

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRM-M-14431-2022

Date of decision: 20.09.2023

Surinder Kumar Chaudhary

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Mandeep Singla, Advocate
for the petitioner.

Mr. Amit Rana, Sr. DAG, Punjab.

MANJARI NEHRU KAUL, J. (ORAL)

1. The instant petition has been filed by the Director of the manufacturing company i.e. M/s Safex Chemicals Ltd. under Section 482 of the Cr.P.C. for quashing of Criminal Complaint No.COMA/76/2017 dated 15.06.2017 registered under Sections 3(k)(i), 17, 18, 29, 33 of the Insecticides Act, 1968 (for short, 'the Act') read with Section 27(5) of the Insecticides Rules, 1971 (Annexure P-7), pending in the Court of Chief Judicial Magistrate, Moga as well as subsequent proceedings arising therefrom including summoning order dated 06.12.2017.

2. As per the allegations levelled in the complaint, on 18.06.2014, Insecticides Inspector Taranjit Singh (hereinafter referred to as 'Inspector'), visited the shop of M/s Ravindra Fertilizer Store, Badhni Kalan, Moga and selected a sealed 20 kg. Pack with packaging No.SX-12 manufactured by M/s Safex Chemicals (India) Ltd. in the month of May, 2013. From the sealed pack, 03 samples of Tricentanol

0.05% GR were drawn by the Inspector as per the prescribed procedure. The Chief Agriculture Officer, Moga thereafter sent the samples drawn which had been duly sealed, to the Senior Analyst at Insecticide Testing Laboratory, Bathinda (hereinafter referred to as 'Bathinda Laboratory'). The test report for the sample was received from the Senior Analyst of Bathinda Laboratory on 01.07.2014. As per the report of Bathinda Laboratory the samples sent were misbranded, as one of the active ingredient contents was found to be only 0.0150% GR instead of the required 0.85% GR. Subsequently, upon a request of the accused dealer Ashwani Kumar, a counter sample was sent to Central Insecticide Laboratory, Faridabad (hereinafter referred to as 'Faridabad Laboratory'). As per the report received from the Faridabad Laboratory on 28.10.2014, the sample sent was also found to be misbranded. After obtaining the requisite consent from the competent authorities on 07.04.2017, the complaint in question was instituted before the Chief Judicial Magistrate, Moga under Sections 3(k)(i), 17, 18, 29, 33 of the Act on 06.12.2017. The Court below vide order dated 06.12.2017, summoned the petitioner to face trial along with co-accused. Hence, the instant petition.

3. Learned counsel appearing for the petitioner who is Director of the manufacturing company M/s Safex Chemicals Ltd., is seeking quashing of the complaint in question primarily on the following grounds that :-

(i) Insecticides Inspector raided the premises i.e. M/s Ravindra Fertilizers Store on 18.06.2014, Report declaring the drawn sample from the shop as 'misbranded' was received from the Bathinda

Laboratory on 01.07.2014. Hence, the cause of action, if any, had arisen on 01.07.2014 only. Since, the alleged offences carry a maximum punishment of 02 years imprisonment, therefore, in view of the provisions of Section 468(3) of the Cr.P.C., the stipulated period of limitation to file a complaint was within 03 years. However, it was a matter of record that the complaint in question had been instituted on 06.12.2017 which was beyond 03 years, as the period of limitation in the case had already expired on 01.07.2017.

(ii) No doubt on 18.07.2014, co-accused Ashwani had indeed requested for sending the remaining samples for retesting to Faridabad Laboratory and the report from the Faridabad Laboratory was received only on 28.10.2014, however, merely because sample had been sent for retesting to Faridabad Laboratory, would not have extended the period of limitation. In support, learned counsel has drawn the attention of this Court to *M/s Cheminova India Limited & Anr. Vs. State of Punjab & Ors, 2021 SCC OnLine SC 541* wherein it has been held that the period of limitation in cases under the Act, would commence from the date of receipt of first report.

(iii) Though the petitioner is a Director of the manufacturing company, however, he was neither the incharge nor responsible for the day to day affairs of the company as two persons, Amarjeet Singh and Ajay Kumar, had already been nominated under Section 33 of the Act as the persons responsible for the conduct of the affairs of the company as well as quality control. Even otherwise, no averment much less specific, had been made in the complaint as to how the petitioner was responsible for the conduct of the business of the company at the

relevant time when the raid was conducted. Still further, both these persons had given their respective affidavits under Section 33 of the Act as Quality Control Managers, much prior to the date of raid. In support, attention of this Court has been drawn to Annexures P-8 and P-9 which are affidavits of Amarjeet Singh dated 28.12.2012 and Ajay Kumar dated 24.12.2012 respectively. Furthermore, the petitioner too had tendered an affidavit (Annexure P-10) on 28.12.2012 nominating the persons, who would be in charge for not only the conduct of business but also the quality control of the manufacturing company as mandated under Section 33 of the Act. Thus, the complaint in question was not only time barred but also did not satisfy the necessary ingredients to warrant the summoning of the petitioner as per settled law.

