2023:PHHC:166606

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

CRM-M-14091-2015
Date of Decision:19.12.2023

(i)
M/s Thind Pesticides Store and Anr. …Petitioners

Vs.

State of Punjab …Respondent

(ii) **CRM-M-41013-2016**

Raj Kumar Gupta …Petitioner

Vs.

State of Punjab …Respondent

Coram : **Hon'ble Mr. Justice N.S.Shekhawat**

Present: Mr. Amit Dhawan, Advocate
for the petitioner in CRM-M-14091-2015.

Mr. Arun Chandra, Advocate
for the petitioner in CRM-M-41013-2016.

Mr. Mohit Chaudhary, AAG, Punjab.

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N.S.Shekhawat J.

1. This order shall dispose off two petitions i.e CRM-M-14091-2015 titled as ***"M/s Thind Pesticides Store and Anr. Vs. State of Punjab"*** and CRM-M-41013-2016 titled as ***"Raj Kumar Gupta Vs. State of Punjab"***, whereby the petitioners have prayed for quashing of the complaint No. 72/02/11 dated 12.10.2009 titled as "***State Vs. M/s The Kakar Kalan Co-operative Agriculture Multi-purpose Society,Kakar Kalan and others***" and quashing of complaint No. 72/02/11 dated 07.05.2011 (Annexure P-1) under Sections 3k(1), 17, 18,29 and 33 of the Insecticides Act, read with Rule 27(5) of the Insecticide Rules 1971 and summoning order dated 07.05.2011 (Annexure P-2)

passed by the Court of Judicial Magistrate, Ist Class, Nakodar, whereby the petitioners were ordered to be summoned by the Trial Court.

2. Learned counsel for the petitioners contend that the complaint in the present case was filed by Insecticide Inspector, Shahkot, District Jalandhar, who had inspected the premises of M/s The Kakar Kalan Co-operative Agriculture Multipurpose Society, Kakar Kalan Block Lohian, District Jalandhar, and had drawn the samples of Cartap Hydrochloride 4% G on 10.08.2007. After the sample was drawn, it was divided in three parts. One part of the sample was returned to the society and the two parts were retained by the Insecticide Inspector. The said two parts of the sample were deposited by him in the office of Chief Agriculture Officer, Jalandhar on 13.08.2007 and from the said office, the sample was sent on 20.08.2007 for its analysis to Insecticide Analyst i.e Insecticide Testing Laboratory, Ludhiana. The sample was received by Insecticide Testing Laboratory, Ludhiana on 20.08.2007, which was in violation of provisions of Section 22 (6) of the Insecticides Act. In fact, the Insecticide Inspector was under a legal obligation to send the sample to its analysis forthwith. The Insecticide Testing Laboratory, Ludhiana prepared a report dated 28.08.2007 and after analysis the sample, it was found to be mis-branded. Thereafter, the competent authority i.e Joint Director Agriculture (Plant Protection Officer), Punjab, Chandigarh granted sanction for institution of prosecution against the accused persons and the written sanction/approval under Section 31(1) of the Insecticides Act was granted on 15.10.2009 and the Insecticide Insepector, Shahkot was authorised to take action under Rule 27 (5) of the Insecticide Rules, 1971 and to register a case against all the accused. Thereafter, the complaint in question (Annexure P-1) was filed before the Court

on 07.05.2011. Learned counsel for the petitioners contend that in the present case, the offence was punishable for two years and the cognizance was barred by the period of limitation, as the cognizance was taken on 07.05.2011, after a period of three years.

3. Learned State counsel has vehemently opposed the submissions made by learned counsel for the petitioners, however, the factual position has spelled out from the record was not controverted by the learned State counsel.

4. I have heard learned counsel for the parties and perused the record.

5. As per the provisions of Section 468 Cr. PC, there is a bar to take cognizance after the expiry of the period of limitation and the same has been reproduced below:-

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.

6. It has been held in the matter of "***M/s Kheti Sewa Centre,Ludhiana Vs. State of Punjab" decided on 20.12.2002*** *and the same* has been reproduced below:-

> "6.*In State of Rajasthan (supra), the senior drug inspector had collected the samples of drugs named therein on 29.2.1998*

mentioned in the complaint which were sent for analysis to the Government Analyst, Food and Drugs Laboratory, Baroda on March 2, 1998. In his report dated 2.7.1998, the Government Analyst opined that those drugs were not of standard quality. Drug Controller had ordered prosecution of the respondents on 3.2.1990 but the complaint came to the instituted in the Court of Additional Civil Judge, Jaipur on 28.6.1991. The said Court issued the summons to the respondents. The summoning order was questioned by them before the High Court on the ground that the complaint was barred by limitation under Section 468(2)(c) of the Code. The complaint in questión was quashed. Two issues came up for consideration before the High Court. First was whether the period of limitation is to be counted from the date of collecting sample or from the date of report of Government Analyst. The Apex Court observed that it is only when the report of Government Analyst was received, that it came to light that provisions of the Act had been violated and offence was committed and for that reason, It was laid down that Clause (a) of Section 469(1) was not attracted. As the fact of drug sold being substandard came to the knowledge of the Drug Inspector only on 2.7.1988 when the report of the Government Analyst was received by him, therefore, Clause (b) of Section 469(1) would be attracted. In this view of the matter, prosecution was held to have been lodged within three years of the report of Government Analyst and for that reason, appeal filed by the State was accepted and Impugned order of the High Court was set aside and the case was remånded to the Additional Civil Judge and Chief Judicial Magistrate, Jaipur for disposal in accordance with law. For coming to the conclusion, notice was also taken of decisions in ***R.S. Arora v. State, 1987(1) RCR(Crl.) 693 (Delhi): 1987 Crl.L.J 1215, Omprakash Gulabchandji Partani v. Ashok, 1992 Crl.L.J. 2704 and M/s. Satyanarayana General Traders v. State, 1993(2) Crimes 203****. Similar view was also taken in Shallaja's case (supra). It would be relevant to extract the observations contained in paras 6 to 8 of the State of Rajasthan's case (supra), as it has a bealing qua the facts of the present case:-*

