

IN THE HIGH COURT OF PUNJAB ANDHARYANA AT CHANDIGARH

CRM-M-11268-2020 (O&M)

Reserved on: May 04, 2023

Pronounced on: May 11, 2023

Anil Kapoor

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr. Veneet Sharma, Advocate,
for the petitioner.

Mr. Amit Shukla, AAG, Punjab.

HARKESH MANUJA, J.

1. By way of present petition filed under Section 482 of Code of Criminal Procedure, 1908, petitioner has sought quashing of complaint No.COMA/267/2017, instituted on 11.05.2017, filed under Sections 3 K (I) 17, 18, 29, 33 of the Insecticide Act, 1968 (hereinafter referred as 1968 Act), punishable under Section 29(1) (9) of The Insecticides Act, 1968 (for short 'the Act') and The Insecticides Rules 1971 as well as summoning order dated 09.06.2017 passed by learned Chief Judicial Magistrate, Jalandhar besides, all subsequent proceedings arising therefrom.

2. Brief facts of the case as noted in the complaint are that Gurcharan Singh- complainant/Insecticide Inspector, Bhogpur (now posted as Agri. Dev. Officer Enf. Jalandhar), in exercise of powers conferred upon the him vide government notification No. S 090/ C.A./46/68-S-20/91 dated 30.10.1991, while performing official duty, inspected the shop of M/s G. S. Fertilizer Mill Road, Bhogpur, Distt. Jalandhar along with Sh. Viney Kumar

A.O. Bhogpur on 06.07.2013. Complainant disclosed his identity as Insecticide Inspector Bhogpur and intended to take sample from the shop of Kulwant Singh, Proprietor of the accused firm G S Fertilizer, Mill Road Bhogpur, Distt. Jalandhar, who was present at the time of inspection. Thereafter, complainant gave intimation in form XX (Annexure C-2) for the purpose of sampling. Complainant inspected the stock register & put his initial on it and verified the stock of the accused firm in respect of Butachlor 50% EW which was manufactured by Sumil Chemicals Pvt. Ltd. Samba (J&K). According to stock register there were 40 packings of 5 litres each. For the purpose of sampling in exercising power conferred upon him under Section 21(1) (e) in the 1968 Act and duties vide Rules 27(3) of the Insecticide Rules 1971, complainant selected one packing of (5 litre) Butachlor 50% EW bearing Batch no.SC. 0121 manufacturing date 29.03.2013 & expiry date 28.03.2015. Complainant opened the packing of above said insecticide and took about 600 ml of Butachlor 50% EW for the purpose of sampling; poured in 3 containers of 200 ml each and closed it tightly. Out of three portions of sample, one was given to Kulwant Singh for testing the same in Insecticide Laboratory, Bathinda; whereas other two portion of samples of above said insecticide were kept by complainant.

3. The Senior Analyst, Insecticide Testing Laboratory, Bathinda after analysing the sample, gave its report dated 18.07.2013 which was received in the office of Chief Agri. Officer Jalandhar with the remarks that the “same did not confirm the I.S.I. specifications in respect of ingredients 50% EW found 47.87 % EW”, thus the sample was misbranded, regarding which a complaint was filed on 11.05.2017 and Learned CJM, Jalandhar passed the summoning order on 09.06.2017.

4. Through the present petition, petitioner has sought quashing of complaint No. COMA/267/2017 dated 11.05.2017, summoning order dated 09.06.2017 passed by Chief Judicial Magistrate, Jalandhar and all subsequent proceedings arising therefrom.

5. Learned counsel for the petitioner contends that as per the complaint, the only allegation against him is that he was involved in the sale of misbranded insecticide and the said insecticide was manufactured by Sumil chemicals limited and marketed by M/s Chambal Fertilisers and Chemicals Limited, Kota, Rajasthan. He further contents that, as per Section 469 Cr.P.C., the limitation in relation to an offence shall commence on the date of the offence, hence, the respondent having inspected the premises of M/s G.S. Fertilizers, Mill Road, Bhogpur, District Jalandhar on 06.07.2013 and the present complaint having been filed on 11.05.2017 was clearly beyond the period of limitation. In this regard, reliance has been placed upon the decisions rendered by Hon'ble Supreme Court in case of ***“Cheminova India Limited and another vs. State of Punjab and another”***, (2021) 8 Supreme Court Cases 818 and ***“State of Rajasthan vs. Sanjay Kumar, 1998)3) RCR (Criminal) 846***, besides, Section 468 Cr.P.C. and for reference, para 13 of **Cheminova's** case (supra) as well as para 13 of **Sanjay Kumar's** case (supra) are reproduced hereunder:-

“Para 13 of Cheminova's case:-

“When it is clear from the language of Section 469, Cr.P.C. 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 CrI.A.@S.L.P.(CrI.)No.4102 of 2020 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.”

