before the Court on 02.01.2023. The petitioners are therefore before this Court.

4. The petitioner No. 1 is the company registered under the Companies Act and is engaged in the business of manufacture of insecticides through its representative. The petitioner Nos. 2 and 3 are the directors of the said company. A complaint is lodged by the respondent No. 2 who happens to be Insecticide Inspector and Deputy Director (Chemical), Directorate of Plant Protection, Quarantine & Storage, Department of Agriculture, Co-operation & Farmers Welfare Ministry of Agriculture & Farmers Welfare, for the offence punishable

under Section 29 of the Insecticide Act, 1968 for violation of Sections 9, 13, 17 and 18 r/w Rules 9 and 11 of the Insecticides Rules, 1971.

5. The main contention of the petitioners is that the complaint is lodged after period of limitation of three years from the date of knowledge. In view of Section 468 of the Code of Criminal Procedure (for short "Cr.P.C.") since the complaint is lodged after three years from the date of knowledge, the same is barred by limitation. The second point raised is that the company is not shown through proper person that is representative, but only the name of the company is shown. It is not specific as through whom the company and two directors are to be served. Thus, the complaint is not maintainable as there is no specific averment as regards the liability or disclosing that the accused Nos. 2 and 3 are the persons responsible for day to day affairs of the company and liable for the action. Third ground raised is that, the learned Magistrate has not applied his mind before direction of issuance of process.

6. The respondent No. 2 lodged a complaint. It is stated in the complaint that, a complaint was received by the Directorate of Plant Protection, Quarantine and Storage with the allegation that the petitioner No. 1 – company is manufacturing and selling bio-pesticides namely Garnet (*Bacillus Subtalilis*), Marvel (*Beauvaria bassiana*) and

Trident (*Verticillium lecanii*) without any certificate of registration from CIB (Central Insecticide Board) and RC and without any valid manufacturing license from the State of Maharashtra. Pursuant to the complaint, inspection was conducted and the report was submitted dated 09.11.2016. In the report, it was submitted that the company was granted provisional certificate under Section 9 (3b) for manufacturing *Beauveria bassiana* 1.15% WP on 22.04.2008 with a validity up to 21.04.2010 and thrice extension for manufacturing the aforesaid pesticide for one year each time. About the product Garnet (*Bacillus Subtalilis*), Marvel (*Beauveria bassiana*) and Trident (*Verticillium lecanii*) was manufactured even after the expiry of the certificate of registration. It is thereafter alleged that, on the basis of the data provided by the company and on the basis of preliminary observation, it was found that the accused/petitioners manufactured and sold above stated two pesticides till the year 2016 under the name Marvel and Trident after expiry of registration certificate. The show cause notice was issued dated 24.03.2017 by the complainant to accused No. 1 and the same was replied on 04.04.2017. It is alleged that, though reply was submitted no certificate of registration for *Bacillus Subtalilis* and apparently was submitted and thus, it was produced without license. The said facts were confirmed by the complainant. Therefore, it is alleged that, there is violation of Sections

9, 13, 17 and 18 of the Insecticides Act by manufacturing bio-pesticides without registration of certificate and manufacturing license. A sanction was obtained as required under Section 31 by sending a proposal dated 25.09.2018. The consent was given on 06.11.2019 and thereafter, a complaint is filed on 03.06.2022.

7. On receiving a complaint, the learned Magistrate issued process by following order :

Order

Perused the chargesheet and the documents filed alongwith. There is sufficient material on record to issue process against the accused.

Hence, issue process for offences alleged against the accused.

8. On this premise, the learned advocate for the petitioners submits as regards point No. (1) – limitation that, in view of Section 468 of the Cr.P.C., a complaint could not have been filed after period of three years as the maximum punishment provided under Section 29 is three years. Section 464 of the Cr.P.C. provides bar to take cognizance after lapse of period of limitation. Section 468 of the Cr.P.C. reads as under :

“Section 468. Bar to taking cognizance after lapse of the period of limitation.

(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of

limitation.

(2) The period of limitation shall be---

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

[(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.]”

9. In his submission, though no limitation is provided under the Insecticides Act, the limitation as prescribed under the Cr.P.C. needs to be considered.

10. The learned advocate relied upon the judgment reported in **AIR 2021 SC 3701** in the case of **M/s. Cheminova India Ltd. And Anr. Vs. State of Punjab and Anr.** Upon going through the said judgment it is seen that, it is squarely applicable to the case in hand. In the said case complaint was lodged after three years from the date of receipt of report of analysis from the laboratory. Learned advocate also relied upon the next judgment of the Punjab and Haryana High Court in the case of **Delhi Bitumen Sales Agency, New Delhi and another Vs. State of Punjab and others** reported in **1989 CRI.L.J. 722** wherein, it is held that

the period of limitation as provided under Section 468 of the Cr.P.C. regarding taking cognizance of the offence is applicable even in the cases under Special Acts. It is further held that, the Government has no power to grant permission to institute prosecution after expiry of statutory period of limitation.

11. Second submission of the learned advocate is in respect of misbranding of insecticides and the offences by the company. He submits that, in this case, the offence is alleged to have been committed by the company namely Nirmal Seeds Pvt. Ltd. There is no averment in the entire complaint about the vicarious liability of the Director. He relies upon the judgment of the Hon'ble Apex Court in the case of Lalankumar Singh & Ors. Vs. State of Maharashtra reported in 2022 LiveLaw (SC) 833.

12. Last submission of learned advocate is that the learned Magistrate has issued process without application of mind in view of judgment in the case of Lalankumar Singh & Ors. (supra).

13. The learned D.S.G.I. for respondents opposes the petition vehemently. He submits that the complaint was rightly lodged by the officer after obtaining sanction from the authority. He submits that Section 468 of the Cr.P.C. is not applicable as in this case the offence is

registered under Insecticide Act and not under General Act. In the Insecticide Act, no period of limitation for filing complaint is prescribed. The learned D.S.G.I. supports the impugned order.

14. Considering the submissions, the contents of the petition and affidavit in reply, it is seen that in the affidavit in reply there is no specific statement about the liability of the company. In view of the fact that it is the specific case of the petitioners that though authorized officer is to represent the company for the offences under the Insecticide Act, the said representative in not made an accused. There is no statement about the persons that is petitioner Nos. 2 and 3 are liable for the action of the companies. Affidavit of the respondent is also silent about other aspects such as when the petitioners are not manufacturers of the product how they are responsible for the alleged contravention. This Court finds that the petitioners have clearly made out a case. As regards petitioner Nos. 2 and 3 there is no averment as to how they are liable for the criminal action under the criminal law. The complaint in this case is against the juristic person and therefore it was necessary to file a complaint against juristic person through proper person.

15. As regards question of limitation is concerned it is seen from the dates that a show cause notice was sent on 24.03.2017 by complainant.

To the show cause notice a reply was sent by the accused on 04.04.2017. The complainant sought consent/permission from the State Department on 25.09.2018 for launching prosecution and same was given on 06.11.2019. The complaint was presented on 03.06.2022.

16. For the purpose of cause of action the Hon'ble Apex Court in judgment in the case of M/s. Cheminova (supra) has clearly held that the date of receipt of first analysis report is the relevant date. In the case in hand a show cause notice was issued on 24.03.2017. The complaint was filed only on 03.06.2022 and is thus clearly time barred.

17. Considering all the above aspects, this Court finds that the petitioners have made out a case for quashing of the complaint.

18. Thus, rule is made absolute in terms of prayer clause (B).

(KISHORE C. SANT, J.)

PS.B.