

Neutral Citation No. 2023:PHHC:067775
CRM-M-3715-2023
IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-3715-2023
Date of Decision: May 8, 2023

Sandeep Goyal and others ...Petitioners

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: - Mr. Rakesh Verma and Mr. Manish Verma, Advocates
for the petitioners.

Mr. Parneet Singh Pandher, AAG, Punjab.

DEEPAK GUPTA, J.(Oral)

By way of this petition filed under Section 482 of the Code of Criminal Procedure, prayer has been made to quash complaint case No.46 dated 09.10.2017 titled as ***“State vs M/s Gupta Pesticides Store & Others”*** under Sections 3(k)(i), 17, 18, 29, 33 of the Insecticides Act, 1968 (hereinafter referred as 'the Act'), pending for adjudication in the Court of learned Judicial Magistrate 1st Class, Sunam, District Sangrur (Annexure P-1), apart from the summoning order dated 03.05.2019 (Annexure P-2) and all the consequential proceedings arising therefrom qua the petitioners.

2. As it emerges on perusal of the paper book that on 26.06.2013, Insecticide Inspector, Malerkotla, visited the premises of M/s Gupta Pesticides Store, Sunam, District Sangrur and after making necessary statutory compliances drew a sample of *Cartap Hydrochloride* 4% GR, Batch No.01, with manufacturing date as April, 2013 and expiry date as March, 2015, manufactured and supplied by M/s Canary Agro Chemicals Pvt. Ltd, Bahadurgarh (Haryana). Out of three samples

collected by the Insecticide Inspector, one of them was sent to the State Insecticide Testing Laboratory, Bathinda on 02.07.2013. The report of the Insecticide Testing Laboratory, Bathinda dated 03.07.2013 was received, as per which sample was declared mis-branded. Copy of the analyst report along with show cause notice dated 12.07.2013 were sent to dealer M/s Gupta Pesticides Store, Sunam and its proprietor; and manufacturing company M/s Canary Agro Chemicals Pvt. Ltd. (petitioner No.4) through petitioner Nos.1 to 3. The dealer as well as manufacturer submitted their replies showing their intention for re-analysis of the second sample from the Central Insecticide Test Laboratory. The Chief Agriculture Officer sent the reference test sample portion to the Central Insecticide Laboratory, Faridabad, vide letter dated 27.11.2013 for re-testing. Report was received on 20.12.2013 declaring the sample to be mis-branded. After obtaining necessary sanction from the competent authority, complaint was filed on 09.10.2017 to prosecute the dealer as well as manufacturer and their representatives under Sections 3(k)(i), 17, 18, 29, 33 of the Act. Learned Judicial Magistrate 1st Class, Sunam vide order dated 03.05.2019 ordered summoning of all the accused to face prosecution.

3. (i) The Complaint as well as summoning order have been assailed by the petitioners i.e., the manufacturer and its representatives on various grounds. It is contended that all the alleged offences under the Act are punishable under Section 29 of the Act up to two years imprisonment and so, as per mandatory provisions under Section 468 Cr.P.C., the limitation to launch prosecution is three years, but in the

present case, the impugned complaint has been instituted after a huge delay of 4 years, 3 months and 6 days from the date of receipt of the Public Analyst report and so, being hopelessly barred by limitation, the same is not maintainable.

(ii) It is next contended that Insecticide Inspector Jaswinder Singh had been notified only for the area of Malerkotla, as per the Notification issued by the Government under Section 20 of the Act and therefore, he did not have the authority to collect sample from Sunam, where the office of the dealer was situated.

(iii) Still further, it is urged that as per Section 22(6) of the Act, the sample is required to be sent to the Chemical Analyst forthwith, but in the present case, there is a delay of 6 days in sending the sample for analysis, which caused prejudice to the petitioners.

(iv) It is also contended that as per the own directions of the Department, 15 days period is allowed for grant of sanction to file the complaint, but in this case the Sanctioning Authority, i.e., the Joint Director, Agriculture (Plant Protection), Punjab took 8 months and 2 days for grant of sanction and so, continuation of the proceedings is abuse of process of law.

(v) Still further, it is urged that learned Magistrate passed the impugned summoning order without making compliance of Section 202 Cr.P.C. and without giving any reasons.

4. Replying to the aforesaid contentions, it is urged by learned State counsel that time consumed for obtaining sanction to prosecute the accused is liable to be excluded, in view of Section 470 Cr.P.C. Besides,

along with the complaint, an application under Section 473 Cr.P.C. was moved before the Magistrate to condone the delay in filing the complaint, which request was orally accepted and it is only thereafter that summoning order was passed. It is contended that period of limitation will start from the date of receiving report from the Central Insecticide Laboratory, as it is the accused-petitioners, who were not satisfied with the report of the Public Analyst and had made a request for re-testing. Learned State counsel further urges that Insecticide Inspector Jaswinder Singh was appointed as Member of Flying Squad Team of District for Fertilizer, Seed and Insecticide, vide order dated 23.04.2012 by the Chief Agriculture Officer, Sangrur and therefore, was competent to take sample from the premises of the dealer at Sunam. It is lastly urged that no prejudice has been caused to the petitioner in any manner and so, they should face trial. With these submissions, prayer is made for dismissal of the petition.

