

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

**CRM-M-7581-2019 (O&M)
Date of Decision: February 07, 2023**

R.C. Sharma and another **...Petitioners**

Versus

State of Punjab **...Respondent**

2. **CRM-M-9001-2019 (O&M)**
Shankar Lal Joshi and another **...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. Hittan Nehra, Addl. A.G., Punjab.

DEEPAK GUPTA, J.(Oral)

This order of mine shall dispose of aforesaid two petitions arising out of the same complaint bearing No.235 of 23.01.2013, titled as “*State of Punjab vs M/s Chandan Pesticides & Others*” under Sections 3(k)(i), 17, 18, 29 and 33 of the Insecticides Act, 1968 (hereinafter referred as 'the Act') read with Rules 10 and 27(5) of the Insecticides Rules, 1971, pending in the Court of learned Judicial Magistrate, Amritsar.

2. By way of these petitions filed under Section 482 of the Code of Criminal Procedure, prayer is made to quash the aforesaid complaint (Annexure P-1) and the summoning order dated 10.09.2018 (Annexure P-2) and all the consequential proceedings arising therefrom

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qua the petitioners.

3. As it emerges on perusal of the paper book, on 30.05.2009 Insecticide Inspector, Block Verka, District Amritsar, visited the premises of dealer i.e. M/s Chandan Pesticides, G.T. Road, Hide Marker, Amritsar and after making necessary statutory compliances, drew sample of an insecticide namely, Butachlor *50% EC Brand Strong*, Batch No.251, with manufacturing date as April, 2009 and expiry date as March, 2011, manufactured by M/s Thakar Chemicals Ltd., New Delhi (petitioner No.2 in CRM-M-7581-2019) and supplied by M/s Ceska Cormen Ltd. New Delhi (petitioner No.2 in CRM-M-9001-2019). Out of three samples collected by the Insecticide Inspector, one of them was sent to the Insecticide Testing Laboratory, Amritsar. The report thereof dated 01.06.2009 was received in the office of Chief Agriculture Officer, Amritsar on 03.06.2006, as per which sample was declared misbranded. Thereafter, show cause notice was issued by the office of Chief Agriculture Officer to both the above petitioner companies, who explained the circumstances under which the sample was found to be misbranded, but Chief Agriculture Officer, Amritsar did not rely upon the same.

4. On 23.01.2023, the impugned complaint was instituted in the Court of learned Chief Judicial Magistrate, Amritsar, who took cognizance qua the dealer firm and its proprietor. Thereafter, dealer firm and its proprietor challenged the complaint in this Court vide CRM-M-11528-2013, which was allowed by a co-ordinate Bench of this Court on 16.09.2013 (Annexure P-4). On 10.09.2018, learned Judicial Magistrate 1st Class, Amritsar, directed to issue the summons to the manufacturer as

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well as supplier i.e. all the petitioners of these two petitions.

5. (i) The petitioners of CRM-M-9001-2019 contend that they being the supplier/marketer of the alleged misbranded insecticide material, and the sample having been drawn from original packing, so in the absence of any allegation of tempering with the seal of the original packing, they are entitled to parity with the petitioners of CRM-M-11528-2013.

(ii) Seeking quashing of the complaint and the consequent proceedings, it is contended further by all the petitioners that offences under the Act, are punishable up to 2 years, as per Section 29 of the Act and so, limitation period to file the complaint is three years, as per Section 468 of the Code of Criminal Procedure, which commences from the date of receipt of the public analyst report. It is contended that in this case, as the report of the public analyst was received on 03.06.2009, therefore, the limitation period commenced from this date and the same expired on 02.06.2012 and so, complaint filed on 23.01.2013 is highly belated, cognizance of which could not be taken.

