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

**CRM-M-31840-2018
Reserved on: 24.01.2023
Date of decision: 14.02.2023**

M/s Unique Farm Aid Pvt. Ltd and others **Petitioners**

Versus

State of Punjab **Respondent**

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Rakesh Verma, Advocate and
Mr. Manish Verma, Advocate
for the petitioners.

Mr. Shubham Kaushik, Assistant Advocate General, Punjab.

RAJESH BHARDWAJ, J.

Petitioners have approached this Court by way of filing the present petition under Section 482 Cr.P.C. praying for quashing of Complaint No.38 dated 27.03.2018, under Sections 3(k)(i), 17, 18, 29 and 33 punishable under Section 29 of Insecticide Act, 1968 read with Rule 27(5) of Insecticides Rule, 1971 titled as "State Vs. M/s Gill Spray Store & Others" pending in the Court of learned Chief Judicial Magistrate, Ferozepur and summoning order dated 27.03.2018 along with consequential proceedings arising therefrom.

Adumbrated facts of the case as submitted before this Court are that the petitioner M/s Unique Farm Aid Private Limited is registered manufacturer of various kinds of insecticides and pesticides having a

valid license issued by Appropriate Authority under Insecticides Act. The complainant in exercise of power vested as per notification of the Punjab Government in discharge of their official duty visited the shop of M/s Gill Spray Store, Makhu Gate, Ferozepur City who is the authorized dealer of M/s Unique Farm Aid Pvt. Ltd. on 17.07.2012. Harjinder Singh was present in the shop at the time of inspection. On inspection of the shop, a stock register in respect of Cartap Hydrochloride 4% GR was inspected. The complainant showed his desire to draw the sample of Cartap Hydrochloride 4% GR, Batch No.11UF1504, manufacturing date 07/2011, expiry date 05/2013, manufactured by M/s Unique Farm Aid Pvt. Ltd. in 5 kg packing and 750 grams material was drawn and put into three separate clean and dry plastic polythene bags having 250 grams of sample in each polythene bag. The Seizure Memo was prepared which was duly signed by the Agriculture Officer and Harjinder Singh. Three samples drawn were put in separate cloth bag along with copy of Seizure Memo Form No.XXI. One of the sealed sample and Form No.XX was handed over to Harjinder Singh on the spot. The sample was taken according to the procedure laid down under Insecticides Act, 1968 vide Section 22(5) read with Rules 33 and 34 of the Act. One of the sealed sample was sent to Insecticide Testing Laboratory, Ludhiana on 20.07.2012. The remaining one sample was kept in the office of Chief Agricultural Officer, Ferozepur. The test report was received on 17.08.2012. As per the test report, the sample was found misbranded as the active ingredient contents were only 3.36% instead of 4% GR. As per the analysis report, show cause notice was issued to Gurnaib Singh son of Jagir Singh, proprietor of M/s Gill Spray Store, Makhu Gate, Ferozepur a

similar notice was issued to M/s Unique Farm Aid Private Limited on 28.08.2012. However, on request of dealer Gurnaib Singh, responsible person and proprietor of M/s Gill Spray Store, second sample of Cartap Hydrochloride 4% GR was sent to Central Insecticide Laboratory for re-analysis on 04.10.2012. The report of re-analysis from the said lab was received on 17.10.2012 and the sample drawn was again found misbranded as the active ingredient contents were only 3.02% instead of 4% GR. Thereafter, show cause notices were issued and the complaint under challenge was filed on 27.03.2018. On presentation of complaint, petitioners were summoned by the trial Court vide impugned summoning order dated 27.03.2018.

Learned counsel for the petitioners has vehemently contended that the petitioners are being prosecuted illegally in the impugned complaint. He submits that from the facts and circumstances of the case, it is apparent that the inspection of the shop of M/s Gill Spray Store Makhu Gate, Ferozepur City was carried out by the respondent-State Authorities on 17.07.2012. The samples were drawn on the same date and one of the sample was sent for analysis on 20.07.2012. The public analyst report was received on 17.08.2012 and as per said report, the sample drawn was found to be misbranded. On request of the responsible person of M/s Gill Spray Store, second sample was sent for re-analysis to Central Insecticide Laboratory on 04.10.2012 and the report from the said lab was received on 17.10.2012 and again as per the report received, even on re-analysis, sample drawn was found to be misbranded. He submits that the prosecuting agencies applied for the sanction for launching prosecution against the petitioner on 07.03.2018 which was granted by the competent

