

Neutral Citation No.2023:PHHC:118702
IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH
CRM-M-34569 of 2017 (O&M)
Reserved on 29.08.2023
Date of Decision: 11.09.2023

M/s Garg Spray Store and others

...Petitioners

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: - Mr. Rishabh Gupta, Advocate for the petitioners.
Mr. P.S. Pandher, AAG, Punjab.

DEEPAK GUPTA, J. (Oral)

By way of this petition filed under Section 482 Cr.P.C., petitioners pray for quashing complaint No.75-2 dated 21.05.2016 titled “*State through Sh. Mukhtiar Singh, Insecticide Inspector, Ferozepur Vs. M/s Garg Spray Store, Mudki and others*” (Annexure P.1), under Section 3(k)(i), 17, 18 and 33 punishable under Section 29 of the Insecticides Act, 1968 read with rules 27(5) of Insecticide Rules, 1971; the summoning order dated 21.05.2016 (Annexure P.2) and all the subsequent proceedings arising therefrom, pending in the Court of learned Chief Judicial Magistrate, Ferozepur.

2. As it emerges on perusal of the paper book, on 04.07.2012, Insecticide Inspector, Ferozepur, visited the premises of dealer i.e., M/s Garg Spray Store (petitioner No.1) and after making necessary statutory compliances, drew sample of an insecticide namely, *Tricentanol* 0.05% GR, batch No. ska 2205 and having manufactured date as June 2012 and expiry date as May, 2014 manufactured by Shri Kaveri Agro Industries, Sangrur (petitioner No.3). Bhagwan Chand (petitioner No.2) is the sole proprietor and responsible person of the dealer i.e., M/s Garg Spray Store; whereas, Kailash Bansal (petitioner No.4) is the responsible person and the proprietor of manufacturer i.e., Shri Kaveri Agro Industries.

3. Out of three samples collected by the Insecticide Inspector,

one of them was sent to Insecticides Testing Laboratory, Ludhiana on 05.07.2012. The report thereof dated 09.07.2012 (Annexure P.4) was received in the Office of Chief Agricultural Officer, Ferozepur, as per which sample was declared 'misbranded'. The show cause notices were issued by the Office of Chief Agricultural Officer to both the petitioners i.e., the dealer as well as manufacturer along with report of the analyst. The dealer i.e., M/s Garg Spray Store applied for retesting the sample. Second sample was sent to Central Insecticide Testing Laboratory, Faridabad with permission of the Chief Agricultural Officer, Ferozepur. However, as per report dated 17.10.2012 (Annexure P.5), the sample was still found to be misbranded. Necessary sanction/ written consent of the authorised person was obtained to seek prosecution of the accused i.e., dealer as well as manufacturer and then the complaint (Annexure P.1) was filed on 21.05.2016 to summon and prosecute the accused, i.e., petitioners. Vide order dated 21.05.2016 (Annexure P.2), learned Chief Judicial Magistrate, Ferozepur took cognizance and ordered summoning of the petitioners under Section 3(k)(i), 17, 18 and 33 punishable under Section 29 of the Insecticide Act, 1968 read with rule 27(5) of Insecticide Rules 1971.

4. Seeking quashing of the afore-said complaint and the summoning order, it is contended that the impugned summoning order has been passed on the basis of conjectures and surmises without taking any preliminary evidence and by ignoring the fact that the complaint was barred by limitation. It is contended that sample was drawn on 04.07.2012 and the report from the Central Insecticide Testing Laboratory, Faridabad was received on 17.10.2012. It is contended that the offences in question are punishable maximum for two years and that limitation for filing such a complaint for offences punishable above one

year and up to three years, is three years as per Section 468 of Cr.P.C. and, therefore, complaint filed on 21.05.2016 is clearly barred by limitation.

5. Learned State Counsel, opposing the petition, drawn attention towards the additional affidavit of Shri Mukhtiar Singh, Insecticide Inspector, Ferozepur, as per which he had applied for getting sanction under Section 31(1) of the Insecticide Act, 1968 to the Sanctioning Authority vide letter dated 04.03.2013 (Annexure R-1/T) and received the requisite sanction on 22.07.2014 and as such, the period spent for obtaining the sanction of the competent Authority from 04.03.2013 to 22.07.2014 is liable to be excluded for computing the limitation period as per Section 470 (3) Cr.P.C. Learned State Counsel contends that once this period is excluded for the purpose of computing the limitation, the complaint as filed on 21.05.2016 is well within limitation and, therefore, the present petition deserves to be dismissed.

6. Heard. The sole contention raised by learned counsel for the petitioners is that cognizance of the complaint in question (Annexure P.1) could not be taken by learned trial Court as the complaint is barred by limitation.

7. Various offences as provided under the Insecticide Act are punishable under Section 29 of the Act and for the first offence, the maximum imprisonment, which may be imposed is two years or with fine or both. Besides, written consent of the State Government or the person authorized in this behalf by the State Government is pre-requisite before launching the prosecution, as per Section 31 of the Act.

8. Section 468 of The Code of Criminal Procedure, 1973 creates a bar to take cognizance of some of the specified categories of

offences after lapse of the period of limitation. It reads 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.

(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.”