5. I have considered submissions of both the parties and have also perused the record carefully.

6. Various offences as provided under the Act are punishable under Section 29 of the Act and for the first offence, the maximum imprisonment, which may be imposed is two years or with fine or both. Besides, written consent of the State Government or the person authorized in this behalf by the State Government, is pre-requisite before launching the prosecution, as per Section 31 of the Act.

7. Offences being punishable up to two years imprisonment i.e., less than three years, therefore, as per Section 468(2)(c) Cr.P.C., the

period of limitation shall be three years to take cognizance of the offence.

The period of limitation is to commence from the date of offence as per Section 469 Cr.P.C. Since the previous consent of the State Government or the officer authorized by it is mandatory before launching the prosecution as noticed above, so Section 470 Cr.P.C. is necessary to notice, the relevant portion of which is as under: -

“470. *Exclusion of time in certain cases.*

(1) xxxx

(2) xxxx

(3) *Where notice of prosecution for an offence has been given, or where, under any law for the time being in force, the previous consent or sanction of the Government or any other authority is required for the institution of any prosecution for an offence, then, in computing the period of limitation, the period of such notice or, as the case may be, the time required for obtaining such consent or sanction shall be excluded. Explanation. - In computing the time required for obtaining the consent or sanction of the Government or any other authority, the date on which the application was made for obtaining the consent or sanction and the date of receipt of the order of the Government or other authority shall both be excluded.*

(4) xxxx”

8. In the present case, sample was taken on 26.06.2013. It is on 03.07.2013, when the report of the Public Analyst was received that it became known to the complainant that due to misbranding, the offences had been committed by the petitioners-accused. Therefore, in view of Section 469 (1)(a) Cr.P.C., the period of limitation shall commence from this date i.e., 03.07.2013. Complaint was filed on 09.10.2017, i.e., after a gap of 4 years, 6 months and 3 days from the date of commencement of limitation.

9. The contention of Ld. State counsel for the respondent to the effect that as accused (dealer) as well as manufacturer had applied for re-analysis of the second part of the sample through Central Insecticide Laboratory, Faridabad, so limitation shall commence from the date of receipt of the report of Central Insecticide Lab, has no merit, in view of the legal position explained by the Hon'ble Supreme Court in case of *"M/s Cheminova India Ltd. & Anr. vs State of Punjab and Anr."*, reported as *2021(3) R.C.R. (Criminal) 750* and also by this Court in case of *"Sohan Singh and others v State of Punjab"* (CRM-M-6763-2018 decided on 16.01.2023), wherein a similar issue was raised.

10. In *"M/s Cheminova India Ltd.'s case (supra)"*, report of the Analyst from the Insecticide Testing Laboratory was received on 14.03.2011; whereas complaint was filed on 25.03.2014 i.e., beyond a period of three years. The submission was made by the State counsel that report from the Central Insecticide Laboratory was received on 09.12.2011, which was the conclusive evidence of the fact of misbranding and so, complaint was within the period of limitation. Rejecting the said contention, it was held by the Hon'ble Supreme Court, as under: -

"10. ---- We are not convinced with such submission made by learned counsel for the State. When it is clear from the language of [Section 469 Cr.PC](#) that the period of limitation shall commence on the date of offence, there is no reason to seek computation of limitation only from the date of receipt of report of the Central Insecticide Testing Laboratory, Faridabad. As per the procedure prescribed under the Statute, i.e., Insecticide Act, 1968 and the rules made thereunder, the Insecticide Testing Laboratory, Ludhiana was the competent authority to which the sample was sent on 17.02.2011, after drawing on 10.02.2011, and

the report of analysis was received on 14.03.2011, as such the said date is said to be the crucial date for commencement of period of limitation. By virtue of the said report received on 14.03.2011 which states that the active ingredient of the sample was only to the extent 34.70% as against the labelled declaration of 40%, it is clear that it is the date of offence allegedly committed by the accused. Merely because a further request is made for sending the sample to the Central Insecticide Testing Laboratory, as contemplated under [Section 24\(4\)](#) of the Act, which report was received on 09.12.2011, receipt of such analysis report on 09.12.2011 cannot be the basis for commencement of limitation. The report of analysis received from the Insecticide Testing Laboratory, Ludhiana on 14.03.2011 itself indicates mis-branding, as stated in the complaint, thus, the period of limitation within the meaning of [Section 469, Cr.PC](#) commences from 14.03.2011 only. In that view of the matter, we are clearly of the view that the complaint filed is barred by limitation and allowing the proceedings to go on, on such complaint, which is ex facie barred by limitation is nothing but amounts to abuse of process of law. ---- ”

11. Similar view was taken by a co-ordinate Bench of this Court in CRM-M-17705-2018 (O&M) titled as **“*Sher Singh and another vs State of Punjab*”** decided on 05.02.2019; and CRM-M-1358-2018 (O&M), titled as **“*Sanjay Gupta and others vs State of Punjab*”** decided on 30.04.2019.

