

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-47018-2018 (O&M)

Date of decision: 23.03.2023

SOHAN SINGH GILL & ORS

...Petitioners

Versus

STATE OF PUNJAB THROUGH INSECTICIDE INSPECTOR

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

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

Mr. Manipal Singh Atwal, DAG Punjab

AMAN CHAUDHARY. J.

1. The present petition under Section 482 Cr.P.C. has been filed for quashing of the Complaint Case No.92 dated 05.01.2018, Annexure P-1 registered for violation of Sections 3(k)(i), 17, 18, 29 and 33 of the Insecticide Act, 1968 read with Rule 27(5) of Insecticide Rules, 1971 titled as “State vs. M/s Kissan Fertilizers and others” as pending adjudication in the Court of Ld. CJM, Patiala and summoning order dated 05.01.2018, Annexure P-2 alongwith all consequential proceedings arising therefrom qua the petitioners.

2. Briefly put, facts as emerge from the case are that petitioner No.1 is the proprietor of the petitioner No.2-firm, while petitioner No.3 is an ex-employee. The firm is a registered manufacturer of various kinds of insecticides and pesticides having a valid license in this regard from the

appropriate authority under the Insecticides Act. It has a lab, fitted with modern equipment of testing in the factory premises, wherein each and every lot of material as manufactured is tested before it is sent out for sale in the market, leaving no scope for the product to be misbranded. However, a raid was conducted at the premises of dealer of the petitioner-firm on 13.07.2012 by Insecticide Inspector who drew a sample of insecticide, namely Cartap Hydrochloride 4% GR Batch No.GCC105, having date of manufacturing as May 2012 with an expiry of 2 years. One part of the sample was sent to Senior Analyst, Insecticide Testing Laboratory Ludhiana for its analysis on 16.07.2012 i.e., after a period of 3 days of drawing of the sample. As per the public analyst report dated 30.07.2012 the sample was found to be misbranded having an active ingredient content of 2.44% as against 4%. The Department instituted a complaint for violation of Sections 3(k)(i), 17, 18, 29 and 33 of the Insecticides Act on 05.01.2018, wherein a notice was issued vide order of even date for 17.02.2018.

3. Learned counsel for the petitioner would contend that the complaint is liable to be quashed since it had been instituted on 05.08.2018 i.e., after 5 years 5 months and 6 days of the first report of public analyst dated 30.07.2012, thereby exceeding the limitation period of three years provided to take cognizance under Section 468 Cr.P.C. He relies on judgment of Hon'ble The Supreme Court of India in the case of **Cheminova India Limited and another vs. State of Punjab and another**, (2021) 8 SCC 818, and judgment of this Court in **Sher Singh and another vs. State of Punjab**, CRM-M-17705 of 2018 decided on 05.02.2019.

4. Learned State counsel would submit that an application had been filed by the Department under Section 5 of the Limitation Act for

condonation of delay in filing the complaint on the ground that in order to file the same, a written consent/approval under Section 31(1) of the Insecticides Act was required, which was received on 01.11.2017. He submits that the request to grant sanction to file a complaint was submitted on 13.08.2015, and the same was granted vide order dated 01.11.2017 by the competent authority. The complaint thereafter was filed on 05.01.2018. The aforesaid period for awaiting report as well as the time taken for receiving the sanction has to be excluded while computing the period of limitation as per Section 470(3) Cr.P.C. He further submits that a combined reading of the aforesaid provisions of law and the judgments would make it apparent that the period of limitation begins from the receipt of the report of the analyst i.e., three years from the said date. However, the time spent in obtaining sanction is to be excluded therefrom.

5. In rebuttal, learned counsel for the petitioner asserts that firstly the application seeking condonation of delay ought to have been filed under Section 473 Cr.P.C., it being criminal proceedings, whereas the application filed by the State was under Section 5 of the Limitation Act, thus was not maintainable. He further submits that even otherwise referring to the contents of the application, it is borne out that the explanation or the condonation of the delay has been sought from the date of filing of the application for seeking sanction till it was received, though no dates have been specifically mentioned therein, but not for the period from thereto. Thus, the application is also vague, being bereft of essential averments. He submits that even if the said period is excluded, still the complaint is time barred, taken from the date of receipt of first report. The cause of action to file the complaint arose from the date of receipt of the first report of public

13.08.2015, the same had been granted on 01.11.2017. Thereby, the total delay being 5 years 5 months and 6 days. To buttress his aforesaid submission, he relies on **Sarah Mathew vs. Institute of Cardio Vascular Diseases by its Director**, 2014 (1) RCR (Criminal) 590 and **Sohan Singh vs. State of Punjab**, 2018 SCC OnLine P&H 7093.

