IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

225 **CRM-M-7338-2018**
Date of decision: 03.02.2023

Uday Kairon and others **Petitioners**

Vs.

State of Punjab through Insecticide Inspector, ISRU, Block Khanna, District Ludhiana **Respondent**

CORAM : HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. Rakesh Verma, Advocate with
Mr. Manish Verma, Advocate
for the petitioners.

Mr. Gurdarshan Singh Sidhu, AAG, Punjab.

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DEEPAK MANCHANDA, J.(ORAL)

The present petition has been filed under Section 482 Cr.P.C. for quashing of the complaint No.14 dated 05.05.2017 (Annexure P-1) registered under Sections 3(k) (i), 17, 18, 29 and 33 of Insecticides Act, 1968 read with Rule 27 (5) of Insecticides Rules, 1971 titled as "***State Vs. M/s Mander Chemicals & Others***" pending before the Judicial Magistrate First Class, Khanna, District Ludhiana as well as summoning order dated 11.01.2018 (Annexure P-2) and all consequential proceedings arising therefrom qua the petitioners.

The facts emanating from the pleadings of the present case are that petitioner No.2 is the firm through its partner-Uday Kairon (petitioner No.1) and Manager-Swarn Singh (petitioner No.3) is having valid licence to manufacture various kind of insecticides and pesticides under Insecticides Act, 1968. On 26.12.2013, Insecticide Inspector, ISRU, Block Khanna, District Ludhiana, alongwith Darshan Singh, Agricultural Officer, Khanna inspected the shop premises of one dealer, namely, M/S Mander Chemicals, Malerkotla Road, ISRU (Ludhiana) and took a sample of insecticides, namely, 2-4-D Ethyle Ester 38% EC bearing Batch No. MS-38-2136 having manufacturing date 20.11.2013 and expiry date 19.11.2015. The aforementioned sample of insecticide has been alleged to be manufactured and supplied by petitioner No.2-firm i.e. M/S Shivalik Agro Chemical, Mohali. Thereafter, out of three parts of test samples, one part was sent to State Insecticide Testing Lab, Amritsar on 01.01.2014 for analysis i.e. after a period of 06 days and the same was found mis-branded after analysis vide Analysis Report dated 23.01.2014 (Annexure P-3) issued by Senior Analyst, State Insecticide Testing Lab, Amritsar. The said Public Analyst Report was received in the office of Chief Agricultural Officer, Ludhiana on 28.01.2014, who issued a show cause notice to petitioner No.2-manufacturing firm. The manufacturing firm (petitioner No.2) submitted its reply to the show cause notice to Office of Chief Agriculture Officer, Ludhiana, but the same was not considered and on 05.05.2017, the impugned complaint has been filed before the Judicial Magistrate First Class, Khanna.

The Judicial Magistrate First Class, Khanna, District Ludhiana without going into the facts of the present case, took the cognizance upon the complaint and summoned the petitioners/accused while issuing notice to accused for 22.02.2018 vide order dated 11.01.2018 (Annexure P-2). Hence the present petition.

Learned counsel for the petitioners contends that the alleged offences are punishable under Section 29 of Insecticides Act, 1968 with imprisonment for a term up to two years, but the complaint in the present case was instituted after 3 years, 3 months and 07 days after receipt of Public Analyst Report in the office of Chief Agricultural Officer, Ludhiana, which is not maintainable. Learned counsel further contends that mandatory provisions of Section 22 of the Insecticides Act, 1968 have not been complied with as the sample of Insecticide was drawn on 26.12.2013, however, the same was sent to State Public Analyst on 01.01.2014 i.e. after a period of six days, which was required to be dispatched forthwith without any delay. He further submits that as per sanction order Annexure R-2/T, the sanction was applied on 20.04.2017, which was granted on 27.04.2017 i.e. within a period of seven days only. Even if, the time period consumed by the sanctioning authority for grant of sanction, is excluded from the period of limitation, the present impugned complaint is statutorily barred by limitation of three years as started from date of receipt of Public Analyst Report dated 23.01.2014, whereas the complaint was instituted on 05.05.2017. He again submits that the prosecution against the present petitioners is nothing, but an abuse of the process of Court of law and the learned trial Court has committed an error by passing the summoning order, therefore, he prays for quashing of the impugned complaint as well as summoning order.