6. Refuting the aforesaid contentions, it is submitted by the learned State counsel on behalf of the respondent that report of the Senior Analyst, Insecticide Testing Laboratory, Amritsar, was received on 03.06.2009 and the complaint was filed on 23.01.2013 and so, the total period works out to be 3 years 7 months 20 days. It is submitted that period from 17.05.2010 to 29.11.2011 was consumed by the Department for grant of sanction, which period of about 18 months is liable to be excluded for computing the period of limitation as per Section 470(3) of the Code of Criminal Procedure and once this period is excluded from

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computing the period of limitation, the complaint has been filed within limitation.

With respect to the contention of supplier, it is contended that it is a matter of evidence as to whether the sample was drawn from the original packing or not; and so, they are liable to be proceeded as per Section 29 of the Act.

With these submissions, prayer is made for dismissal of both the petitions.

7. I have considered the submissions made on behalf of both the parties and have also perused the record carefully.

8. M/s Chandan Pesticides (petitioner in CRM-M-11528-2013) was the dealer firm. Said petition was allowed by a co-ordinate Bench of this Court on 16.09.2013. M/s Thakar Chemicals Ltd., New Delhi (petitioner in CRM-M-7581-2019) is the manufacturer; whereas, M/s Ceska Corman Ltd. New Delhi (petitioner in CRM-M-9001-2019) is the supplier of the insecticide in question, sample of which on testing was found to be misbranded.

9. While allowing CRM-M-11528-2013 as filed by the dealer, this Court (co-ordinate Bench) held in its order dated 16.09.2013, as under:

“Admittedly, the Insecticide Inspector drew sample of Butachlor 50% EC from 5 litres of sealed packing and the petitioners were selling the insecticide in dispute in a sealed container in the original form. It is not the case of the respondent that the insecticide was not properly stored or was not in the same stage after packing or there was tampering with the seal of the packing. In absence of such averment in

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the complaint, the petitioner is entitled to the protection provided under Section 30(3) of the Insecticides Act. Section 30(3) of the Act is reproduced as under:

“30. Defences which may or may not be allowed in prosecutions under this Act.

(3) A person not being an importer or a manufacturer of an insecticide or his agent for the distribution thereof, shall not be liable for a contravention of any provision of this Act, if he proves.

(a) that he acquired the insecticide from an importer or a duly licensed manufacturer, distributor or dealer thereof;

(b) that he did not know and could not, with reasonable diligence, have ascertained that the insecticide in any way contravened any provision of this Act; and

(c) that the insecticide, while in his possession, was properly stored and remained in the same state as when he acquired it.”

A perusal of Section 30(3) of the Act shows that the petitioners are entitled to protection as sample was taken from the sealed container as seal was not found to be tampered with when it was recovered from the shop of the petitioner. It is also not the case of the respondent State that the insecticide was not properly stored or there was tampering with the seal.

*The case of the petitioners is squarely covered by judgment of Apex Court in case **M/s Kisan Beej Bhandar, Abohar v. Chief Agricultural Officers, Ferozepur 1990 Supreme Court Cases (Crl.) 623.***

10. In view of the facts and law position explained above, the present petition is allowed. The complaint No.235 dated 23.1.2013 under Sections 29 read with Section 3(k)(i), 17, 18, 29 and 33 of the

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Insecticides Act, 1968 and Rules 10 and 27 (5) of the Insecticides Rules 1971 as well as summoning order dated 23.1.2013 and subsequent proceedings arising therefrom qua the petitioners are quashed.”

11. It is, thus, clear that dealer was given the protection of Section 30 (3) of the Act as available to him by said provision, in as much as sample of insecticide in question i.e. Butachlor 50% EC was taken from 5 litres of sealed packing and the dealer was selling the insecticide in dispute in a sealed container in the original form.

12. The protection envisaged under Section 30 (3) of the Act is not available to the manufacturer or to the supplier/distributor of the manufacturer, as is clear from the words - “*A person not being an importer or a manufacturer of an insecticide or his agent for the distribution thereof*” used in Section 30 (3) of the Act. Therefore, petitioners of CRM-M-9001-2019 i.e. supplier can not claim parity with the petitioner of CRM-M-11528-2013, which had been filed by the dealer and so, no advantage of the order dated 16.09.2013 can be given to supplier or manufacturer.