4. Per contra, learned State counsel while reiterating the allegations levelled in the complaint against the petitioner, has contended that the complaint in question was instituted well within time, after due compliance of the procedure as envisaged under the Act. It is a matter of record that co-accused Ashwani had requested for the samples drawn to be sent for retesting at Faridabad Laboratory, after a report had been received from the Bathinda Laboratory qua it being a 'misbranded' sample, on 25.06.2014. The Chief Agriculture Officer, thereafter sent the sample to the Faridabad Laboratory on 28.10.2014 which reconfirmed vide its report dated 24.11.2014 that it was 'misbranded'. Since the report from the Faridabad Laboratory was received by the Chief Agriculture Officer only on 28.11.2014, hence in the circumstances, the limitation period to institute the complaint in

question would have commenced only from the date of receipt of second report i.e. on 28.11.2014. It has been further submitted that subsequent to the receipt of the second report from the Faridabad Laboratory, the respondent had sought permission to initiate legal action against the petitioner and others. It was only after the relevant permission/consent had been received from the department concerned that the complaint in question was instituted on 06.12.2017. Learned State counsel has submitted that the request for obtaining the requisite permission/consent from the department was initiated on 09.11.2016 and it was after 05 months and 12 days, it was received. Hence, as per section 470 of the Cr.P.C., the aforementioned period of 05 months and 12 days ought to have been excluded from the limitation period. It has still further been submitted that the petitioner along with other accused had prima facie committed the offence punishable under Sections 3(k)(i), 17, 18, 29, 33 of the Act since the petitioner being the Director of the company was responsible for the affairs of the company, particularly, for ensuring the quality of the insecticides. Learned State counsel has further submitted that the plea of the petitioner that he was not incharge of the day to day affairs of the company much less responsible for the conduct of its business, was just his defence, which could only be raised during trial and would be gone into when the respective parties lead their evidence before the Trial Court.

5. I have heard learned counsel for the parties and perused the relevant material on record.

6. The primary and foremost issue which arises for consideration of this Court is whether the complaint filed on

06.12.2017 by the respondent-State was within stipulated period of limitation or was it barred by limitation?

7. Before proceeding further, it would be relevant to reproduce Section 29 of the Act which reads as under:-

“29. Offences and punishment.—

(1) Whoever,—

(a) imports, manufactures, sells, stocks or exhibits for sale or distributes any insecticide deemed to be misbranded under sub-clause (i) or sub-clause (iii) or sub-clause (viii) of clause (k) of section 3; or tc" (a) imports, manufactures, sells, stocks or exhibits for sale or distributes any insecticide deemed to be misbranded under sub-clause (i) or sub-clause (iii) or sub-clause (viii) of clause (k) of section 3; or"

(b) imports or manufactures any insecticide without a certificate of registration; or tc" (b) imports or manufactures any insecticide without a certificate of registration; or"

(c) manufactures, sells, stocks or exhibits for sale or distributes an insecticide without a licence; or tc" (c) manufactures, sells, stocks or exhibits for sale or distributes an insecticide without a licence; or"

(d) sells or distributes an insecticide, in contravention of section 27; or tc" (d) sells or distributes an insecticide, in contravention of section 27; or"

(e) causes an insecticide, the use of which has been prohibited under section 27, to be used by any worker; or tc" (e) causes an insecticide, the use of which has been prohibited under section 27, to be used by any worker; or"

(f) obstructs an Insecticide Inspector in the exercise of his powers or discharge of his duties under this Act or the rules made thereunder, tc" (f) obstructs an Insecticide Inspector in the exercise of his powers or discharge of his duties under this Act or the rules made thereunder,"

[shall be punishable—

(i) for the first offence, with imprisonment for a term which may extend to two years, or with fine which shall not be less than ten thousand rupees but which may extend to fifty thousand rupees, or with both; tc" (i) for the first offence, with imprisonment for a term which may extend to two years, or with fine which shall not be less than ten thousand rupees but which may extend to fifty thousand rupees, or with both;"

(ii) for the second and a subsequent offence, with imprisonment for a term which may extend to three years, or with fine which shall not be less than fifteen thousand rupees but which may extend to seventy-five thousand rupees, or with both.] tc" (ii) for the second and a subsequent offence, with imprisonment for a term which may extend to three years, or with fine which shall not be less than fifteen thousand rupees but which may extend to seventy-five thousand rupees, or with both.]"

(2) Whoever uses an insecticide in contravention of any provision of this act or any rule made thereunder shall be punishable with fine 26 [which shall not be less than five hundred rupees but which may extend to five thousand rupees, or imprisonment for a term which may extend to six months, or with both]. tc "(2) Whoever uses an insecticide in contravention of any provision of this act or any rule made thereunder shall be punishable with fine 1 [which shall not be less than five hundred rupees but which may extend to five thousand rupees, or imprisonment for a term which may extend to six months, or with both]."

