

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CRM-M-20730-2022 (O&M)

Reserved on : 19.1.2023

Pronounced on : 8.2.2023

M/s Mahindra Shubhlabh Services Limited and another

....Petitioner

VERSUS

State of Punjab

....Respondent

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by : Mr. Gaurav Chopra, Sr. Advocate with
Mr. Rishabh Bajaj, Advocate,
for the petitioners.

Mr. C.L.Pawar, Addl. AG, Punjab.

KARAMJIT SINGH, J.

The petitioners have filed this petition under Section 482 of Cr.P.C. for quashing of the complaint No.COMA/1/2018 dated 24.1.2018 under Sections 3(k)(i), 17, 18, 29 and 33 of Insecticides Act read with Rule 27(5) of the Insecticides Rules, 1971 (Annexure P-1), order dated 29.4.2019 (Annexure P-9) whereby the application instituted by the respondent under Section 473 of Cr.P.C. was allowed and the summoning order dated 29.4.2019 (Annexure P-2) passed by the learned Sub Divisional Judicial Magistrate, Guru Harsahai, District Ferozepur and all the consequential proceedings arising therefrom.

Brief facts of the complaint are that on 4.7.2007, Jaswinder Singh, Insecticide Inspector, Guru Harsahai along with Teja Singh, Block Agricultural Officer, Guru Harsahai visited the shop premises of M/s Duggal Pesticides, Guru Harsahai, Ferozepur (dealer), in exercise of the

powers conferred upon them by the State Government and drew a sample of insecticide Cartap Hydrochloride 4% G from 5 kg packing manufactured by M/s Acme Organics Private Limited, Noida (UP) having batch No.272, manufacturing date August 2006 and the expiry date July 2008, which was taken at random for the purpose of analysis and the same was put in 3 clean and dry polythene bags separately each weighing 250 grams approximately. The polythene bags were tied tightly and put in 3 separate cloth bags. Then the seizure memo forms No.XX and XXI were prepared and form No.XX was signed by the complainant and Inderpal Singh proprietor of the aforesaid firm also signed the same. Form No.XXI was also put in the aforesaid 3 cloth bags. Then the samples were sealed by following the proper procedure and one part of the sealed sample was handed over to Inderpal Singh against proper receipt. The other two parts of the sealed sample were deposited with Teja Singh, Block Agricultural Officer, Guru Harsahai and then one part of the sample was sent for its analysis to Insecticide Laboratory, Amritsar. After analysis, the said laboratory gave its report dated 20.7.2007, as per which, the sample did not conform to its IS specifications in respect of the percentage active ingredient content, hence, was declared misbranded. Copies of the analysis report along with show cause notices were served to the aforesaid dealer, manufacturer and the marketing company of the said insecticide. The show cause notices were replied by the accused persons but the replies being found not satisfactory, an opportunity of personal hearing was given to the accused persons vide letter dated 10.9.2007. Dealer Inderpal Singh made written request for re-testing of the sample as per provisions of Section 24 of the Insecticide Act (in short, "the Act") and accordingly, second part of the sealed sample was

sent to Central Insecticide Testing Laboratory, Faridabad vide letter dated 1.1.2008 for its analysis. Even as per the said re-testing report which was received on 11.3.2008, the sample was not found to be conforming to the relevant specifications in the active ingredient content and thus, declared mis branded. After receipt of the report of re-testing of the second sample, all the formalities were completed and the case was sent to the Director Agriculture, Punjab at Mohali vide letter dated 3.9.2008 for getting proper sanction under the provisions of Section 31(1) of the Act to prosecute all the accused persons. Director Agriculture, Punjab gave sanction to prosecute the accused persons i.e. dealer, manufacturer and the marketing company of the concerned insecticide and to this effect, communication was received by the office of the complainant on 27.12.2017 and immediately, thereafter, impugned complaint (Annexure P-1) was filed by the complainant on 24.1.2018 in the Court of Sub Divisional Judicial Magistrate, Guru Harsahai.

Along with the said complaint, an application under Section 473 of Cr.P.C. was also filed by the complainant seeking condonation of delay in filing of the complaint. The said application was allowed by the learned trial Court vide order dated 29.4.2019 (Annexure P-9) and delay in filing of the complaint was condoned. On the same day, notice of the impugned complaint was issued to the accused persons by the learned trial Court vide order dated 29.4.2019 (Annexure P-2).