6. Heard the learned counsel for the parties at length.
7. It would be worthwhile to refer to the relevant provisions of law for consideration of the case in hand, which reads thus:

“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.

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 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.

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 limitation, the time during authority shall both be excluded.

(4) In computing the period of 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 29 (1) (i) of the Insecticides Act reads thus:

"(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; te" (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;"

8. The crucial date of commencement of period of limitation would be the date of first analysis report and merely because a further request made for sending sample to Central Insecticide Testing Laboratory, as contemplated under Section 24(4) of the Act, the report of which is received subsequently cannot be the basis for commencement of period of limitation. Thus, the complaint lodged after three years from the date of receipt of the first report was barred by limitation. As such, allowing the proceedings to go on based on such complaint was found to be an abuse of process of law, as held by Hon'ble The Supreme Court in **Cheminova India Limited and another vs. State of Punjab and another**, (2021) 8 SCC 818.

9. In **M/s Doaba Seeds Store vs. State of Punjab**, 2018(4) Law Herald 3396, **M/s SinglaKhetiSewaKender and another vs. State of Punjab**, CRM-M-36938-2016, decided on 06.12.2019 and **ZamidaraKheti and another vs. State of Punjab**, 2019(1) RCR (Crl.) 288, the respective complaints and summoning orders being barred by time, were quashed by the High Court, observing that the delay caused by the complainant has resulted in misuse of the process of law and in defeating the ends of justice, thus, initiation and continuation of the complaint against the petitioners is not legally justified and sustainable.

10. In so far as the submission of the learned State Counsel with regard to the exclusion of period spent for seeking sanction while computing the period of limitation as per Section 470(3) Cr.P.C. is concerned, the application filed for condonation of delay along with the complainant under Section 5 of the Limitation Act, is apposite to be referred to, which reads thus:-

“Application under section 5 of the Limitation Act for condonation of delay in filing of the complaint. The Complainant respectfully submits as under:-

1. That the above noted complaint is being filed in this: Hon'ble Court alongwith the present application. The complaint is likely to succeed as per averments made therein, which may kindly be read as part of this application.
2. That there is delay in filing of the complaint which occurred due to the reason that the complaint is a government department and in order to file the complaint u/s 27(5) of the Insecticide Rules 1971, the written consent/approval under section 31 (1) of the Insecticides Act, 1968 was required and as such, as per law and rules of the government, the letters were sent and correspondence was made to the competent authorities by the complainant for grant of approval/consent in writing as required under section 31 (1) of the Insecticides Act 1968 so that the present complaint can be filed in this Hon'ble Court against the accused persons mentioned in the complaint and they can be punished by the court in accordance with law. It is pertinent to mention here that the letters for grant of approval/sanction were sent within time by the complainant to the competent authorities, but it took sufficient long time through proper channel and procedure of government in the said process.
3. That the written consent/approval u/s 31 (1) of the ibid Act has been received by the complainant from the Joint Director Agriculture (Plant Protection), Punjab, S.A.S Nagar in the month of Nov, 2017 who had signed the approval/consent on 01.11.2017 and which was subsequently sent to the complainant vide endorsement No.2856-58/A.D.O.(P.P)(1) dated 01.11.2017. Copy of same is attached herewith for kind perusal.
4. That thereafter, the necessary proceedings were initiated and the complaint was prepared and hence the complaint is being filed in this Hon'ble Court.
5. That the delay in filing the complaint is neither intentional nor willful, but due to above mentioned reason.
6. That there are sufficient grounds for condoning the delay.
7. That the accused are liable to be punished for the offence committed by them which is serious in nature.
8. That in case the delay is not condoned then serious prejudice shall be caused to the complainant.
It is, therefore, prayed that the application may Kindly be allowed and the delay in filing the complaint may Kindly be condoned, in the interest of justice.”

11. Hon'ble The Supreme Court in **Sarah Mathew** (supra), while drawing out a distinction between Section 5 of the limitation Act and

Section 473 CrPC held that, "It is absurd to hold that the Court should issue

notice to the accused for condonation of delay, explain the delay caused at its end and then pass condoning or not condoning the delay. Law cannot be reduced to such absurdity. Therefore, the only harmonious construction which can be placed on Sections 468, 469 and 470 of the CrPC is that the Magistrate can take cognizance of an offence only if the complaint in respect of it is filed within the prescribed limitation period. He would, however, be entitled to exclude such time as is legally excludable. The role of the Court acting under Section 473 was aptly described by this Court in VankaRadhamanohari (Smt.) where this Court expressed that this section has a non-obstante clause, which means that it has an overriding effect on Section 468. This Court further observed that there is a basic difference between Section 5 of the Limitation Act and Section 473 of the CrPC. For exercise of power under Section 5 of the Limitation Act, the onus is on the applicant to satisfy the Court that there was sufficient cause for condonation of delay, whereas, Section 473 enjoins a duty on the Court to examine not only whether such delay has been explained but as to whether, it is the requirement of justice to ignore such delay. These observations indicate the scope of Section 473 of the CrPC. Examined in light of legislative intent and meaning ascribed to the term cognizance by this Court, it is clear that Section 473 of the CrPC postulates condonation of delay caused by the complainant in filing the complaint. It is the date of filing of the complaint which is material."

