

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

CRM-M-36893-2014 (O&M)

Reserved on: November 03, 2023

Date of Decision: November 22, 2023

M/s Swastik Pesticides Ltd. and others

...Petitioners

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: - Mr. R.K. Girdhar and Mr. Chirag Girdhar, Advocates
for the petitioners.

Mr. Parneet Singh Pandher, AAG, Punjab.

DEEPAK GUPTA, J. (Oral)

By way of this petition filed under Section 482 of the Code of Criminal Procedure, prayer has been made to quash complaint case No.19 dated 15.05.2014 titled as “*State of Punjab v. M/s Swastik Pesticides Limited and Others*” (Annexure P-1) under Sections 3(k)(i), 17, 18, 29, 33 of the Insecticides Act, 1968 (hereinafter referred as 'the Act') read with Rule 27(5) of the Insecticides Rules, 1971, pending for adjudication in the Court of learned Chief Judicial Magistrate, Bathinda apart from the summoning order dated 15.05.2014 (Annexure P-2) and all the consequential proceedings arising therefrom qua the petitioners.

2. As it emerges on perusal of the paper book that on 05.06.2009, Insecticide Inspector, Bathinda, visited the premises of M/s Swastik Pesticides Ltd., Bathinda. After making necessary statutory compliances, he drew a sample of insecticide *Cartap Hydrochloride 4%*

GR, Batch No. SPC-9008, with manufacturing date as June, 2009 and expiry date as May, 2011, supplied by petitioner No.3 - M/s Swastik Pesticides Limited, Bhopa Road, Muzaffarnagar (U.P.). Out of the samples collected by the Insecticide Inspector, one of them was sent to the Senior Analyst, Insecticides Testing Laboratory, Bathinda on 08.06.2009. The report of the Insecticide Testing Laboratory, Bathinda dated 10.06.2009 was received in the office of Chief Agriculture Officer, Bathinda, as per which sample was found to be mis-branded. Copies of the report were sent to dealer as well as manufacturer. At the request of manufacturer, reference sample was got re-tested from the Central Insecticides Laboratory, Faridabad, but again it was found mis-branded vide report dated 20.11.2009. After obtaining necessary sanction from the competent authority, complaint was filed on 15.05.2014 to prosecute the dealer as well as manufacturer and their respective representatives under Sections 3(k)(i), 17, 18, 29, 33 of the Act. Learned Chief Judicial Magistrate, Bathinda, vide order dated 15.05.2014 ordered summoning of all the accused to face prosecution.

3. (i) The Complaint as well as summoning order have been assailed by the petitioners on the ground that complaint in question is barred by limitation, as all the alleged offences under the Act are punishable under Section 29 of the Act up to two years imprisonment and so, as per mandatory provision of Section 468 Cr.P.C., the limitation to launch prosecution is three years, but in the present case, the impugned complaint has been instituted after a delay of 05 year from the date of receipt of the Public Analyst report and so, being hopelessly barred by

limitation, the same is not maintainable.

(ii) To support the contention, Ld. counsel has relied upon a decision of this Court in **CRM-M-3715-2023** titled as **Sandeep Goyal and others Vs. State of Punjab** decided on 8th May, 2023, in which reliance had been placed upon a decision of Hon'ble Supreme Court titled as **M/s Cheminova India Ltd. and another Vs. State of Punjab and another, 2021(3) RCR (Crl) 750**; and **Sohan Singh vs. State of Punjab 2019 (2) RCR (Crl.) 314**.

(iii) Ld. Counsel contends that as the case is covered by the statutory bar of limitation, so the same is liable to be quashed without any further inquiry, as has been held by Hon'ble Supreme Court in **Sirajul and others Vs. State of UP and another, 2015(3) RCR (Crl) 661**.

With the aforesaid submissions, prayer is made for quashing the complaint in question along with summoning order and all subsequent proceedings.

4. (i) Replying to the aforesaid contentions, it is urged by learned State counsel that the sample was found to be misbranded by report of the central Insecticide Lab Faridabad on 20.11.2009. It is further submitted that after getting information about misbranded sample vide letter dated 24.10.2013 from the office of DD (LCPP), Chandigarh on 28.10.2013, the process for filing the complaint was started as per Insecticide Act, 1968 and sanction was applied, which was received on 28.10.2013 and then the complaint was filed on 15.5.2014.