The petitioners were impleaded as accused persons being the marketing company of the insecticide in question and responsible person of the said marketing company. The petitioners have laid challenge to complaint (Annexure P-1), order dated 29.4.2019 (Annexure P-9) whereby

the delay in filing of the complaint is condoned and the summoning order (Annexure P-2) dated 29.4.2019 whereby all the accused persons including the petitioners are ordered to be summoned by the learned trial Court to face trial in complaint (Annexure P-1).

Learned senior counsel, while challenging Annexures P-1, P-2 and P-9, has contended that the sample in question was taken on 4.7.2007 and the report of the analyst was received on 20.7.2007 and even the report of re-testing of sample was received on 11.3.2008 and the complainant/district authorities sought sanction from the competent authority vide letter dated 9.11.2017 in order to prosecute the accused persons and the sanction to prosecute was granted on 27.12.2017 and thereafter, the complaint (Annexure P-1) was filed by the complainant on 24.1.2018 and thus, the complaint was clearly filed after the expiry of the prescribed limitation period of 3 years. The offence under the Act is punishable by maximum of 2 years imprisonment, so, the complaint could have been filed only within 3 years from the date of receipt of the report of analyst i.e. 20.7.2007, in light of the provisions of Section 468 of the Cr.P.C. Learned senior counsel has further submitted that even if the date i.e. 11.3.2008, on which, the report of re-testing of sample was received, is taken into consideration, then also, the complaint (Annexure P-1) was hopelessly time barred. In support of his contentions, learned senior counsel has placed reliance upon the judgment of Hon'ble Supreme Court in **M/s Cheminova India Private Limited v. State of Punjab and another**; 2021 (2) RCR (Criminal) 750 wherein the Hon'ble Apex Court held that the period of limitation within the meaning of Section 469 Cr.P.C. commences from the date, on which, the report of analyst was received from the

insecticide testing laboratory of the State concerned. Learned senior counsel has further submitted that the respondent cannot take any advantage of the fact that along with the complaint, an application under Section 473 of the Cr.P.C. was filed and that the same was allowed by the learned trial Court vide order Annexure P-9. Learned senior counsel has further argued that there was delay of more than 7 years in filing of the complaint but the learned trial Court condoned the delay without affording any opportunity of hearing to the accused persons including the petitioners, while placing reliance upon the pronouncement dated 15.12.2017 passed in CRM-M-18077-2015 **M/s Shree Ramcides Chemicals Private Limited and others v. State of Punjab**. Learned senior counsel submits that in the said case, the complaint under the Act was filed on 25.8.2014 on the basis of the report of analyst dated 3.8.2011 and the request for grant of sanction was sent on **5.9.2013** which was received on **1.1.2014** i.e. within the limitation period and the Court held that as per Section 470 (3) of the Cr.P.C., the period consumed for grant of sanction to prosecute, is to be excluded and thus, held that the complaint is not time barred. Learned senior counsel further submits that, however, the facts of the present case are entirely different as the request for grant of sanction to prosecute the accused persons was made after expiry of the limitation period as the said request was made on 9.11.2017 as is evident from sanction order dated 22.12.2017 (Annexure P-11).

Learned senior counsel further referred to judgment passed by Coordinate Bench of this Court dated 6.1.2023 passed in CRM-M-28297-2019 **Bhavesh Shah v. State of Punjab** wherein also, under similar circumstances, the complaint was quashed being hopelessly time barred

with the observations that-“the report of the public analyst was available on **29.1.2013** and the complaint was instituted on 23.3.2018. Even if the period between **8.12.2017** (the date on which the sanction was sought from the appropriate authority) to the time of sanction was granted on 16.2.2018 (by the sanctioning authority) was excluded, even then, the complaint was hopelessly time barred.”