In support of his contentions, learned counsel for the petitioners relies on the judgments passed by the Hon'ble Supreme Court in ***"M/S Cheminova India Ltd. & Anr. Vs. State of Punjab and Anr." 2021 (3) RCR (Criminal) 750, "Sirajul and others Vs. State of U.P. and another" 2015 (3)R.C.R(Crl) 661*** and the judgments passed by the Co-ordinate Benches of this Court in CRM-M-17705-2018, titled as "***Sher Singh and another Vs. State of Punjab***", CRM-M-1358-2018, titled as

"***Sanjay Gupta and others Vs. State of Punjab***", CRM-M-6763-2018, titled as "***Sohan Singh and others Vs. State of Punjab***", CRM-M-9632-2015, titled as "***M/s S.S.Ferilizer and another Vs. State of Punjab", 2017(2)R.C.R.(Criminal) 59*** and *CRM-M-12926-2018, titled as "**Sohan Singh Vs. State of Punjab**"*.

On the other hand, learned State counsel while referring to the reply dated 27.07.2018 filed by way of affidavit of Boota Singh, Insecticide Inspector, ISRU, Block Khanna, District Ludhiana has argued that since the sample taken on 26.12.2013 was found to be mis-branded from the State Notified Insecticide Testing Laboratory, Amritsar on 23.01.2014, and the reference test sample portion of the insecticide had been re-tested from the Central Insecticides Laboratory, Faridabad on 22.05.2014 on the request of the dealer firm/ petitioner-company. The limitation for filing complaint has been rightly calculated from the re-testing report dated 22.05.2014 which is in the stipulated limitation period. He further argues that mere delay in dispatch of the same also cannot become the ground for quashing the complaint. Since the reference sample portion of the insecticides had also been tested as per request of the dealer firm as well as the petitioner No.2, thus, no prejudice had been caused to the petitioners. Further, the facts stated in the re-test report of the sample is the conclusive evidence as per Section 24 (4) of the Insecticides Act, 1968, where petitioners cannot be escaped from mis-branding the tested sample which was found to be against the prescribed norms in violation of Sections 3 k (i), 17, 18, 29 and 33 of the Insecticides Act, 1968 and the complaint is legally valid, which had been rightly instituted against the present petitioners. He prays for dismissal of the present petition.

Vide order dated 20.02.2018, this Court had issued notice of motion vide which the trial Court was directed to adjourn the case beyond the date fixed in the instant petition and vide order dated 16.01.2023, this Court ordered to continue the interim order granted vide order dated 20.02.2018.

I have heard learned counsel for the parties and have perused the impugned order and other material placed on record.

The Hon'ble Supreme Court on the issue of limitation in the case of "***M/s Cheminova India Ltd. & Anr. Vs. State of Punjab and another", 2021 (3) RCR (Criminal) 750***, has held as under:-

> "*10. In the present case, it is not in dispute, the complainant-2nd respondent has received the report of analysis on 14.03.2011 from the Insecticide Testing Laboratory, Ludhiana and the complaint was lodged on 25.03.2014 which is beyond a period of three years from 14.03.2011. The only submission of the learned counsel for the State is that further report from the Central Insecticide Testing Laboratory was received on 09.12.2011 which is the conclusive evidence of the facts, as such, the complaint is within the period of limitation. 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. Though the learned counsel has also raised other grounds in support of quashing, as we are persuaded to accept his submission that complaint filed is barred by limitation, it is not necessary to deal with such other grounds raised.*"

