

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

CRM-M-6763-2018

Date of Decision: January 16, 2023

Sohan Singh and others

...Petitioners

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

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

Mr. R.S. Khaira, DAG, Punjab.

DEEPAK GUPTA, J.(Oral)

By way of this petition filed under Section 482 of the Code of Criminal Procedure, prayer is made to quash Complaint Case No.75 dated 06.12.2017 titled as ***“State vs M/s Ravindra Fertilizer Store & Others”*** under Sections 3(k)(i), 17, 18, 29, 33 of the Insecticides Act, 1968 (hereinafter referred as 'the Act') read with Rules 27(5) of the Insecticides Rules, 1971, as pending for adjudication in the Court of learned Chief Judicial Magistrate, Moga (Annexure P-1), apart from the summoning order dated 06.12.2017 (Annexure P-2) and all the consequential proceedings arising therefrom qua the petitioners.

2. As it emerges on perusal of the paper book on 18.06.2014 Insecticide Inspector, Nihal Singh Wala, District Moga, visited the shop of M/s Ravindra Fertilizer Store, VPO Badhni Kalan, District Moga and after making necessary statutory compliances, drew sample of an insecticide namely, *Cartap Hydrochloride 4% GR*, Batch No.VOI-5M, with manufacturing date as May, 2014 and expiry date as April, 2016,

manufactured and supplied by M/s Vikas Organic Industrial Corporation,

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VPO Panchgrain Kalan, Tehsil Kotkapura, Faridkot (Petitioner N: 2). Out of three samples collected by the Insecticide Inspector, one of them was sent to the Insecticide Testing Laboratory, Ludhiana on 19.6.2014. The report thereof dated 25.06.2014 was received on the same date, as per which sample was declared misbranded as it was found to be not confirming to IS specifications with respect to its percentage active ingredient content requirement, inasmuch as the said active ingredient content was only 2.07% GR instead of 4% GR. Copy of the analyst report along with show cause notice dated 30.06.2014 were sent to the dealer M/s Ravindra Fertilizer Store through its proprietor as well as the manufacturing firm i.e. Vikas Organic Industrial Corporation through its Directors by the Chief Agriculture Officer in compliance of the provisions of Section 24(2) of the Act. Though the manufacturing firm did not reply to the show cause notice but the dealer M/s Ravindra Fertilizer Store replied to the show cause notice on 09.07.2014. The said dealer vide a request letter dated 18.07.2014 asked for second opportunity to prove his innocence by getting the remaining samples of the insecticide re-tested from the Central Insecticide Laboratory, Faridabad. The Chief Agriculture Officer sent the second part of the sample to Central Insecticide Laboratory, Faridabad vide letter dated 28.10.2014. Report dated 03.11.2014 was received by the Chief Agriculture Officer declaring the sample as misbranded which was acknowledged by the Insecticide Inspector on 05.12.2014. The Insecticide Inspector sought permission to launch prosecution against the accused on 09.11.2016 but the same was forwarded by the Chief

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Agriculture Officer on 28.11.2016 to the competent authority. The sanction was granted by the Department on 10.04.2017, which was received by the Insecticide Inspector on 21.04.2017 and then the complaint (Annexure R-1) was filed in the Court of learned Chief Judicial Magistrate after necessary vetting from the office of District Attorney, on 06.12.2017.

3. On the same day i.e. 06.12.2017, learned Chief Judicial Magistrate, Moga directed to issue the summons to all the accused vide order Annexure P-2.

4. (i) Seeking quashing of the complaint and the consequent proceedings, it is contended by the petitioners-accused that offences under the Act, are punishable up to 2 years as per Section 29 of the Act and so, limitation period to file the complaint is three years, as per Section 468 of the Code of Criminal Procedure, which commences from the date of receipt of the public analyst report. It is contended that in this case, as the report of the public analyst was received on 25.06.2014, therefore, the limitation period commenced from this date and the same expired on 24.06.2017.