Learned senior counsel has further submitted that in the present case, the sample of the insecticide was taken by the Insecticide Inspector from a sealed container on 4.7.2007 from the premises of the dealer namely M/s Duggal Pesticides. The said insecticide was manufactured by M/s Acme Organics Private Limited and the petitioners are arraigned as accused being the marketing company of the said insecticide. Learned senior counsel submits that this fact has not been disputed by the respondent in its reply dated 2.1.2023, which is by way of affidavit of Jaswinder Singh, Insecticide Inspector, Guru Harsahai; that in view of the matter, as the sample was taken from a sealed container, the petitioners cannot be held liable even if the sample was found to be misbranded. In support of his contentions, learned senior counsel referred to the provisions of Section 30(3) of the Act and further submitted that nothing has been brought on the record to show that the insecticide was not properly stored. Further, learned senior counsel has also placed reliance upon the pronouncement dated 20.4.2022 passed in CRM-M-20338-2017; **M/s Rallis India Limited and others v. State of Punjab through Insecticide Inspector** wherein the complaint lodged under the Act was quashed against the marketing agency/licensed dealer on the ground that the sample was drawn from the sealed container by the Insecticide Inspector.

Learned senior counsel has further contended that order (Annexure P-9) is passed by the learned trial Court in a mechanical manner and the application under Section 473 of the Cr.P.C. was allowed without issuing its notice to the accused persons. Learned senior counsel while referring to summoning order (Annexure P-2), has submitted that the same was also passed in a casual manner without even giving brief facts of the case.

The present petition is resisted by the State. Reply by way of affidavit of Jaswinder Singh, Insecticide Inspector, Guru Harsahai, Ferozpur filed on behalf of the State is taken on record.

Learned State counsel has submitted that in the present case, the sample was seized on 4.7.2007 and on its analysis, it was found to be misbranded vide analyst report dated 20.7.2007 and even on its re-testing, it was found to be misbranded vide analyst report dated 7.3.2008 and thereafter, the complainant sought sanction to prosecute the accused persons from the competent authority vide letter dated **3.9.2008** and the sanction was granted vide order dated 27.12.2017 and immediately thereafter, complaint (Annexure P-1) was filed on 24.1.2018. State counsel has further contended that along with the complaint, an application was also moved under Section 473 of the Cr.P.C. and the same was allowed by the learned trial Court after appreciating the entire facts and circumstances of the case vide order dated 29.4.2019 (Annexure P-9) and the learned trial Court while disposing of the said application held that the complaint has been filed within the limitation. State counsel has further submitted that on the same day, the learned trial Court issued notice to the accused persons in the complaint (Annexure P-1) in conformity with the provisions of Section 200

of the Cr.P.C. as the complaint (Annexure P-1) was made in writing by the Insecticide Inspector (a public servant), while acting in discharge of his official duties and thus, there was no need to examine the complainant. State counsel has further submitted that the petitioners are vicariously liable as per provisions of Section 33 of the Insecticide Act as the sample of the insecticide seized from the licensed dealer was found to be misbranded and petitioner No.1 is the marketing agency of the said insecticide and petitioner No.2 is the responsible person of the said marketing agency. State counsel has further made submission that the present petition deserves to be dismissed being devoid of merits.

I have considered the submissions made by the counsel for the parties.

Before proceeding in the matter, it would be necessary to examine the relevant provisions of law in this regard : -

Section 29 of the Insecticides Act, 1968, 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
- (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
- (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
- (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;

(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 [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—

(i) for the first offence, with imprisonment for a term which may extend to [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 [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.

Section 30 of The Insecticides Act, 1968 reads as under

30. Defences which may or may not be allowed in prosecutions under this Act.—

(1) Save as hereinafter provided in this section, it shall be no defence in a prosecution under this Act to prove merely that the accused was ignorant of the nature or quality of the insecticide in respect of which the offence was committed or of the risk involved in the manufacture, sale or use of such insecticide or of the circumstances of its manufacture or import.

(2) For the purposes of section 17, an insecticide shall not be deemed to be misbranded only by reason of the fact that—

(2) For the purposes of section 17, an insecticide shall not be deemed to be misbranded only by reason of the fact that;

(a) there has been added thereto some innocuous substance or ingredient because the same is required for the manufacture or the preparation of the insecticide as an article of commerce in a state fit for carriage or consumption, and not to increase the bulk, weight or measure of the insecticide or to conceal its inferior quality or other defect; or

(a) there has been added thereto some innocuous substance or ingredient because the same is required for the manufacture or the preparation of the insecticide as an article of commerce in a state fit for carriage or consumption, and not to increase the bulk, weight or measure of the insecticide or to conceal its inferior quality or other defect; or

(b) in the process of manufacture, preparation or conveyance some extraneous substance has unavoidably become intermixed with it.

