

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

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CRM-M-7031-2017 (O&M)

Date of decision: 22.02.2023

BHOGI LAL PATEL AND ORS.

....Petitioner(s)

Versus

STATE OF PUNJAB THRU INSECTICIDE INSP.

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. SPS Sidhu, Advocate for the petitioners.

Mr. Manipal Singh Atwal, DAG Punjab.

AMAN CHAUDHARY. J.

The present petition has been filed under Section 482 Cr.P.C. for quashing of complaint No.23-2 dated 29.01.2013, titled as “State vs M/s National Kheti Sewa Kender and others” under Sections 3 (k) (i), 17, 18, 33 punishable under Section 29(1) of the Insecticide Rules, 1971, as well as the order dated 29.01.2013 passed by learned trial Court.

Learned counsel for the petitioner contends that a raid was conducted on 17.07.2007 at the shop of National Kheti Sewa Kender. They took the sample of Cartaphydro Chloride. The same was sent to Chief Agriculture Officer Fazilka, for analysis on 07.08.2007. As per the report of even date, the sample was found to be misbranded as active ingredients found were 2.52% instead of 4%. The second sample was taken on 01.01.2008 for analysis and the report whereof was received on 07.03.2008.

The complaint was filed on 28.01.2013 by Insecticide Inspector, wherein summoning order was passed on 29.01.2013, Annexure P-2. He further

submits that the complaint was filed after 39 months of the 1st sample drawn on 07.07.2007, thus, the same is barred as per Section 469 CrPC, inasmuch as the complaint could be filed within a period of 3 years, as the sentence for the said offence is upto two years as per Section 29 Insecticides Act. He places reliance on the judgment passed by this Court in the case of **Om Parkash Aggarwal versus State of Haryana** in CRM-M-3028 of 2012 decided on 18.02.2015.

Learned State counsel submits that the request to grant sanction to file complaint was submitted on 8.6.2010 and the same was granted vide order dated 18.10.2010 by the competent authority. The complaint thereafter was filed on 28.1.2013. 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) CrPC.

Learned counsel for the petitioner in rebuttal submits that even if the aforesaid period, though the same cannot be excluded but for the sake of arguments is excluded still there is a delay of 4 years 6 months, taken from the date of receipt of first report.

Heard.

It would be apposite to refer to Section 468 CrPC, 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.]

Section 469 of the Cr.P.C. reads thus:-

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 thus:-

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;"

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, held that 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 made basis for commencement of period of limitation. The complaint lodged after three years from the date of receipt of first report was barred by limitation. As such, allowing the proceedings to go on based on such complaint was found to be abuse of process of law.

This Court in the cases of **M/s Doaba Seeds Store vs. State of Punjab** 2018(4) Law Herald 3396, **M/s Singla Kheti Sewa Kender and another vs. State of Punjab**, CRM-M-36938-2016, decided on 06.12.1999 and **Zamidara Kheti and another vs. State of Punjab** 2019(1) RCR (CrI.) 288, quashed the complaints being time barred, filed beyond the period of limitation of three years.

Even taking into consideration the explanation to Section 470(3) CrPC, the first report of misbranding having been received on 7.8.2007, application seeking sanction dated 8.6.2010 and the same having been received on 18.10.2010, whereafter, the complaint was instituted on 28.1.2013, the same ought to have been filed within a period of three years as per Section 468, the punishment for the offence under Section 29 of the Insecticides Act being two years, from the date of receipt of first report, it is apparent that the complaint was clearly barred by the period of limitation, it being the germane issue, thus, the complaint, the summoning order and the consequent proceedings are liable to be quashed.

In view of the discussion above, the present petition is allowed. The complaint No.23-2 dated 29.01.2013, titled as “State vs M/s National Kheti Sewa Kender and others” as well as the order dated 29.01.2013 are quashed.

(AMAN CHAUDHARY)
JUDGE

February 22, 2023

M.Kamra

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*