

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

277/2

CRM-M-46219-2017(O&M)
Date of decision: 08.08.2023

Harish Gulati and another

...Petitioners

Versus

State of Punjab Through Insecticide Inspector

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

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

Mr. Manipal Singh Atwal, DAG Punjab

AMAN CHAUDHARY, J.

1. Prayer in the present petition filed under Section 482 of the Code of Criminal Procedure is for quashing of complaint Nos.30 dated 12.09.2017 respectively under Sections 3(k)(i), 17, 18, 29 and 33 of the Insecticide Act, 1968 (for short 'the Act') titled as 'State vs. M/s Jain Khad Company and others' and summoning order dated 12.09.2017, Annexure P-2, passed by learned Sub Divisional Judicial Magistrate, Dhuri, District Sangrur.

2. The factual matrix of the case is that the complainant-Insecticide Inspector drew a sample from an originally sealed packet on 12.07.2012, of one insecticide i.e. Cartap Hydrochloride 4% GR, Batch No.123100, from the premises of M/s Jain Khad Company, Dhuri manufactured in the month of March, 2012 by M/s Agrico Organics Ltd., Delhi, with an expiry of two years. It was sent for testing and the report of the first sample was received, declaring it to be misbranded. The sample aforesaid was found misbranded on having been

examined by the State Insecticide Testing Laboratory, Ludhiana wherein active ingredients were found to be 3.52% instead of 4%, vide report dated 16.04.2012 and thereafter, the referral part of the sample was sent to Central Insecticide Laboratory, Faridabad, upon which active ingredients were found to be 3.67%. A show cause notice was issued to the petitioners leading to filing of the complaint dated 12.09.2017, Annexure P-1 was filed and summoning order was passed vide order of even date, Annexure P-2, by the learned Trial Court.

3. Learned counsel for the petitioners submits that the complaint is barred by time as per Section 468 Cr.P.C., since it was filed after 5 years. Additionally, the petitioners are only the Director and Godown Incharge and thus, are not in any manner the responsible persons for ensuring the quality of the products. Therefore, they are not liable to be prosecuted as per Section 33 of the Act for the product found to be misbranded. Further, he submits that there are no specific averments in the complaint with regard to them being responsible for the day-to-day conduct of the business, therefore, no liability can be fastened on them. Reliance is placed on **State (NCT of Delhi) vs. Rajiv Khurana**, (2010) 11 SCC 469, **Sher Singh and another vs. State of Punjab**, CRM-M-17705-2018 decided on 05.02.2019 and **Cheminova India Ltd. vs. State of Punjab**, (2021) 8 SCC 818.

4. Learned State counsel on the other hand contends that the delay in filing the complaint was caused as some time was consumed in granting approval by the sanctioning authority, as such the said period be excluded and an application for condonation of the same was also filed. In this regard, various reminders were also sent by the Department. He submits that all the petitioners

had rightly been arrayed and were liable to be prosecuted, being responsible for the day to day conduct of the business.

5. In rebuttal, learned counsel for the petitioners asserts that the trial Court passed the summoning orders, without there being any application seeking condonation of delay. The cause of action to file the complaint arose on the receipt of the first report of the public analyst, which was 16.07.2012, whereas the complaint has been filed on 12.09.2017.

6. Heard the learned counsel for the parties and perused the files.

7. It will be apposite to refer to the relevant provisions of law for adjudication of the matter, which read 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 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.

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 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; tc" (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. It is manifest that since the punishment prescribed for the offence under Section 29 of the Insecticides Act is two years, the period for taking cognizance as envisaged under Section 468 Cr.P.C. is three years.

9. It would be pertinent to mention here that with regards to the application for condonation of delay, as stated above, nowhere in the summoning order dated 12.09.2017, Annexure P-5 of the trial Court, it has been discussed that any such application was filed or that delay was condoned. Moreover, as per the order dated 18.08.2018 of this Court, learned State Counsel had submitted on instructions from Mr. Jaswinder Singh, Insecticide Inspector, that an application under Section 5 of the Limitation Act, seeking condonation of delay had been filed but the same has not been placed on record. The said order reads thus:

Learned State Counsel on instructions from Mr. Jaswinder Singh, Insecticide Inspector, states that in CRM-M-46219-2017, while filing the complaint under Insecticide Act and Insecticide Rules, the complaint has filed an application under Section 5 of the Limitation Act, seeking condonation of delay. However, learned counsel for the petitioners states that to his information, there is no such application.

10. It would be apt to refer to the relevant dates, which are thus:

Particulars of events	Date
Inspection of premises	12.07.2012
First sample sent	16.07.2012
Report of Testing	16.07.2012

Second sample sent	18.10.2012
Report of Testing	05.11.2012
Request for Sanction	_____
Grant of Sanction	03.07.2014
Institution of Complaint	12.09.2017

11. It would be gainful to refer to the judgment in the case of **Cheminova India Limited** (supra) wherein Hon'ble The Supreme Court held that, “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. 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.”