(3) A person not being an importer or a manufacturer of an insecticide or his agent for the distribution thereof, shall not be liable for a contravention of any provision of this Act, if he proves—

(a) that he acquired the insecticide from an importer or a duly licensed manufacturer,

distributor or dealer thereof;

(b) that he did not know and could not, with reasonable diligence, have ascertained that the insecticide in any way contravened any provision of this Act; and

(c) that the insecticide, while in his possession, was properly stored and remained in the same state as when he acquired it.

Section 31 of the Insecticides Act, 1968, reads as under:-

31. Cognizance and trial of offences.-(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.

(2) No court inferior to that of a 1[Metropolitan Magistrate or a Judicial Magistrate of the first class] shall try any offence under this Act.

Section 33 of the Insecticides Act, 1968 reads as under:-

33. Offences by companies.-(1) Whenever an offence under this Act has been committed by a company, every person who at the time the offence was committed, was in charge of, or was responsible to the company for the conduct of the business of, the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment under this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any Director, Manager, Secretary or

other officer of the company, such Director, Manager, Secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purpose of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

Section 468 of the Cr.P.C. 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 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.]

Section 469 of the Cr.P.C. reads as under:-

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.

Section 470 of the Cr.P.C. reads as under:-

470. Exclusion of time in certain cases.-(1) In computing the period of limitation, the time during which any person has been prosecuting with due diligence another prosecution, whether in a Court of first instance or in a Court of appeal or revision, against the offender, shall be excluded:

Provided that no such exclusion shall be made unless the prosecution relates to the same facts' and is prosecuted in good faith in a Court which from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) Where the institution of the prosecution in respect of an offence has been stayed by an injunction or order, then, in computing the period of limitation, the period of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

(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) In computing the period of limitation, the time during which the offender-

(a) has been absent from India or from any territory outside India which is under the administration of the Central Government, or

(b) has avoided arrest by absconding or concealing himself, shall be excluded.

Section 473 of the Cr.P.C. reads as under:-

473. Extension of period of limitation in certain cases.-

Notwithstanding anything contained in the foregoing provisions of this Chapter, any Court may take cognizance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice.

The Hon'ble Supreme Court in the case of **M/s Cheminova India Ltd.**

(supra), held 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. Though the learned counsel has also raised other grounds in support of quashing, as we are persuaded to accept his submission that complaint filed is barred by limitation, it is not necessary to deal with such other grounds raised.”

From the aforementioned provisions of law and the judicial pronouncement of the Hon'ble Supreme Court, it is apparent that the period of limitation begins from the receipt of the report of the analyst and in the instant case, the period of limitation is 3 years from the said date. However,

the time spent in obtaining sanction to prosecute the accused persons is to

be excluded.

Now adverting to the facts of the present case, the sample of the insecticide was drawn on 4.7.2007 from the premises of the licensed dealer and the same was sent for its analysis to the Insecticide Testing Laboratory, Amritsar and the report of the analyst was received on 20.7.2007, as per which, the sample was found to be misbranded and accordingly, the accused persons were informed and some of the accused made request for re-analysis and the request was considered and even on re-testing, the sample was found to be misbranded vide report dated 7.3.2008 and the same was received on 11.3.2008. So, in this case, the period of limitation commenced from 20.7.2007 as per law laid down by Hon'ble Supreme Court in M/s Cheminova India Limited (supra) and if the same is to be considered from the date of the re-testing report, then the limitation period started from 11.3.2008.

It is the case of the prosecution that the request in writing was made to the competent authority seeking sanction to prosecute the accused persons vide letter dated 3.9.2008. However, no such communication dated 3.9.2008 which is stated to be made in writing by the concerned district authorities to the Director Agriculture, Punjab is produced on behalf of the State in the present petition along with its reply dated 2.1.2023. Even no such communication is available on the record of the learned trial Court. In this manner, the prosecution has *prima facie* failed to establish that the sanction to prosecute the accused persons was sought from the competent authority by the complainant/district authorities vide letter dated 3.9.2008. Undoubtedly, necessary sanction to prosecute the accused persons including the petitioners was given by the competent authority vide order dated