12. It is no doubt true that period consumed for obtaining the consent of the State Government to launch the prosecution is liable to be excluded while computing the limitation period, as per Section 470(3) Cr.P.C., but in this case, even if the said period is excluded, the complaint will still be beyond limitation.

13. The sanction was applied by the Insecticide Inspector on

05.08.2016 and the same was allowed on 07.04.2017 and therefore, this period of 8 months and 2 days is liable to be excluded for computing the period of limitation. Even if, this period of 8 months and 2 days is excluded for the purpose of computation of limitation, the complaint instituted on 09.10.2017 is still after 3 years, 7 months and 3 days from the date of commencement of limitation and thus, beyond limitation period.

14. Apart from above, perusal of the sanction order (Annexure R-3/T) forming part of the reply of the respondent clearly reveals that the said sanction was forwarded even to Insecticide Inspector in the office of Chief Agriculture Officer, Sunam, with a direction to file the complaint in the Court within a week and then to inform the office. Assuming that respondent-Insecticide Inspector received the said sanction letter on 07.04.2017 as is contented by him, still he instituted the complaint in the Court on 09.10.2017 i.e., much beyond the period allowed by the sanctioning authority.

15. Here itself, it is liable to be noted that as per instructions issued by the Joint Director of Agriculture (Plant Protection), Punjab, for the Director of Agriculture, Punjab, vide memo dated 06.01.2017 (Annexure P-5) various time periods have been prescribed with regard to issuance of sanction. Instructions No.4 clearly provides that a period of 15 days is fixed to issue sanction by the concerned competent authority after receipt of attested documents of manufacturer and distributor from DDA. In this case, although the Insecticide Inspector applied for sanction on 05.08.2016, but the Sanctioning Authority, i.e., the Joint Director of

Agriculture (Plant Protection), Punjab breached instructions of the Department and instead of according sanction within 15 days, issued the necessary sanction on 07.04.2017, as is evident from Annexure P-4.

16. It is argued by learned State counsel that while filing the complaint, an application under Section 473 Cr.P.C. was moved to condone the delay in filing the complaint and that said delay was condoned by the Trial Court while deciding the application, after finding sufficient grounds to proceed with the complaint, as the reasons for delay were explained verbally by the complainant.

17. With regard to this contention, respondent-complainant has clearly tried to mislead this Court, as has been rightly pointed out by counsel for the petitioners. Although learned State counsel, at the time of arguments placed on record copy of an application under Section 473 Cr.P.C., alleged to have been moved along with the complaint, but perusal of the complaint (Annexure P-1) reveals that there is absolutely no reference of any such application under Section 473 Cr.P.C., for condoning the delay in filing the complaint. Not only this, neither in the initial order dated 09.10.2017 when the complaint was moved; nor in any of the subsequent order of the trial court including the summoning order dated 03.05.2019 (Annexure P-2), there is any reference that any such application under Section 473 Cr.P.C., as is alleged by the complainant, was ever moved before the Court.

18. Assuming for the sake of arguments that any such application had been moved as is contended by learned State counsel, copy of which is made available on record, even if it is taken into

consideration, it is revealed that the only reason stated for seeking condonation was the heavy work load. Even this delay was sought to be condoned only from the date of receipt of the report of the Chemical Analyst. No explanation is given even in this application for applying for sanction on 05.08.2016, despite the fact that report of Chemical Analyst, declaring the sample as mis-branded, had been received way back on 03.07.2013, i.e., 3 years prior to the applying for sanction.

19. In view of the aforesaid discussion, there cannot be any hesitation to conclude that complaint in question being time barred, is not maintainable. It has been held by Hon'ble Supreme Court in "*Sirajul & Ors. v. The State of U.P. & Anr.*", 2015(3) R.C.R.(Criminal) 661, that cases covered by statutory bar of limitation may be liable to be quashed without any further inquiry, although for the cases not covered by statutory bar, ground of delay can be pleaded in appropriate cases due to violation of the speedy trial.

20. In the present case, the complaint in question is statutorily barred by limitation and so, being not maintainable, is liable to be quashed without any further inquiry.

21. In view of the aforesaid discussion, no other points raised by petitioners, need to be considered, as complaint, the summoning order and all subsequent proceedings arising therefrom, are hereby quashed for the reasons that complaint itself is not maintainable, being barred by limitation.

May 08, 2023
Sarita

(DEEPAK GUPTA)
JUDGE

Whether reasoned/speaking:	Yes/No
Whether reportable:	Yes/No