(3) Whoever contravenes any of the other provisions of this Act or any rule made thereunder or any condition of a certificate of registration or licence granted thereunder, shall be punishable— tc "(3) Whoever contravenes any of the other provisions of this Act or any rule made thereunder or any condition of a certificate of registration or licence granted thereunder, shall be punishable—"

(i) for the first offence, with imprisonment for a term which may extend to 3 [one year, or with fine which shall not be less than five thousand rupees but which may extend to twenty-five thousand rupees, or with both], tc" (i) for the first offence, with imprisonment for a term which may extend to 2 [one year, or with fine which shall not be less than five thousand rupees but which may extend to twenty-five thousand rupees, or with both],"

(ii) for the second and a subsequent offence, with imprisonment for a term which may extend to 4 [two years, or with fine which shall not be less than ten thousand rupees but which may extend to fifty thousand rupees, or with both]. tc" (ii) for the second and a subsequent offence, with imprisonment for a term which may extend to 3 [two years, or with fine which shall not be less than ten thousand rupees but which may extend to fifty thousand rupees, or with both]."

(4) If any person convicted of an offence under this Act commits a like offence afterwards it shall be lawful for the court before which the second or subsequent conviction takes place to cause the offender's name and place of

residence, the offence and the penalty imposed to be published in such newspapers or in such other manner as the court may direct. tc "(4) If any person convicted of an offence under this Act commits a like offence afterwards it shall be lawful for the court before which the second or subsequent conviction takes place to cause the offender's name and place of residence, the offence and the penalty imposed to be published in such newspapers or in such other manner as the court may direct.""

8. Since the offences alleged against the petitioner carry a maximum punishment of imprisonment upto 02 years, the limitation period for instituting a complaint in this case would be 03 years as per Section 468(3) of the Cr.P.C. In the present case, the complaint in question was instituted on 06.12.2017. Admittedly, the raid in the present case was carried out by the Inspector on 18.06.2014 and the report of the Bathinda Laboratory was received on 01.07.2014. Thereafter, on the request of a co-accused, a counter sample of the insecticides was sent to the Faridabad Laboratory for retesting. The report from the Faridabad Laboratory declaring the sample to be 'misbranded' was received on 28.10.2014. No doubt, learned counsel for the State has vehemently contended that the period of limitation was to be computed from 28.10.2014 i.e. the date, on which the report was received from the Faridabad Laboratory, however, this Court does not find any merit in his contention as the limitation period would have commenced from the date of receipt of report from the Bathinda Laboratory, i.e 01.07.2014 and would have expired on 01.07.2017. The question with respect to the commencement of limitation period in cases falling under the Act is no longer res integra in view of the judgment of the Hon'ble Supreme Court in ***M/s Cheminova India***

Limited's case (supra).

9. While dealing with an identical question of law the Hon'ble Supreme Court in ***M/s Cheminova India Limited's case (supra)*** has held that the period of limitation for filing a complaint in a case of 'misbranding', under the Act would start from the date of receipt of report from the Insecticides Analyst. It would be apposite to reproduce relevant part of the ***M/s Cheminova India Limited's case (supra)*** which reads as under:-

“10.In the present case, it is not in dispute, the complainant 2nd respondent has received the report of analysis on 14.03.2011 from the Insecticide Testing Laboratory, Ludhiana and the complaint was lodged on 25.03.2014 which is beyond a period of three years from 14.03.2011. The only submission of the learned counsel for the State is that further report from the Central Insecticide Testing Laboratory was received on 09.12.2011 which is the conclusive evidence of the facts, as such, the complaint is within the period of limitation. 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 misbranding, 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.”

10. Thus, it is evident that the complaint in question which was lodged on 06.12.2017 was time barred as it was instituted after a significant delay of more than 05 months from the date of expiry of limitation.

11. Though the learned State counsel has contended that time taken by the department for giving permission/consent to file a complaint has to be deducted while computing limitation, however this Court finds no merit in the said contention too. It would be relevant to notice that the consent/permission from the department concerned was received on 10.04.2017. A perusal of the consent letter (Annexure P-6) reveals that the department concerned had specifically asked the officials to institute the complaint against the petitioners within a week from the date of the letter i.e. 10.04.2017, however, for reasons very strange rather best known to them, the officials concerned failed to abide by the direction given in letter dated 10.04.2017 and instead instituted the complaint only on 06.12.2017. Thus, the explanation given for delay in filing the complaint would not be of any avail to it and that too at this stage, moreso, when it is a matter of record, that while filing the complaint in question before the Trial Court, neither did the State move any application under Section 473 of the Cr.P.C. seeking condonation of delay nor did it make any averment in it, in the

said regard. In the light of the settled law in *M/s Cheminova India Limited's case (supra)*, the impugned complaint deserves to be quashed on the ground of limitation itself.

12. As a sequel to the above and in the light of the settled law in *M/s Cheminova India Limited's case (supra)*, the instant petition is allowed and the complaint No.COMA/76/2017 dated 15.06.2017 under Sections 3(k)(i), 17, 18, 29, 33 of the Act read with Section 27(5) of the Insecticides Rules, 1971 (Annexure P-7) along with all consequential proceedings arising therefrom including the summoning order are quashed qua the petitioner.

20.09.2023	(MANJARI NEHRU KAUL)
Vinay	JUDGE
Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No