(ii) It is contended further that the sanctioning authority directed the concerned Insecticide Inspector to file the complaint within seven days as per the sanction order dated 07.04.2017 but still the complaint was instituted on 06.12.2017 i.e. much beyond the period allowed by the sanctioning authority.

(iii) Still further, it is contended that even if the time consumed by the sanctioning authority for grant of the sanction is excluded from the

period of limitation, still the complaint in question is statutorily barred by limitation.

(iv) It is further *inter alia* contended that as per letter dated 06.01.2017 issued by the Joint Director of Agriculture (Plant Protection), Punjab, different time periods have been given for every step involving launch of prosecution. A maximum period of 15 days is fixed for grant of sanction by the concerned authority but in the present case the sanctioning authority i.e. Joint Director (Plant and Protection), Punjab itself took 4 months and 10 days for grant of sanction.

(v) Lastly, it is urged that learned Trial Court passed a non-speaking summoning order dated 06.12.2017 without making any application of mind.

5. Refuting the aforesaid contentions, it is submitted by the learned State counsel on behalf of the respondent that report of the Central Insecticide Laboratory, Faridabad dated 24.11.2014 was received by the respondent on 05.12.2014 and the complaint was filed on 06.12.2017 and so, the total period works out to be 3 years 1 day. It is submitted that period from 09.11.2016 to 21.04.2017 was consumed by the Department for grant of sanction, which period of 5 months and 12 days is liable to be excluded for computing the period of limitation as per Section 470(3) of the Code of Criminal Procedure and once this period is excluded from computing the period of limitation, the complaint has been filed within a period of 2 years 6 months and 18 days and thus, it is within limitation.

Still further, it is contended that no prejudice has been

caused to the petitioners in any manner because it is at their request that second sample was sent for re-analysis to the Central Insecticide Laboratory, Faridabad.

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

6. I have considered the submissions made on behalf of both the parties and have also perused the record carefully.

7. The relevant portion of Section 22 & 24 of the Insecticides Act, 1968 reads as under:-

“22. Procedure to be followed by Insecticide Inspectors.-

(1) xxxx

(2) xxxx

(3) xxxx

(4) xxxx

(5) xxxx

(6) *The Insecticide Inspector shall restore one portion of a sample so divided or one container, as the case may be, to the person from whom he takes it and shall retain the remainder and dispose of the same as follows:-*

(i) one portion or container, he shall forthwith sent to the Insecticide Analyst for test or analysis; and

(ii) the second, he shall produce to the Court before which proceedings, if any, are instituted in respect of the insecticide.

Section 24. Report of the Insecticide Analyst.-

1) xxxx

(2) xxxx

(3) xxxx

(4) Unless the sample has already been tested or analysed in the Central Insecticides Laboratory, where a person has under sub-section (3) notified his intention of adducing evidence in controversion of the Insecticide Analyst's report, the Court may,

of its own motion or in its discretion at the request either of the complainant or of the accused, cause the sample of the insecticide produced before the Magistrate under sub-section (6) of section 22 to be sent for test or analysis to the said laboratory, which shall, within a period of thirty days, make the test or analysis and report in writing signed by, or under the authority of, the Director or the Central Insecticides Laboratory the result thereof, and such report shall be conclusive evidence of the facts stated therein.

(5) xxxx ”

8. 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.

9. 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. 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”

10. In the present case, as noticed earlier, sample was taken on 18.06.2014. It is on 25.06.2014 when the report of the Public Analyst was received that it became known that due to misbranding, offence 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. 25.06.2014. Complaint was filed on 6.12.2017 i.e. after 3 years 5 months 10 days from the date of commencement of limitation.

11. The contention of counsel for the respondent to the effect that as one of the accused (dealer) 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, wherein a similar issue was raised. In that case, 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, which is 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 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. 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. ---- ”*

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12. Similar view was taken by a co-ordinate Bench of this Court 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.

13. 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, even if the said period is excluded, the complaint will still be beyond limitation.

