

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

CRM-M-12926-2018

Date of Decision: January 16, 2023

Sohan Singh

...Petitioner

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. R.S. Khaira, DAG, 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.90 dated 05.01.2018 titled as “***State vs M/s Ghuman Pesticides and Fertilizers and others***” under Sections 3(k)(i), 17, 18, 29, 33 of the Insecticides Act, 1968 (hereinafter referred as 'the Act') read with Rule 27 (5) of Insecticides Rules, 1971 pending for adjudication in the Court of learned Chief Judicial Magistrate, Patiala (Annexure P-1), apart from the summoning order dated 05.01.2018 (Annexure P-2) and all the consequential proceedings arising therefrom qua the petitioners.

2. As it emerges on of the paper book, on 12.02.2015 Insecticide Inspector, Bhunerheri, District Patiala, visited the premises of M/s Ghuman Pesticides and Fertilizers Balbehera District, Patiala and after making necessary statutory compliances, drew sample of Insecticide namely, *Platinum Brand Imidacloprid 30.5 % SC*

manufactured by M/s Vikas Organic Ind. Corporation, Faridkot; and

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marketed by Gujarat Chemical Company, Ahmedabad. Out of three samples collected by the Insecticide Inspector, one of them was sent to the State Insecticide Testing Laboratory, Bhatinda on 18.02.2015, i.e. after 6 days for analysis. The report of the Public Analyst, Bhatinda was received on 24.02.2015 in the the office of Chief Agriculture Officer, Patiala, as per which sample was declared misbranded. Against the show cause notice sent to the accused i.e. the dealer, supplier and the manufacturing company, replies were filed by them. Request was made by the dealer to send the second part of the sample to the Central Insecticide Laboratory, Faridabad, so as to controvert the report of Public Analyst. The sample was sent to the Central Insecticide Laboratory, Faridabad on 20.05.2015, where the analysis was done on 25.05.2015, as per the report Annexure R-3, declaring the sample as misbranded. After obtaining necessary sanction from the competent authority, the prosecution was launched in the Court of learned Chief Judicial Magistrate, Patiala on 05.01.2018.

3. On the same day i.e. 05.01.2018, learned Chief Judicial Magistrate, Patiala directed to issue the summons to all the accused vide order Annexure P-2.

4. Although other grounds have also been pleaded to quash the complaint in the revision but the only ground contended before this Court by learned counsel for the petitioners is that as per complaint (Annexure P-1), the sample was drawn on 12.02.2015 but the same was sent to the Public Analyst on 18.08.2015 i.e. after a gap of 6 days, which is gross violation of the mandatory provisions of Section 22 (6) of the Act. It is

further urged that learned Trial Court passed the summoning order without application of mind as the order is casual and non-speaking.

5. Refuting the aforesaid contention, it is urged by Ld. State Counsel that since the reference sample portion was also got re-tested from the Central Insecticide Laboratory, Faridabad on 25.05.2015, so the facts stated therein are conclusive as per Section 24(4) of the Act and so the mere fact that sample to the Public Analyst was sent after a delay, is of no consequence. It is also contended that as the sample was received in the State Insecticide Testing Laboratory, Bhatinda with its seal intact, therefore, mere delay in sending the sample cannot be the reason for quashing of the complaint.

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

7. Section 22 of the Insecticides Act, 1968 provides the procedure to be followed by the Insecticide Inspectors. The relevant portion of the said Section reads as under:-

“22. Procedure to be followed by Insecticide Inspectors.-

(1) xxxx

(2) xxxx

(3) xxxx

(4) xxxx

(5) xxxx

(6) The Insecticide Inspector shall restore one portion of a sample so divided or one container, as the case may be, to the person from whom he takes it and shall retain the remainder and dispose of the same as follows:-

*(i) one portion or container, he shall **forthwith** sent to the Insecticide Analyst for test or analysis; and*

(ii) the second, he shall produce the Court before which

proceedings, if any, are instituted in respect of the insecticide.”

8. It is evident from the aforesaid provision that one portion of the sample so divided by the Insecticide Inspector is required to be sent forthwith to the Insecticide Analyst for test or analysis.

9. Although the term 'forthwith' is not defined in the Act, in ordinary sense, it simply means 'immediately'. For the purpose of Section 22(6) of the Act, the said word 'forthwith' is to be read as on the date of sampling or by the next date or at the most by next working day, in case the day next to taking the sample was a holiday. However, in the present case, sample has been sent to the Public Analyst after a delay of six days without any explanation forthcoming from the side of the respondent for causing the delay in sending the sample.

10. A similar issue was also considered by a co-ordinate Bench of this Court in case of ***“B.S. Rana vs State of Punjab”*** reported as 2008(3) R.C.R. (Criminal) 210, wherein sample was drawn on 29.10.2003 and the same reached the Laboratory on 17.11.2003. Holding that provisions of Section 22(6) of the Act was mandatory requiring the sample to be sent to the Analyst forthwith and that the violation of the said provisions rendered the complaint liable to be quashed.

11. In case of ***“M/s S.S. Fertilizer and another vs State of Punjab”***, reported as 2017(2) R.C.R.(Criminal) 59, there was a delay of 4 days in sending the sample, which was not sent forthwith in violation of Section 22(6) of the Act. Holding that delay in sending the sample was fatal to the prosecution, a co-ordinate Bench of this Court quashed the complaint.

12. In the present case also, the delay of 6 days in sending the sample is held to be fatal as the mandatory requirement of Section 22(6) of the Act has not been complied with. It does not lie in the mouth of the respondent to plead that second sample was sent to the Central Insecticide Laboratory or that the sample was received in the State Insecticide Testing Laboratory, Bhatinda with its seal intact.

13. Apart from above, order dated 05.01.2018 (Annexure P-2), whereby the Court of learned Chief Judicial Magistrate, Patiala ordered for issuing the notice to the accused reads as under:-

“Present: Gurmail Singh, Insecticide Inspector for State.

Complaint presented today. It be registered. Let notice to the accused be issued for 17.02.2018

Sd/-

05.01.2018

CJM Patiala”

14. The aforesaid order clearly reveals that no reasons whatsoever have been given for issuing process against the accused. No doubt that detailed inquiry is not required to be done at the stage of summoning but the order of the Magistrate must show at least application of mind to the effect that there was a *prima facie* case for summoning the accused. Reliance in this regard can be placed upon the judgment of a co-ordinate Bench of this Court in case of **“Sanjiv Kumar Sharma vs State of Punjab**, reported as 2006(3) R.C.R. (Criminal) 894, wherein it is held that the Court has to record reasons for summoning the accused. Court is not absolved of its statutory obligation to pass a reasoned judicial order, while summoning an accused.

15. For the reasons as discussed above, it is held that prosecution launched by the respondent can not be sustained. Therefore,

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the complaint (Annexure P1), the impugned summoning order (Annexure P2) and all the consequential proceedings are hereby quashed. It is ordered accordingly.

January 16, 2023
sarita

(DEEPAK GUPTA)
JUDGE

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