22.12.2017 (Annexure P-11). After going through the said sanction order (Annexure P-11), it appears that necessary sanction was granted by the competent authority in response to the letter No.6081 dated 9.11.2017 written by Chief Agricultural Officer, Ferozepur to the Director Agriculture, Punjab and in the said order, there is no mention of any previous letter dated 3.9.2008 which the prosecution is relying upon in order to bring its case within the period of limitation. It is not the case of the prosecution that the record relating to the said letter dated 3.9.2008 is missing from the office of the concerned official. Furthermore, if any such letter dated 3.9.2008 was ever sent to the office of the competent authority by the complainant/district authorities and no response to the same was received from the concerned office, in that case also, the complainant/district authorities were duty bound to send reminder within a reasonable period. However, in the instant case, no such reminder was ever sent within the prescribed period of limitation, thus, making it apparent that no such letter/communication dated 3.9.2008 was ever sent by the complainant/district authorities to the office of the competent authority for obtaining sanction as per the provisions of Section 31 of the Act to prosecute the accused persons and the only letter which was received by the office of the competent authority in this regard from the concerned district authorities was dated 9.11.2017. In these circumstances, the plea taken by the State counsel that the period from 20.7.2007/11.3.2008 till 22.12.2017 is to be excluded in light of the provisions of Section 470 of the Cr.P.C. is totally untenable. The period to be excluded in calculating the limitation of 3 years in the instant case is from 9.11.2017 to 22.12.2017, so making it clear that the complaint filed by the respondent has been filed after the expiry of about 6 years of prescribed period of limitation and the

said delay is inexplicable. Thus, the complaint Annexure P-1 is hopelessly time barred.

Further, in the present case, the sample was drawn from the original sealed package of the concerned insecticide as is evident from seizure memo comprised of Forms XX and XXI which are part of the record of the learned trial Court. There is nothing on record to show that the said sealed package/container was not properly stored by the licensed dealer or that at the time of taking of sample, the container of the insecticide was not found to be properly sealed or the seal was found to be tampered with by the Insecticide Inspector. In view of the fact that the sample was taken from a properly sealed container/package, the liability arising out of the misbranding cannot be that of the marketing agency or its employees, in light of the provisions of Section 30(3) of the Act. In this context, reliance can be placed on judgment of Hon'ble Supreme Court in **M/s Kisan Beej Bhandar, Abohar v. Chief Agricultural Officer, Ferozepur and another** (1990) SCC (Criminal) 623 wherein, it was held as under : -

“4. The High Court took the view that by enacting sub-section (1) of Section 30 of the Act, Parliament had taken out the element of mens rea from consideration and, therefore, knowledge was not at all material. Appellant's counsel has argued that protection of sub-section (3) is available not only to prosecutions but also to every contravention of the Act and cancellation of licence for contravention of the Act and cancellation of licence for contravention of the Act is also a matter covered by sub-section (3). We are inclined to accept the submission and take the view that whether it is prosecution or contravention leading to cancellation, sub-section (3) applies. In that view of the matter, on the facts found that it was a full tin in a sealed condition, the liability arising out of misbranding

was not of the appellant. Unless he had any other source of information about misbranding – and it has not been established – the appellant is entitled to the protection of (sic) appellant's contention that it was a sealed tin intact has been found, the burden that lay on him under the provisions of sub-section (3) had been satisfactorily discharged, even in the matter of considering the question of cancellation of licence and, therefore, his licence should not have been cancelled. We allow the appeal, reverse the order of the High Court and the authorities and restore the licence. The appeal is disposed of accordingly. No costs.”

Even Coordinate Bench of this Court in **M/s Rallis India Limited** (supra) has held that the petitioners i.e. marketing agency/licensed dealer cannot be held vicariously liable and penalised for misbranding of a product where they were not involved in the manufacturing process at all merely for having traded in the same.

In view of above, this Court finds that initiation and continuation of complaint (Annexure P-1) and the consequent proceedings against the petitioners are not legally justified and sustainable and the delay in filing of the complaint has resulted in misuse of the process of law. Accordingly, the present petition is allowed and complaint (Annexure P-1), order dated 29.4.2019 (Annexure P-9), summoning order dated 29.4.2019 (Annexure P-2) and the subsequent proceedings taken in pursuance thereof are quashed qua the petitioners only.

(KARAMJIT SINGH)
JUDGE

February 8, 2023
Paritosh Kumar

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