

CRM-M-42333-2017

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

CRM-M-42333-2017(O&M)

Date Reserved:-30.05.2023

Date of Pronouncement:-June 02, 2023

Innova Captab

...Petitioner

Vs.

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Akshay Jain, Advocate, for the petitioner.
Mr. Gaurav Bansal, DAG, Haryana, for respondent-State.

HARKESH MANUJA, J.

1. By way of present petition filed under Section 482 Cr.P.C., prayer has been made for quashing of Criminal Complaint Case No.2 of 08.06.2012 (Annexure P-5) and all consequential proceedings arising therefrom including summoning order dated 08.06.2012, passed against the petitioner for offence punishable under Section 28 of the Drugs and Cosmetics Act 1940 (hereinafter referred as to as 'Drugs Act') as well as order dated 21.12.2016 whereby the complaint case has been sent to the Court of learned Chief Judicial Magistrate, Sirsa for trial.

2. Briefly stating, facts of the present case are that on 08.10.2008 the inspecting team visited a chemist shop under the name of M/s Behal Medical Agency, Land Market, Sirsa; inspected the premises and took various samples of allopathic drugs in Form-17 for the purposes of test and analysis. Pursuant to the seizure made by the respondent, the drugs were

sent to the Government Analyst and vide report dated 26.02.2009 (received by the Drug Inspector on 05.03.2009) in Form-13 issued by the Government Analyst in terms of Section 25(1) of the Drugs Act and the same was declared to be not conforming to the standard quality on account of the assay/potency of ciprofloxacin being less than the IP limits. Consequently, original test report and the third sample portion was forwarded to the petitioner vide letter dated 05.05.2009 by the respondent. On 08.03.2010, the investigating team along with drug authorities visited the manufacturing unit of the petitioner firm and directed it to submit certain documents by virtue of the letter dated 08.03.2010. On receipt of the aforementioned letter, petitioner firm submitted the requisite information and documents as demanded by the respondent. After receipt of the reply from the petitioner, sanction to prosecute was moved by the respondent on 16.03.2011 and the same was accorded by the Controlling Authority vide letter dated 13.10.2011.

3. Resultantly, respondent filed Criminal Complaint dated 07.06.2012 in the Court of learned Additional Sessions Judge, Sirsa and the same was registered vide Criminal Complaint Case No.2 of 08.06.2012 in terms of Section 32 of the Drugs Act for violation of Section 18(A)(1) thereof being punishable under Section 28. Pursuant to the filing of the complaint, the Additional Sessions Judge took cognizance of the offence by issuing summons to the petitioner vide order dated 08.06.2012. However, vide order dated 21.12.2016, it was observed by Ld. Sessions Judge that alleged offences took place in the year 2008 i.e. prior to the amendment in

the Drugs Act, effective from 10.08.2009, as such the offences were triable by the court of learned Judicial Magistrate Ist Class, therefore, this case file was also sent to learned Chief Judicial Magistrate, Sirsa for disposal according to law. In pursuance to the order dated 21.12.2016, complaint case No.02 of 08.06.2012 was registered as Complaint Case No.154 of 21.12.2016 in the court of learned Chief Judicial Magistrate, Sirsa and the same is now pending adjudication.

4. Relying upon the decisions rendered by Hon'ble Supreme Court in case of ***“Cheminova India Limited and another vs. State of Punjab and another”***, (2021) 8 Supreme Court Cases 818 and ***“State of Rajasthan vs. Sanjay Kumar, 1998 (3) RCR (Criminal) 846***, besides, Section 468 Cr.P.C. as well as Section 27(d) of the Act, learned counsel for the petitioner submits that once the report of Government Analyst was received by the respondent on 05.03.2009, the complaint filed at their instance on 07.06.2012 was clearly barred by limitation and could not have been entertained at all by the learned Additional Session Judge. In this regard, learned counsel for the petitioner refers to paragraph 13 of ***Cheminova's*** case (supra) as well as paragraph 13 of ***Sanjay Kumar's*** case (supra), which are reproduced hereunder for reference:-

“Para 13 of Cheminova's case (supra):-

“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 Crl.A.@S.L.P.(Crl.)No.4102 of 2020 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.”

Para 13 of Sanjay Kumar's case (supra)

“For the above reasons, in the instant case, the limitation for the purpose of Section 468(2) (c) will commence from July 2, 1988, the date of knowledge of the commission of offence to the concerned officer under Section 469(1) (b) but not from February 29,1988 (the date of collection of samples by the Drugs Inspector) and as the complaint was filed on June 28, 1991 which is within three years so the complaint is not barred by limitation under Section 468(2) (c). The High Court has missed this germane aspect erroneously took the date of commencement of the limitation as February 29,1988 , the date on which the samples were collected by the Drugs Inspector from accused No. 16. It is thus clear that the High Court has committed illegality in so computing the period of limitation, which results in miscarriage of justice.”