In view of the undisputed fact that after drawing the sample from the dealer on 26.12.2013, first report of analysis was received from the State Notified Insecticide Testing Laboratory, Amritsar on 23.01.2014. The petitioners are sought to be prosecuted on the ground of mis-branding of the Insecticides i.e.2-4-D Ethyl Ester 38% EC bearing batch No.MS-38-2136 having manufacturing dated 20.11.2013 and expiry date 19.11.2015. It is the allegations in the complaint that upon analysis of the sample, the same was shown as 31.35% EC active ingredient contents of 2-4-D Ethyl Ester instead of 38% EC, which is the case of mis-branding within the meaning of Section 3k(i) of the provisions of the Insecticides Act, 1968 and selling of such mis-branded item is in violation of Sections 17, 18 and 33 punishable under Section 29 of the Insecticides Act, 1968.

From reading of Section 29 of Insecticides Act, 1968, it is made clear that maximum punishment for such offence, if it is first offence, is 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. For the second and subsequent offence, the punishment is imprisonment for a term which may extend to three years, or with fine which shall not be less than fifteen thousand rupees, but which may extend to seventy-five thousand rupees, or with both.

Section 468 of Cr.P.C prohibits taking cognizance of an offence after the lapse of period of limitation and as per sub Section 468 (2)(c) thereof, the period of limitation is three years, if the offence is punishable with imprisonment for a term exceeding one year, but not exceeding three years.

Section 469 of Cr.P.C deals with the commencement of the period of limitation. As per the said provision, 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.

A perusal of the material available on record including the commencement of complaint filed by the respondent-State reveals that the report of analysis is dated 23.01.2014 from State Notified Insecticide Testing Laboratory, Amritsar and the complaint was instituted on 05.05.2017, which is beyond the period of three years and the same had been filed after the gap of 03 years, 03 months and 12 days as per the assertion made by learned counsel for the petitioners, which seems to be correct. The only submission of learned counsel for the State is that the re-analysis report from the Central Insecticides Laboratory, Faridabad was received on 22.05.2014, which is the conclusive evidence of the facts, as such, the complaint is within the period of limitation. But the argument raised by learned counsel for the State is not appealing. When it is made clear that from the language of Section 469 of Cr.P.C i.e. 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 Insecticides Laboratory, Fardiabad. As per the procedure prescribed under the Statue, i.e. Insecticides Act, 1968 and the rules made thereunder, the State Notified Insecticide Testing Laboratory, Amritsar was the competent authority to which the sample was sent on 26.12.2013 and report of analysis was received on 23.01.2014 received by Chief Agricultural Officer, Ludhiana, as such, the said date is said to be the crucial date for commencement of period of limitation. Merely because a further request is made for sending the sample to Central Insecticides Testing Laboratory, Faridabad as contemplated under Section 24(4) of the Act, which report was received on 22.05.2014, receipt of such analysis report cannot be the basis for commencement of limitation.

This Court is of the clear view that 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. During the arguments, no other ground is raised.

Secondly sample was drawn on 26.12.2013, which was reached in terms of Section 22 of the Insecticides Act, the Insecticide Inspector after drawing the sample and after dividing the same into three parts was to give one part to State Insecticide Testing Laboratory, Amritsar for analysis forthwith and remaining two parts were to be retained by them. The sample was not sent for its analysis forthwith, but after the delay of six days, which was in violation of Section 22 of the Insecticides Act, 1968.

In view of the above discussion, as well as the conspectus of the decisions referred above and relied upon in preceding paragraphs, the present petition is allowed and complaint No.14 dated 05.05.2017 (Annexure P-1) registered under Sections 3(k) (i), 17, 18, 29 and 33 of Insecticides Act, 1968 read with Rule 27 (5) of Insecticides Rules, 1971 as well as consequential proceedings, including summoning order dated 11.01.2018 (Annexure P-2) are accordingly quashed qua the petitioners only.

(DEEPAK MANCHANDA)
JUDGE

03.02.2023
Nisha-II/vanita

Whether reasoned/speaking? *Yes/No*
Whether reportable? *Yes/No*