12. This Court in **Zimidara Kheti and another vs. State of Punjab**, 2019(1) RCR (Crl.) 288, wherein somewhat similar facts to that of the case at hand, there was unexplained inordinate delay in the filing of the complaint, held that, “Having heard the learned counsel for the parties, this Court finds adequate substance in the argument raised by learned counsel for the petitioners. A bare perusal of the facts of the case on record shows that the report of the Government Analyst had been received by the complainant on 26.06.2007. Even the sanction for prosecution, though applied too belatedly on 12.01.2010, was received on 17.09.2010 itself. Hence as per the mandate of Section 468(3) of Cr.P.C; and judgment of Supreme Court in the case of State of Rajasthan(Supra) complaint in the present case could have been filed, at the best, within a period of 03 years from the date of receipt of report of the Government Analyst. However, the complaint has been filed after 08 years from the said date. Hence, the complaint in the present case is hopelessly time barred.”

13. This Court in **Bhavesh Shah vs. State of Punjab**, CRM-M-28297-2019 decided on 06.01.2023 quashed the complaint being time barred as it had been filed on 23.03.2018 from the date of the report of the sample was first obtained on 29.01.2013 by even excluding the period from 07/08.12.2017 to 16.02.2018, consumed to get sanction.

14. In the case at hand, the limitation began from the date of receiving of the first sample report, i.e. 12.07.2012 and would have lapsed on 11.07.2015, whereas, the complaint was instituted on 12.09.2017. The period taken to obtain sanction being not available in the complaint or the reply cannot be excluded, thus, the complaint is liable to fall being grossly time barred.

15. This Court in the cases of **Sanjay Gupta and others vs. State of Punjab**, CRM-M-1358-2018 decided on 30.04.2019, **M/s. Crop Chemicals India Ltd. v. State of Punjab**, CRM-M-5355-2018 decided on 14.10.2022, **M/s Unique Farm Aid Pvt. Ltd v. State Of Punjab**, CRM-M-31840-2018 decided 14.02.2023 and **Sandeep Goyal and others vs. State of Punjab**, in CRM-M-3715-2023 decided on 08.05.2023, quashed the complaints being time barred, filed beyond the period of limitation of three years. The relevant paras of **Sanjay Gupta and others** (supra), read thus:

“Even in the present proceedings, though an affidavit has been filed by the Insecticide Inspector, however, no explanation, whatsoever, has been given for the huge delay of about 04 years, except to make a lame excuse and to make an attempt to apportion part of the delay to Chief Agriculture Officer, Sangrur, who is equally be liable for his inaction and the consequent delay in filing the complaint. This Court does not find the explanation furnished, even now, by the Insecticide Inspector, anywhere near to being satisfactory. Hence the complaint filed against the petitioners is held to be time barred.

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In view of the above, facts and circumstances, this Court finds that the initiation and continuation of a complaint and the consequent proceedings against the petitioners, are not legally justified and sustainable. Because of the delay caused by the complainant, the present proceedings have resulted in misuse of the process of law and in defeating the ends of justice. The petitioners can no more be kept subjected to the proceedings of the complaint. Accordingly the complaint and consequent proceedings arising therefrom, deserve to be quashed.”

16. It was held by Hon'ble The Supreme Court that it is the duty of the High Court to look into each and every case with great detail to prevent miscarriage of justice.[See **Hasmukhlal D. Vora vs. State of T.N.**, 2022 SCC OnLine SC 1732]

17. It would be profitable to make a reference to the judgment of **Parbatbhai Aahir vs. State of Gujarat**, (2017) 9 SCC 641, wherein Hon'ble The Supreme Court, while expounding the wide and plenitude powers of High Court observed that "Section 482 CrPC preserves the inherent powers to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court." Further, in **Ramesh Chandra vs. State of U.P.**, 2022 SCC OnLine SC 1634, Hon'ble The Supreme Court held thus:

"15. This Court has an occasion to consider the ambit and scope of the power of the High Court under Section 482 CrPC for quashing of criminal proceedings in **Vineet Kumar v. State of Uttar Pradesh** decided on 31st March, 2017. It may be useful to refer to paras 22, 23 and 41 of the above judgment where the following was stated:

"22. Before we enter into the facts of the present case it is necessary to consider the ambit and scope of jurisdiction under Section 482 CrPC vested in the High Court. Section 482 CrPC saves the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice.

23. This Court time and again has examined the scope of jurisdiction of the High Court under Section 482 CrPC and laid down several principles which govern the exercise of jurisdiction of the High Court under Section 482 CrPC. A three-Judge Bench of this Court in **State of Karnataka vs. L. Muniswamy**, (1977) 2 SCC 699 held that the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the

proceeding ought to be quashed. In para 7 of the judgment, the following has been stated:

‘7. ... In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.’

18. In view of the foregoing discussion, this Court is of the considered opinion that the continuation of the proceedings in the complaint in question shall result in abuse of the process of the Court and thus, the present petitions deserve to be and are hereby allowed. The complaint No.30 dated 12.09.2017, titled as "State vs. M/s Jain Khad Company and others" (Annexure P-1) as well as the summoning order 12.09.2017 (Annexure P-2) are quashed qua the petitioners.

19. A photocopy of this order be placed on the file of the connected case.

(AMAN CHAUDHARY)
JUDGE

08.08.2023

S.Sharma(syr)

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No