(ii) Ld. state counsel submit that the time consumed for obtaining sanction to prosecute the accused is liable to be excluded, in view of

Section 470 Cr.P.C. It is further contended that period of limitation will start from the date of receiving report from the Central Insecticide Laboratory, as it is the accused-petitioners, who were not satisfied with the report of the Public Analyst and had made a request for re-testing. Still further, it is contended that after applying the judicious mind, Id. trial Court rightly issued the impugned summoning order. It is lastly urged that no prejudice has been caused to the petitioners in any manner and so, they should face trial.

With all these submissions, prayer is made for dismissal of the petition.

5. I have considered submissions of both the sides and have also perused the record carefully.

6. Various offences as provided under the 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.

7. Offences 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 to take cognizance of the offence. The period of limitation is to commence from the date of offence as per Section 469 Cr.P.C. 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

notice, 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”

8. In the present case, sample was taken on 05.06.2009. It is on 10.6.2009, when the report of the Public Analyst was received that it became known to the complainant that due to misbranding, the offences 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., 10.6.2009. Complaint was filed on 15.05.2014, i.e., after a gap of more than 04 years & 11 months from the date of commencement of limitation.

9. The contention of Ld. State counsel for the respondent to the effect that as accused – dealer as well as manufacturer had applied for re-analysis of the second part of the sample through Central Insecticide Laboratory, Faridabad, so limitation shall commence from the date of receipt of the report of Central Insecticide Lab, has no merit, in view of

the legal position explained by the Hon'ble Supreme Court in case of *“M/s Cheminova India Ltd. & Anr. vs State of Punjab and Anr.”*, reported as *2021(3) R.C.R. (Criminal) 750* and also by this Court in case of *Sandeep Goyal and others Vs. State of Punjab (supra)* and *“Sohan Singh and others v State of Punjab” (supra)*, wherein a similar issue was raised.

10. In *“M/s Cheminova India Ltd.’s case (supra)”*, report of the Analyst from the Insecticide Testing Laboratory was received on 14.03.2011; whereas complaint was filed on 25.03.2014 i.e., beyond a period of three years. The submission was made by the State counsel that report from the Central Insecticide Laboratory was received on 09.12.2011, which was the conclusive evidence of the fact of misbranding and so, complaint was within the period of limitation. Rejecting the said contention, it was held by the Hon'ble Supreme Court, as under: -

“10. ---- 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 labeled 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 mis-branding, 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. ---- ”*

11. Similar view was taken by this court ***Sandeep Goyal (supra); Sohan Singh (supra)*** and also in CRM-M-17705-2018 (O&M) titled as ***“Sher Singh and another vs State of Punjab”*** decided on 05.02.2019; and CRM-M-1358-2018 (O&M), titled as ***“Sanjay Gupta and others vs State of Punjab”*** decided on 30.04.2019.

12. It is no doubt true that period consumed for obtaining the consent of the State Government to launch the prosecution is liable to be excluded while computing the limitation period, as per Section 470 (3) Cr.P.C., but in this case, it is not informed either in the complaint Annexure P-1 or in the reply to this petition as to when the sanction was applied, nor it Carta is informed as to when the sanction was received.

13. In view of the aforesaid discussion, there cannot be any hesitation to conclude that complaint in question being time barred having been filed after more than 4 years & 11 months from the date of

cause of action, so the same is not maintainable. It has been held by Hon'ble Supreme Court in *"Sirajul & Ors. v. The State of U.P. & Anr."*, **2015(3) R.C.R.(Criminal) 661**, that cases covered by statutory bar of limitation may be liable to be quashed without any further inquiry, although for the cases not covered by statutory bar, ground of delay can be pleaded in appropriate cases due to violation of the speedy trial.

14. In the present case, the complaint in question is statutorily barred by limitation and so, being not maintainable, is liable to be quashed without any further inquiry.

15. In view of the aforesaid discussion, complaint, the summoning order and all subsequent proceedings arising therefrom, are hereby quashed for the reasons that complaint itself is not maintainable, being barred by limitation.

November 22, 2023

Sarita

(DEEPAK GUPTA)

JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable: Yes/No