13. Coming to the contention that complaint is barred by time, 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.

14. 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

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period of limitation shall be three years. 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”

15. In the present case, as noticed earlier, sample was taken on 30.05.2009. It is on 03.06.2009, when the report of the Senior Analyst was received that it became known that due to misbranding, offence 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. 03.06.2009. Reliance can be placed on “***M/s Cheminova India Ltd. & Anr. vs State of Punjab and Anr.***”, reported as 2021(3) R.C.R. (Criminal) 750, wherein date of receipt of the report of public analyst was

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held to be the starting point of limitation by Hon'ble Supreme Court. In present case, complaint was filed on 23.01.2013 i.e. after 3 years 7 months and 20 days from the date of commencement of limitation.

16. However, the period from 17.05.2010 to 29.11.2011 was consumed for obtaining sanction of the competent authority for launching the prosecution. This period of 1 year, 6 months and 12 days is liable to be excluded for the purpose of computing the period of limitation, as per Section 470(3) Cr.P.C. The word “shall” as used in Section 470(3) Cr.P.C. clearly indicates that it is mandatory for the Court to exclude from the limitation period the period required for obtaining the consent or sanction before launching the prosecution from the competent authority and the Court has not any discretion therein.

17. Similar view was taken by Kerala High Court in “**George Thomas v State of Kerala**”, 1987 Cr.LJ 1311; and also by the Gauhati High Court in “**K. Vikheho Sema v. State of Nagaland**”, 2007 CrLJ 4266. In “**Subramaniam v. State**”, 1988 Mad LW (Crl) 326, it has been held by Madras High Court that when the special Act requires previous sanction for the prosecution, all provisions in the Code relatable to grant of sanction would apply and therefore, the time taken for obtaining sanction has to be excluded while computing the period of limitation under Section 7 (b) of the Dowry Prohibition Act, 1961.

18. Learned counsel for the petitioners has referred to “**Liyaqat Ali Gauri v State of Rajasthan**”, 1996(3) Crimes 241 in order to contend that when sanction is granted for prosecution by the State before expiry of limitation, then period consumed in taking sanction was not liable to be excluded and as delay in filing challan was not explained, so

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cognizance was held to be not proper. The case before Rajasthan High Court was regarding false injury report and cognizance by the Court had been taken under Sections 193 and 218 of the Indian Penal Code.

19. It is urged by ld. Counsel that in present case also, as the sanction was granted on 29.11.2011 i.e. within three years from the date of receipt of Public Analyst Report, therefore, the period consumed for taking sanction cannot be excluded. This Court finds itself unable to scribe to this view because in case sanction is granted subsequent to the expiry of limitation, obviously the complaint would be barred by limitation. Besides Section 470(3) Cr.P.C. does not make any distinction as to whether the sanction was applied and granted prior to the expiry period of limitation or not. The only mandate is that as and when the sanction of the complaint is required, period consumed for sanction is to be excluded while computing the period of limitation.

20. Once the period of 1 year, 6 months and 12 days consumed for obtaining sanction of the competent authority to launch the prosecution is excluded, obviously the complaint filed on 23.01.2013 is well within limitation.

21. It is also urged by learned counsel for the petitioners that Insecticide Inspector was directed to file complaint in the Court within 7 days by the sanctioning authority, vide letter dated 29.11.2011 but still he filed the complaint on 23.01.2013 i.e. well beyond the period of 7 days. No doubt, this has been lapse on the part of the Insecticide Inspector, for which this Court has already imposed a cost of ₹1,00,000/- upon him, as per order dated 28.11.2019 but this in itself cannot give any advantage to the petitioners, once it is found that complaint is within limitation after

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excluding the period consumed for grant of sanction.

22. In view of the entire discussion as above, both the petitions are held to be devoid of any merit and so, the same are hereby dismissed.

Photocopy of this order be placed on the connected case file.

February 07, 2023
sarita

(DEEPAK GUPTA)
JUDGE

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