14. As per the petitioner, sanction was applied on 28.11.2016 and the same was granted on 07.04.2017. These dates have been disputed by the learned counsel for the respondent, who contends that sanction was applied on 09.11.2016 and the intimation regarding grant of sanction was received on 21.04.2017. Perusal of the reply by the respondent-State reveals that the Insecticide Inspector sought permission to initiate legal action against the petitioner on 09.11.2016 but the same was forwarded by the Chief Agriculture Officer on 28.11.2016. This period from 09.11.2016 to 28.11.2016 cannot be taken into consideration because it was the internal matter between the department. It is 28.11.2016 when the letter was sent by the Chief Agriculture Officer to the Central Insecticide Laboratory, Faridabad, which is liable to be taken into consideration. As per the consent letter dated 07.04.2017 (Annexure R-7) forming part of reply of the respondent, the said consent was granted in reference to the letter dated 28.11.2016 of the Chief Agriculture Officer. There is no

reference in the said consent letter that sanction had been sought on 09.11.2016 as is now being contended by the respondent. Similarly, as noticed above, sanction was granted on 07.04.2017 as per Annexure R-7 and the letter was received in the Department of the respondent on 10.04.2017. Therefore, it is this date i.e. 07.04.2017, which shall be relevant. As such, period from 28.11.2016 to 07.04.2017 is liable to be excluded from the period of limitation. Even when this period of 4 months and 10 days is excluded from the computation, the complaint as instituted on 06.12.2017 is still after 3 years and one month from the date of commencement of limitation and thus, beyond limitation period.

15. Apart from above, perusal of the sanction order Annexure R-7 forming part of the reply of the respondent clearly reveals that the said sanction was forwarded even to Insecticide Inspector in the office of Chief Agriculture Officer, Moga, with a direction to file the complaint in the Court within a week and then to inform the office. Assuming that respondent-Insecticide Inspector received the said sanction letter on 21.04.2017 as is contented by him, still he instituted the complaint in the Court on 06.12.2017 i.e. much beyond the period allowed by the sanctioning authority.

16. Apart from above, order dated 06.12.2017 (Annexure P-2), whereby the Court of learned Chief Judicial Magistrate, Moga ordered for issuing the notice to the accused reads as under:-

“Present: Taranjit Singh, Insecticide Inspector, Nihal Singh Wala.

Complaint presented today. It be registered. Heard. Notice to accused be issued for 17.02.2018.

The present complaint has been filed by complainant in the capacity of public servant. Complainant requested that he is

unable to attend this court on each and every date being a public servant. As such, request of complainant is considered and learned APP for the state is directed to appear on behalf of complainant in the present case on each and every date.

Sd/-

06.12.2017

Chief Judicial Magistrate, Moga.”

17. The aforesaid order clearly reveals that no reasons whatsoever have been given for issuing process against the accused. No doubt that detailed inquiry is not required to be done at the stage of summoning but the order of the Magistrate must show at least application of mind to the effect that there was a *prima facie* case for summoning the accused. Reliance in this regard can be placed upon the judgment of a co-ordinate Bench of this Court in case of “**Sanjiv Kumar Sharma vs State of Punjab**”, reported as 2006(3) R.C.R. (Criminal) 894, wherein it is held that the Court has to record reasons for summoning the accused. Court is not absolved of its statutory obligation to pass a reasoned judicial order, while summoning an accused.

18. For the reasons as discussed above, it is held that prosecution launched by the respondent being beyond the period of limitation, so the complaint, the impugned summoning order and all the consequential proceedings are liable to be quashed. It is ordered accordingly.

19. Before parting, this Court would like to point out towards the negligent and a lackadaisical attitude of the respondent. Despite the fact that Insecticide Laboratory had sent its report on 25.06.2014, the sanction was applied on 28.11.2016. Even if it be assumed that Insecticide Inspector initiated his part by writing a letter to the chief

Agriculture Officer, Moga on 9.11.2016 as contended by him, still it took him more than two years and four months to write such letter for initiating legal prosecution against the petitioners-accused. Not only this, though the period of limitation commences from the date of the report of the Public Analyst and assuming for the sake of arguments that respondent-Insecticide Inspector was under the impression that limitation period will commence from the date of receipt of the report of the Central Insecticide Laboratory, the said report was received on 24.11.2014. Still the process was not initiated to launch the prosecution for two years.