authorities on 14.03.2018. He submits that after having been granted the sanction, complaint for the prosecution of the petitioner for offence under Section 29 of Insecticides Act was filed on 27.03.2018. Learned counsel for the petitioner vehemently contends that from the facts emanating from the case of the prosecution, it is evident that the complaint has been filed by the prosecuting agencies after a period of 05 years, 07 months and 10 days from the receipt of the Public Analyst Report on 17.08.2012. He submits that the sample was drawn on 17.07.2012 and it was received by the Insecticides Analyst on 20.07.2012 i.e. after three days and thus, the same was not sent forthwith. He submits that the prosecuting agencies applied for launching sanction of the prosecution on 07.03.2018 which was accorded within about seven days i.e. 14.03.2018. He has submitted that the sanction was granted by the competent authority in a totally cavalier and mechanical manner without assigning any reason. He submits that learned trial Court has totally failed to appreciate that as per the statutory provisions of Sections 468 and 469 Cr.P.C., limitation for filing the complaint is three years. He has submitted that as per the settled law, limitation for filing the complaint under the Insecticides Act begins from the date when Public Analyst Report is received. In the present case, the Public Analyst report was received by the prosecuting agencies on 17.08.2012. Thereafter, on the request of the responsible person of M/s Gill Spray Store, the sample was sent for re-analysis and the report of the CFSL was also received on 17.10.2012 but despite that, the prosecuting agencies applied for the sanction for prosecution of the petitioner after about 05 years i.e. on 07.03.2018 which was granted within seven days i.e. 14.03.2018. He submits that as per the statute, the complaint filed is

hopelessly time barred. He submits that the delay occurred is not marginally beyond the prescribed limit of three years but there is total delay of 05 years, 07 months and 10 days in filing the complaint. He relies upon the judgments titled as *M/s Cheminova India Ltd. and another Vs. State of Punjab and another, 2021(3) RCR (CrL) 750;* *Sirajul and others Vs. State of UP and another, 2015(3) RCR (CrL) 661;* *Sohan Singh and others Vs. State of Punjab, CRM-M-6763-2018 decided on 16.01.2023;* *Sher Singh and another Vs. State of Punjab, CRM-M-6763-2018 decided on 16.01.2023;* *Sher Singh and another Vs. State of Punjab, CRM-M-17705-2018 decided on 05.02.2019 and Sanjay Gupta and others Vs. State of Punjab, CRM-M-1358-2018 decided on 30.04.2019* and has submitted that the proposition in question is no more *res integra* and time and again the Hon'ble Supreme Court and Hon'ble High Court has dealt with the proposition and thus, held that the prosecution launched against the accused by way of filing the complaint under Section 29 of the Insecticides Act beyond 03 years is not maintainable. He submits that the learned trial Court has miserably failed in appreciating the settled proposition of law and thus, has summoned the petitioners in a mechanical manner which is unsustainable in the eyes of law. He submits that issuing the summons against the petitioner cannot be in a cavalier manner as the same seriously prejudice the fundamental rights of the petitioners as envisaged under Article 21 of the Constitution of India and thus, the summoning is totally unsustainable in the eyes of law.

Learned State counsel, on the other hand, has submitted that the sample was sent for re-analysis and the report of the Central

Insecticide Laboratory was received. He has drawn the attention of this Court to the reply filed by the respondents by way of affidavit of Mr. Resham Singh, Insecticide Inspector, Ferozepur o/o Chief Agriculture Officer, Ferozepur. He has drawn the attention of this Court to the stand taken by the respondent in explaining the delay which read as under:-

“It is worthwhile to mention here that for instituting complaint the department/deponent had applied for sanction in time and soon after receiving the sanction the prosecution was immediately instituted as mentioned before this Para, as such there is no delay on the part of the deponent. Without any sanction prosecution cannot be instituted, after obtaining the sanction, deponent immediately filed the complaint in the Court which is well within limitation period.”

Learned State counsel submits that in view of Section 468 Cr.P.C., the complaint filed is within limitation. He submits that the sanction was received on 17.03.2018 and after having been granted the sanction, complaint for the prosecution of the petitioner for offence under Section 29 of Insecticides Act was filed on 27.03.2018 which is well within the limitation period.

Heard.

Admittedly, the shop was inspected on 17.07.2012. The samples were drawn on the same date and one of the sample was sent for analysis. The public analyst report was received on 17.08.2012 and as per the report, the sample drawn was found to be misbranded. On request of the responsible person of M/s Gill Spray Store, second sample was sent for re-analysis to Central Insecticide Laboratory on 04.10.2012 and the report from the said lab was received on 17.10.2012 and again even on

re-analysis, sample drawn was found to be misbranded. The prosecuting agencies applied for the sanction for launching prosecution against the petitioner on 07.03.2018 and after having been granted the sanction, complaint for the prosecution of the petitioner for offence under Section 29 of Insecticides Act was filed on 27.03.2018. i.e. after a period of 05 years, 07 months and 10 days.

As per the settled law, the statutory provisions of Sections 468 and 469 of Cr.P.C. read as under:-

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.

2[(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 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 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.

The offence is punishable for two years and therefore, the limitation to be computed is from the date when the public analyst report was received i.e. on 17.08.2012. Taking into consideration the limitation from the date of receipt of report from laboratory i.e. 17.08.2012, the complaint filed on 27.03.2018 is beyond the limitation. This has already been settled by the Hon'ble Supreme Court which is followed by the various High Courts as is evident from the aforementioned judgments cited earlier. Even after the receipt of the re-analysis report from the Central Insecticide Laboratory which was received on 17.10.2012 reaffirming the sample taken to be misbranded, the prosecution applied for the sanction on 07.03.2018 which was duly granted on 14.03.2018 despite that, the complaint was filed on 27.03.2018. For the computation of the limitation as settled by the Hon'ble Supreme Court, the relevant date is the date when the public analyst report was received which is admittedly 17.08.2012 and thus, the complaint filed looking from any angle is beyond limitation which is three years in the present case.