9. In present case, offences in question for which prosecution of the petitioners is sought, being punishable up to two years imprisonment i.e., less than three years, therefore, as per Section 468(2)(c) Cr.P.C., the period of limitation shall be three years. Said period of limitation is to commence from the date of offence as per Section 469 Cr.P.C.

10. Proceeding further, Section 31 of the Insecticides Act, 1968 provides for written consent of the State Government or the officer authorized by it before launching the prosecution. It reads as under:

“31. Cognizance and trial of offence. — (1) No prosecution for an offence under this Act shall be instituted except by, or with the written consent of, the State Government or a person authorised in this behalf by the State Government.”

Since the previous consent of the State Government or the

officer authorized by it, is mandatory before launching the prosecution as noticed above, so Section 470 Cr.P.C. is necessary to be mentioned, the relevant portion of which is as under: -

“470. *Exclusion of time in certain cases.*

(1) xxxx

(2) xxxx

(3) *Where notice of prosecution for an offence has been given, or where, under any law for the time being in force, the previous consent or sanction of the Government or any other authority is required for the institution of any prosecution for an offence, then, **in computing the period of limitation, the period of such notice or, as the case may be, the time required for obtaining such consent or sanction shall be excluded.** Explanation. - In computing the time required for obtaining the consent or sanction of the Government or any other authority, the date on which the application was made for obtaining the consent or sanction and the date of receipt of the order of the Government or other authority shall both be excluded.*

(4) xxxx”

12. Thus, where, under any law for the time being in force, the previous consent or sanction of the Government or any other authority is required for the institution of any prosecution for an offence, then, **in computing the period of limitation, the period of such notice or, as the case may be, the time required for obtaining such consent or sanction shall be excluded.**

13. In the present case, as noticed earlier, sample was taken on 04.07.2012. It is on 09.07.2012, when the report of the Senior Analyst was received and it became known that due to misbranding, offence had been committed by the petitioners-accused. Therefore, in view of Section 469 (1)(a) Cr.P.C. the period of limitation shall commence from this date i.e., 09.07.2012. Reliance can be placed on **“M/s Cheminova India Ltd. & Anr. vs State of Punjab and Anr.”**, reported as 2021(3) R.C.R.

(Criminal) 750, wherein date of receipt of the report of public analyst was

held to be the starting point of limitation by Hon'ble Supreme Court.

14. Learned counsel for the petitioners has also relied upon ***State of Rajasthan Vs. Sanjay Kumar, 1998(3) R.C.R. (Criminal) 846***, wherein it was held by Hon'ble Supreme Court that limitation to file a complaint starts from the date of receipt of the report of the Public Analyst and not from the date of collection of the sample by the Inspector.

In present case, complaint was filed on 21.05.2016 i.e., after 3 years 10 months and 12 days from the date of commencement of limitation.

15. However, the period from 04.03.2013 to 22.07.2014 was consumed for obtaining sanction of the competent authority for launching the prosecution. This period of 1 year, 4 months and 18 days is liable to be excluded for the purpose of computing the period of limitation, as per Section 470(3) Cr.P.C. The word "shall" as used in Section 470(3) Cr.P.C. clearly indicates that it is mandatory for the Court to exclude from the limitation period the period required for obtaining the consent or sanction before launching the prosecution from the competent authority and the Court has not any discretion therein.

16. Similar view was taken by Kerala High Court in "***George Thomas v State of Kerala***", 1987 Cr. LJ 1311; and also, by the Gauhati High Court in "***K. Vikheho Sema v. State of Nagaland***", 2007 CrLJ 4266. In "***Subramaniam v. State***", 1988 Mad LW (CrI) 326, it has been held by Madras High Court that when the special Act requires previous sanction for the prosecution, all provisions in the Code relating to grant of sanction would apply and therefore, the time taken for obtaining sanction has to be excluded while computing the period of limitation under Section 7 (b) of the Dowry Prohibition Act, 1961. Same view was earlier

taken by this High Court in CRM-M-7581-2019 titled '***RC Sharma vs.***

State of Punjab' decided on 07.02.2023.

17. Once the period of 1 year, 4 months and 18 days consumed for obtaining sanction of the competent authority to launch the prosecution is excluded in this case, then the time taken for filing the complaint works out to be 2 years, 5 months and 24 days i.e., less than 3 years and therefore, the complaint filed on 21.05.2016 is found to be well within limitation.

18. Learned counsel for the petitioners has referred to *M/s Balaji Sales Corporation and Another Vs. State of Punjab, 2013(7) R.C.R. Criminal) 1871; M/s Chandan Pesticides and another Vs. State of Punjab, 2014(3) R.C.R. (Criminal) 949; and M/s Hyderabad Chemicals Ltd., and others Vs. State of Punjab – CRM-M-10680 of 2012 (O&M) decided on 03.03.2014*, in all of which, the co-ordinate Benches of this Court had found the complaint to be barred by limitation.

19. I have carefully gone through all the above cited authorities, which are found to be distinguishable on facts. In the facts and circumstances of those cases, the complaints were found to have been filed beyond limitation. However, it is not so in the present case. As has been found above, after excluding the period consumed for obtaining the sanction from competent authority, the complaint is well within limitation.

20. In view of the entire discussion as above, the petition is held to be devoid of any merit. Consequently, the same is hereby dismissed.

September 11, 2023

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**(DEEPAK GUPTA)
JUDGE**

Whether reasoned/speaking: Yes
Whether reportable: Yes