12. Now advertent to the facts of the case in hand, even if this Court for the sake of arguments, ignores the factum of the application filed under Section 5 of the Limitation Act instead of the correct provision of law i.e., Section 473 Cr.P.C., still apparent it is, that at best the State is making

an endeavour to get the delay condoned for the period consumed in

obtaining the sanction. It is worth a notice that the application in that regard was filed on 13.08.2015 and vide order dated 01.11.2017, the sanction was granted. Excluding the aforesaid period also, does not make the complaint fall within the period of limitation, cognizance whereof could have been taken. Further still, there is no cause much less sufficient, shown in the aforesaid application for the period between the receipt of the first report of the Analyst and the date on which the application seeking sanction was submitted. Thus, the effort to justify the delay by filing an application appears to be only half-hearted. Taken from any which way, the application is of avail to the State to get the delay condoned.

13. In somewhat similar set of facts, there having been found to be no pleading in the application with regard to the explanation from the date of receipt of public analyst report till the date on which application was filed for seeking sanction, as also it was filed under Section 5 of the Limitation Act instead of Section 473 Cr.P.C., this Court in **Sohan Singh and others** (supra), allowed the petition and held that trial Court would have had no ground to extend time, paras as relevant to this case read thus:-

“8. Much reliance has been placed by learned State counsel on the application moved by the complainant for extension of time, as permitted by section 473 of Cr.P.C, 1973 To buttress his argument, learned State counsel has relied upon the explanation given in the application moved for condonation of the delay which has occurred in filing the complaint. The relevant para of the application is reproduced hereinbelow:-

"5. That the office of Chief Agriculture Office, Bathinda applied for sanction for the prosecution of the accused with the Joint Director, Agriculture (Plant protection) Punjab and the sanction for prosecution of the accused was granted by the competent authority on 7.4.2017. And it was received in the officer of the Chief Agriculture Office on 17.04.2017.

6. That the entire file remained in custody of the concerned official of the office of Chief Agriculture Office, Bathinda and was never entrusted to the complainant for filing the complaint.

7. That the file was handed over to the complainant on 28.04.2017 and the remaining documents(Form no.XX, insecticide purchase bill and letters through which sample was sent from AO Maur to CAO Bathinda, AO Maur to APPO Bathinda and from CAO Bathinda to lab) were handed over to the complainant on 02.01.2018. Thereafter the complainant completed the entire file and got prepared the complaint.'

9. A bare perusal of the above said pleading of the complainant, submitted for seeking explanation of time show that, in fact, there is no explanation furnished by the complainant in this case for the delay which has occurred in filing the complaint. The explanation of the delay is given only from the date of applying for sanction for filing complaint, dated 20.02.2017 till the date of grant of sanction, ie, 17.04.2017. However, there is not even any pleading as to what is the explanation for the period from 17.07.2012 till 20.02.2017.

10. In view of the above, even if the Trial Court would have so considered fit to apply its mind to extend the time, there would not have been any material before the Trial Court to extend the time. The prayer made by the Complainant; for extension of time, is without any basis being disclosed on the record of the case. Hence even the application and prayer for extension of the time is insignificant qua the case of the petitioner."

14. It would be pertinent to notice that since the punishment prescribed for the offence under Section 29 of the Insecticides Act is two years, thus, the period for taking cognizance under Section 468 Cr.P.C. is three years. As is explicit from the record, the sample was drawn on 13.07.2012, which as per the first Analyst report dated 30.07.2012 was found to be misbranded, whereas the complaint in question was instituted on 05.01.2018, ergo, it is barred by limitation. It is the duty of the High Court to look into each and every case with great detail to prevent miscarriage of justice as held by Hon'ble The Supreme Court in **Hasmukhlal D. Vora vs. State of T.N.**, 2022 SCC OnLine SC 1732, thus, in the present case, the proceedings deserve to be quashed.

15. The facts of this case when viewed from the exposition of law, this Court is persuaded to allow the present petition. As a sequel thereto, the

complaint No.92 dated 05.01.2018, titled as "State vs. M/s Kissan Fertilizers

and Others" (Annexure P-1) as well as the summoning order dated 05.01.2018 (Annexure P-2) are quashed.

23.03.2023
S.Sharma/gsv

(AMAN CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

:

Yes / No
Yes / No