Para 13 of Sanjay Kumar's case (supra):-

“For the above reasons, in the instant case, the limitation for the purpose of Section 468(2) (c) will commence from July 2, 1988, the date of knowledge of the commission of offence to the concerned officer under Section 469(1) (b) but not from February 29,1988 (the date of collection of samples by the Drugs Inspector) and as the complaint was filed on June 28, 1991 which is within three years so the complaint is not barred by limitation under Section 468(2) (c). The High Court has missed this germane aspect erroneously took the date of commencement of the limitation as February 29,1988 , the date on which the samples were collected by the Drugs Inspector from accused No. 16. It is thus clear that the High Court has committed illegality in so computing the period of limitation, which results in miscarriage of justice.”

For the purpose of adjudication of present dispute, it may be necessary to delve upon Sections 468 & 469 Cr.P.C., which are reproduced hereunder for reference:-

“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.*

469. Commencement of the period of limitation:-

- (1) The period of limitation, in relation to an offence, 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 offence 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.*
- (2) In computing the said period, the day from which such period is to be computed shall be excluded”*

6. On the other hand, Learned counsel for the respondent-state contends that as petitioner was involved in the sale of misbranded insecticide, he was liable to face trial for offences specified in the complaint.

7. I have heard learned counsel for the parties and gone through the paper book. I find substance in the arguments raised by the learned counsel for the petitioner.

8. A perusal of complaint dated 11.05.2017 as well as the summoning order dated 09.06.2017 reveals that the only allegation against the petitioner is that he was involved in the sale of misbranded insecticide as defined under Section 3(k)(i) of the 1968 Act. There is no allegation against the petitioner that he was involved in the manufacturing or quality control of the misbranded insecticide. Relevant part of the order whereby the learned Trial Court has recorded the role of accused persons is reproduced hereunder:-

“The said insecticide was manufactured by Sumil chemicals limited and marketed by M/S Chambal Fertilisers and chemicals limited, Kota, Rajasthan a impugned Complaint dated 11.05.2017 is annexed along with the petition (Annexure P-1).”

Perusal of the above shows that petitioner is not involved in the quality control or manufacturing of the misbranded insecticide. Further, it is an admitted and undisputed fact that the bags in which misbranded insecticide was contained or the bag from which samples were taken, were in a sealed condition and supplied to the dealer in the same sealed condition. There is no allegation of any tampering, opening or replacing of the insecticides in the original packing by the petitioner company. Even as per the complaint, samples were collected from sealed bags upon opening the same with no averment that the insecticide was not kept stored as per

the provisions contained under the Insecticides Act and the Rules framed thereunder. A coordinate Bench of this Court while dealing with somewhat similar issue in CRM-M-20338-2017 titled as **“M/s Rallis India Limited and others Vs. State of Punjab through Insecticide Inspector”** decided on 20.04.2022, after going through the various precedents, held as under:-

“DISCUSSION: 22.

It is evident from a perusal of the petition as well as documents appended along with the same that the undisputed case of the respondent-State is that the petitioners were a marketing agent of the insecticides. It has been repeatedly so affirmed by the respondent in various paragraphs of the complaint instituted through Insecticide Inspector and already extracted above. It is also not a subject matter of dispute that the sample was drawn from a sealed packet and it is nowhere alleged that the sample had not been stored in accordance with the provisions contained under the Insecticides Act and Rules framed thereunder. There is also no allegation that the petitioners were responsible for the quality of the product as also for ensuring the labelled ingredients of the same. The petitioners are not nominated as the authorised/responsible officers in terms of Section 33 of the Insecticides Act. The statutory mandate intends to penalize a person who has committed an offence. It does not intend to prosecute the people who are merely dealing with the said product and for which they have no control as regards its quality and content. The petitioners cannot be held vicariously liable and to be penalized for misbranding of a product where they were not involved in the manufacturing process at all merely for having traded in the same. Section 3(k)(i) defines misbranding. The same relates to the label of products and its contents. It is not the case that any of the activities referred to under section 3 (k) attracting misbranding was undertaken by the petitioners. Further, Section 17 of the Act is also not attracted against the petitioners inasmuch as the

petitioners are neither the importer of the misbranded insecticides, nor manufacturer thereof. Further, the ingredients of Section 18 of the Act are also not satisfied and there is no allegation that the petitioners had indulged in the sale of the insecticides, which was either not registered under the Act or was prohibited under Section 27. Similarly, Section 29 also would not be applicable against the petitioners inasmuch as the same contemplates punishment for offences as stated above. Once the necessary ingredients of the said Sections are not satisfied against the petitioners, they cannot be penalized for the same.”

9. It cannot be denied that the facts of both the cases are similar and therefore, case of the petitioner is squarely covered by the observations made by this High Court in **M/s Rallis India Limited case** (supra). Accordingly, petitioner cannot be held responsible under 1968 Act for the contents of the samples when it is not disputed that the seal of the sample was intact at the time of sampling and petitioner was not even responsible for the manufacturing or quality control of the misbranded insecticide.
10. In view of the discussion made hereinabove, the present petition is allowed and complaint dated 11.05.2017, summoning order dated 09.06.2017 along with all subsequent proceedings arising therefrom are hereby quashed, qua the petitioner.
11. Pending miscellaneous application(s), if any, shall also stand disposed of.

May 11, 2023
sanjay

(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned
Whether reportable?

yes/no
yes/no