Learned trial Court has summoned the petitioners vide impugned order dated 27.03.2018 which read as under:-

“Complaint presented today. It be registered. This complaint has been filed by complainant insecticide Inspector in his official capacity. So recording of the statement of complainant and other preliminary evidence dispensed with.

I have heard the complainant and perused the file and other material available on the file. From the perusal of the same, prima facie case for the summoning of the accused for

the offence under Section 3(K)(i), 17, 18, 29 and 33 punishable under Section 29 of Insecticide Act, 1968 with Rules 27(5) of Insecticides Rules, 1971 stands made out as there exists sufficient grounds for proceedings against the accused. Let, all the accused be summoned for 05.06.2018.

At this stage complainant submitted that his personal appearance be dispensed with. Learned APP for the State, stated that he will go on appearing on behalf of the complainant. Considering these submissions, personal appearance of the complainant stands exempted till further orders. APP will go on appearing on behalf of the complainant.”

Perusal of the summoning order would show that the petitioners have been summoned by the trial Court in a mechanical manner. It further shows that the attending facts and circumstances have not been taken into consideration by learned trial Court. Hon'ble Supreme Court in *M/s Pepsi Foods Ltd. Vs. Special Judicial Magistrate, 1998 AIR (Supreme Court) 128* has held that the summoning cannot be ordered in a mechanical manner and Court has to apply its judicious mind before drawing a conclusion for summoning any accused.

Resultantly, this Court is of the opinion that the impugned Complaint No.38 dated 27.03.2018, under Sections 3(k)(i), 17, 18, 29 and 33 punishable under Section 29 of Insecticide Act, 1968 read with Rule 27(5) of Insecticides Rule, 1971 titled as "*State Vs. M/s Gill Spray Store & Others*" pending in the Court of learned Chief Judicial Magistrate, Ferozepur and summoning order dated 27.03.2018 along with consequential proceedings arising therefrom, do not stand on the anvil of the settled law and resultantly, both are quashed.

From the facts and circumstances of this case, glaring inaction of the Insecticide Inspector in prosecuting the petitioners as in accordance with law is writ large. In the similar circumstances, this Court in **Sanjay Gupta's case (supra)** had reprimanded the Insecticide Inspector for his lackadaisical attitude in carrying out the investigation and observed as follows:-

“This Court has found that the modality of filing the complaint after a long delay is not restricted to the present case only. In the present case also; due to huge and unexplained delay in filing the complaint by the complainant, Insecticide Inspector Jaswinder Singh, the manufacturer of the spurious insecticide have got scot free. Although Inspector Jaswinder Singh have tried to apportion a part of delay to Chief Agricultural Officer, Sangrur, who also is not free from blame in this case, however, the facts on record of the case show a clear-cut deliberate delay on the part of Complainant, Jaswinder Singh. The copy of sanction for prosecution is duly endorsed to the Complainant, Jaswinder Singh as well, with a further direction to contact the prosecution department and to launch the prosecution within a week. So he can not hide behind the inaction of Chief Agricultural Officer, Sangrur. The unexplained delay in filing the complaint has led to wastage of precious time of the Courts. Resultantly, this Court deems it appropriate to impose an exemplary cost upon the Complainant, the then Insecticide Inspector, Jaswinder Singh, for making the Courts to waste their time on the complaint. Accordingly, the Insecticide Inspector, Jaswinder Singh is burdened with cost of Rs.1 lakh to be paid from his personal pocket. This cost is directed to be deposited with the District Legal Services Authority, Sangrur, within a period of 15 days. Let the copy of this Order be sent to the Director Agriculture, Punjab for necessary compliance. The Direction Agricultural shall ensure that the above-said Jaswinder Singh deposits the

amount within 15 days from the date of receipt of certified copy of this Order, and shall also inform the Registry of this Court qua compliance within one month thereafter.”

Thus, the complaint has been filed with the gross delay of 05 years, 07 months and 10 days due to the inaction of the Inspector and the same cannot be ignored by this Court. Thus, the Insecticide Inspector Mr. Resham Singh is burdened with the cost of Rs.1,00,000/- to be paid by him from his personal pocket to the Poor Patients' Welfare Fund, PGIMER, Chandigarh within 15 days from the date of this order.

Copy of this order be sent to the Director of Agriculture (Plant Protection), Punjab for necessary compliance, who will also ensure the deposit of the cost by the said Insecticide Inspector Mr. Resham Singh within 15 days from the date of receipt of certified copy of this order and shall inform the Registry of this Court qua compliance within 15 days thereafter.

With the above-mentioned terms, the present petition for quashing is hereby allowed.

(**RAJESH BHARDWAJ**)
JUDGE

14.02.2023
m. sharma

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