5. Learned counsel further contends that the complaint has been sent to the CJM, Sirsa by virtue of order dated 21.12.2016 after more than four years of its initial filing, while Section 201 Cr.P.C. only postulates return of the complaint to be filed before the competent Court, but this course was never adopted by the Additional Sessions Judge and consequently, complaint was further barred by limitation. He also raises the point that in the complaint, only the firm has been arrayed as accused and though an attempt has been made now to cover up the deficiencies by filing an application in this regard; but amendment of complaint is not provided under the Cr.P.C. For this purpose he places reliance upon “**S.R. Sukumar v. S. Sunaad Raghuram**”, reported as (2015) 9 SCC 609 and “**Jai Mata Traders v. Unique Foundary Regd.**”, reported as 2011 SCC OnLine P&H 3642.

6. On the other hand, learned State counsel submits that delay has been caused on account of official formalities required to be completed in such cases. With respect to the argument that only firm has been arrayed as accused, he submits that an application dated 22.03.2023 has been filed before CJM, Sirsa to proceed against the responsible persons of the firm and the same is pending adjudication.

7. I have heard learned counsel for the parties and gone through the paper-book.

8. A perusal of summoning order dated 08.06.2012 reveals that summons were issued against the accused for the offence under Section 18(A)(1) punishable under Section 28 of the Drugs Act. For the purpose of

adjudication of present dispute, it may be necessary to delve upon Section 28 of the Drugs Act, besides Sections 468, 469 Cr.P.C., which are reproduced hereunder for reference:-

“Section 28 of the Drugs and Cosmetic Act:-

28. *Penalty for non-disclosure of the name of the manufacturer, etc.—**Whoever contravenes the provisions of section 18A or section 24 shall be punishable with imprisonment for a term which may extend to one year, or with fine which shall not be less than twenty thousand rupees or with both.*

Section 468 & 469 of Cr.P.C.:-

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.*

469. *Commencement of the period of limitation:-*

- (1) The period of limitation, in relation to an offence, 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."*

9. Maximum punishment that would become imposable upon one being proved guilty for offence under Section 28 of the Drugs Act would be for a period of one year. Section 468 of the Cr.P.C. bars the concerned Court from taking cognizance after lapse of the period of limitation and the period of limitation as per 468(2)(b) is mandated to be one year if the offence is punishable with imprisonment for a term not exceeding one year. The report of the Laboratory in this case was received on 05.03.2009 & thus, the limitation to file complaint would expire on 04.03.2010 while the same has been filed by the Drug Inspector on 07.06.2012 i.e. approximately after 3 years and 3 months when period of limitation was long over. Despite of there being no application for condonation of delay, summoning order dated 08.06.2012 was passed by the Court of learned Additional Session Judge, Sirsa against the present petitioner, which was clearly beyond jurisdiction in view of the conjoint readings of the Sections mentioned above.

10. On a specific query put to the respondent counsel regarding the applicability of law laid down in **Cheminova's** case (supra) and **Sanjay Kumar's** case (supra) to the present case, no satisfactory exception has been carved out. Therefore, the entire proceedings right from registration of the complaint are rendered unsustainable being in violation of Section 468 of the Cr.PC. as well as the judgments of Hon'ble Apex Court in **Cheminova's** case (supra) and **Sanjay Kumar's** case (supra).

11. There is another reason as well which has weighed into the mind of this Court. In the complaint, only the firm has been arrayed as accused without impleading it through any of its authorised representative. When this fact came to the notice of this Court, vide order dated 14.03.2023, the State Drugs Controller, Haryana was directed to file affidavit for explaining the deficiencies referred therein. Subsequently an application dated 22.03.2023 has been filed before CJM, Sirsa to proceed against the responsible persons of the firm, however, in view of the authorities cited by the counsel for the petitioner in case of **S.R.Sukumar's** case (supra); wherein it was held that amendment of complaint cannot be allowed if there is likelihood of prejudice to the other side, even the maintainability of such an application seeking impleadment through amendment is doubted and thus, criminal proceedings against the company only, when sentence of imprisonment cannot be imposed on the juristic person ("**Standard Chartered Bank v. Directorate of Enforcement**", 2005(2) Apex Criminal 176: 2005(2) R.C.R.(Criminal) 913: 2005 (3) CTC 39 (SC): (2005) 4 SCC 530), are an exercise in futile.

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12. For the aforesaid reasons, this petition is allowed and Criminal Complaint Case No.2 of 08.06.2012 (Annexure P-5) and all consequential proceedings arising therefrom including summoning order dated 08.06.2012 as well as order dated 21.12.2016 whereby the complaint case has been sent in the Court of learned Chief Judicial Magistrate, Sirsa for trial and all other consequential proceedings in Criminal Complaint Case No.154 of 21.12.2016 stand quashed .

13. Pending miscellaneous application(s), if any, shall also stand disposed of.

June 02, 2023
sanjay

(HARKESH MANUJA)
JUDGE

whether speaking/reasoned: Yes/No
whether reportable: Yes/No