20. Not only above, when the sanctioning authority gave its consent to launch the prosecution vide its letter dated 07.04.2017, it was specifically endorsed to the Insecticide Inspector, namely Shri Taranjit Singh. It was clearly mentioned that complaint was to be filed within seven days with intimation to the office of the sanctioning authority i.e. Joint Director (Agriculture). Despite this specific direction, no step was taken for filing the complaint prior to 06.12.2017. Although the respondent in its reply has tried to justify the delay on the ground that complaint was sent to the District Attorney office but once he was asked to file the complaint within seven days, it was for him to ensure that the complaint is forwarded to the office of District Attorney within reasonable time so that after being vetted, the same is filed in the Court within the time permitted by the sanctioning authority.

21. The above said inaction on the part of the Insecticide Inspector cannot be assumed to be without any reason. This Court in **Sanjay Gupta's** case (*supra*) had noted the similar conduct on the part of

the Insecticide Inspector by making the following observations:-

“This Court has found that the modality of filing the complaint after a long delay is not restricted to the present case only. In the present case also; due to huge and unexplained delay in filing the complaint by the complainant, Insecticide Inspector Jaswinder Singh, the manufacturer of the spurious insecticide have got scot free. Although Inspector Jaswinder Singh have tried to apportion a part of delay to Chief Agricultural Officer, Sangrur, who also is not free from blame in this case, however, the facts on record of the case show a clear-cut deliberate delay on the part of Complainant, Jaswinder Singh. The copy of sanction for prosecution is duly endorsed to the Complainant, Jaswinder Singh as well, with a further direction to contact the prosecution department and to launch the prosecution within a week. So he can not hide behind the inaction of Chief Agricultural Officer, Sangrur. The unexplained delay in filing the complaint has led to wastage of precious time of the Courts. Resultantly, this Court deems it appropriate to impose an exemplary cost upon the Complainant, the then Insecticide Inspector, Jaswinder Singh, for making the Courts to waste their time on the complaint. Accordingly, the Insecticide Inspector, Jaswinder Singh is burdened with cost of Rs.1 lakh to be paid from his personal pocket. This cost is directed to be deposited with the District Legal Services Authority, Sangrur, within a period of 15 days. Let the copy of this Order be sent to the Director Agriculture, Punjab for necessary compliance. The Direction Agricultural shall ensure that the above-said Jaswinder Singh deposits the amount within 15 days from the date of receipt of certified copy of this Order, and shall also inform the Registry of this Court qua compliance within one month thereafter.”

22. The delayed action on the part of the Insecticide Inspector continues, which is either deliberate to give undue benefit to the accused/petitioners or due to gross negligence. Whatever may be the reason, this delay has resulted in going of the accused/petitioners scot

free. For the said act and conduct of the respondent, he must be burdened with exemplary cost. As such, the Insecticide Inspector, namely, Shri Taranjit Singh is burdened with the cost of ₹1,00,000/- to be paid from his personal pocket, which is directed to be deposited with the District Legal Services Authority, Moga, within a period of 15 days.

23. Copy of this order be sent to the Director of Agriculture (Plant Protection), Punjab for necessary compliance, who will also ensure the deposit of the cost by the said Insecticide Inspector Shri Taranjit Singh within 15 days from the date of receipt of certified copy of this order and shall inform the Registry of this Court qua compliance within 15 days thereafter.

24. With this, the present petition for quashing is hereby allowed.

January 16, 2023
sarita

(DEEPAK GUPTA)
JUDGE

Whether reasoned/speaking:	Yes/No
Whether reportable:	Yes/No