In the Code of Criminal Procedure, 1973, Chapter XXXVI has been added prescribing limitation for taking cognizance of certain offences with a view to expedite the process of detection and investigation of crimes and also to ensure observance of the principle of fairness in the trial of the offences by barring belated prosecution. Delay in prosecution of offences causes undue hardship as it keeps the sword hanging on the heads of accused person and it also results in the material evidence getting vanished. This chapter applies to all such offences for which punishment prescribed is less than three years. But it does not apply to offences for which punishment prescribed is more than three years and to economic offences under various Acts, which are excluded under Central Act 12 of 1974 or any State

Acts. It contains seven Sections (467-473). Section 467 defines the expression period of limitation used in the chapter. Sections 468 to 473 deal with various aspects of computation of limitation. Of the aforesaid, provisions, we are concerned with Sections 468 and 469. Sub-section (1) of Section 468 ordains that no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the periods of limitation prescribed thereunder. This, however, is subject to the other provisions of the Code. Sub-section (2) postulates different periods of limitation for offences with reference to the punishment provided for them; if the punishment provided for an offence in any Act is only fine, the period of limitation fixed is six months; if the offence is punishable with imprisonment for a term not exceeding one year, the period of limitation prescribed is one year and if the offence is punishable with Imprisonment for a term exceeding one year but not exceeding three years, the period of limitation laid down is three years. And sub-section (3) spells out the rule of limitation in cases of joinder of charges; If a person is tried for more offences than one, then the period of limitation will 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; for example, if a person is tried for various offences and some of them are punishable with fine and some with Imprisonment for a term less than a year and some for which the punishment is provided upto three years, then the period of limitation for all the offences, if, they are tried together, will be three years.

“7.Section 469 deals with commencement of the period of limitation and it reads thus:

**469. Commencement of the period of limitation: (1) The period of limitation, in relation to an offender, shall commence:-*

(a) on the date of the offence; or

(b) where the commission of the offence was not known to the person aggrieved by the offences or to any, police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier; or

(c) where it is not known by whom the offence was committed the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier."

“8.A plain reading of the provision extracted above shows that in sub-section (1) three alternative starting points of limitation have been specified (a) the date of the offence; (b) the first day on which an offence came to the knowledge of the person aggrieved by the

> *offence or to any police officer, whichever is earlier, in a case where the commission of the offence was not known to any of them; or (c) the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earller, hut this can be called in aid in a case where it is not known by whom the offence was committed.* ***Basically from the date of offence the period of limitation will start but there will be cases where the commission of offence or identity of the offender comes*** *to knowledge of those concerned with it long thereafter so in such situations Clauses (b) and (c), as the case may be, would be the date of commencement of period of limitation."*

7. Now, adverting to the facts of the present case, it is apparent that the sample was drawn by the Insecticide Inspector on 10.08.2007 and it was sent to the Insecticide Testing Laboratory, Ludhiana and was found to be mis-branded on 28.08.2007. Thereafter, the competent authority had authorised the Insecticide Inspector, Shahkot to file a criminal complaint in the present case and thereafter, the complaint was filed before the Court on 07.05.2011. However, in the present case, the sample was declared to be mis-branded on 28.08.2007 and the period of limitation would start from the said date, when the commission of offence was known to the complainant. However, the complaint in the present case has been filed after a period 03 years and 09 months. Even the punishment under Section 29 of the Insecticide Act is 02 years and manifestly, the complaint in the present case has not been filed within the period of 03 years. Thus, in terms of provisions of Section 468 Cr.P.C, the Magistrate could not have taken the cognizance of the said offence and for that reason, the summoning order passed as such is illegal.

8. Resultantly, both the petitions are accepted and the complaint No. 72/02/11 dated 12.10.2009 titled as *"State Vs. M/s The Kakar Kalan Co-operative Agriculture Multi-purpose Society,Kakar Kalan and others"* and

another complaint No. 72/02/11 dated 07.05.2011 (Annexure P-1) under Sections 3k(1), 17, 18,29 and 33 of the Insecticides Act, read with Rule 27(5) of the Insecticide Rules 1971 and summoning order dated 07.05.2011 (Annexure P-2) passed by the Court of Judicial Magistrate, Ist Class, Nakodar are hereby ordered to be quashed, as the same are barred by the period of limitation.

(N.S.SHEKHAWAT)
JUDGE

19.12.2023
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No