

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-28297-2019

Date of Decision:- 06.01.2023

BHAVESH SHAH

.....Petitioner

Versus

STATE OF PUNJAB

.....Respondent

CRM-M-49293-2019

M/S G.S.P. CROP SCIENCE PVT. LTD. & ORS.

.....Petitioners

Versus

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Gaurav Chopra, Sr. Advocate with
Ms. Seerat Saldi, Advocate for the petitioner(s).

Mr. Kirat Singh Sidhu, DAG, Punjab.

JASJIT SINGH BEDI, J.

This order shall dispose of two petitions bearing No.CRM-M-28297-2019 titled as Bhavesh Shah Versus State of Punjab and CRM-M-49293-2019 titled as M/s G.S.P. Crop. Science Pvt. Ltd. & others Versus State of Punjab & others. For the sake of convenience, the facts are being taken from CRM-M-28297-2019 as both these petitions are arising out of the same complaint and summoning order.

2. The present petitions have been filed under Section 482 Cr.P.C. for quashing of the complaint No.12 of 2018 dated 23.03.2018 (Annexure P-1) registered under Sections 3(k)(i), 17, 18 and 33 punishable under Section 29(2) of Insecticides Act, 1968 read with Rules 27(5) of Insecticides Rules, 1971 titled "State Vs. M/s Malout Beej Bhandar & Others", the summoning order dated 23.03.2018 (Annexure P-2) and all

subsequent proceedings arising therefrom.

3. The brief facts of the case as emanating from the respective pleadings are that on 29.12.2012 one Hassan Singh, Insecticide Inspector Malout visited the shop premises of a dealer i.e. M/s Malout Beej Bhandar Shop No.113, New Grain Market, Malout and drew a sample of insecticide namely, Clodinafop-Propargyl 15% WP, Batch No.GSR-010, manufacturing date 09.12.2021, expiry date 08.12.2013 out of a 160 gms packing. The insecticide was allegedly manufactured and supplied by the accused/Company i.e. M/s G.S.P. Crop Science Pvt. Ltd. 404, Lalita Complex, 325/3, Rasal Road, Navrangpura, Ahmedabad, Gujarat. The Insecticide Inspector cut opened the sealed pack of 160 gms and withdrew 60 gms insecticide material and further divided it into three parts of samples weighing 20 gms each.

4. Thereafter, on 02.01.2013 i.e. after about 03 days from the date of the sampling, out of three parts of the sample taken, one part was sent to the Senior Analyst, State Insecticide Testing Laboratory, Bathinda for analysis and the same was found to be misbranded after analysis vide analysis report dated 29.01.2013. The referral part of the sample was found to be misbranded after analysis by the Central Insecticide Laboratory, Faridabad as the active ingredient contents were found to be 13.79 % instead of 15 % vide analysis report dated 14.03.2013. The copies of the analysis report dated 29.01.2013 of the State Insecticide Testing Laboratory, Bathinda and re-analysis report dated 14.03.2013 of Central Insecticide Laboratory, Faridabad are annexed as Annexures P-3 and P-4 to the petition (CRM-M-28297-2019).

5. Thereafter, one show cause notice is purported to have been issued by the office of the Chief Agriculture Officer, Sri Muktsar Sahib

(hereinafter referred to as “CAO, Sri Muktsar Sahib”) to the manufacturing company. A reply is stated to have been submitted by the Company which was not considered by the CAO, Sri Muktsar Sahib.

6. Be that as it may, the Agricultural Development Officer (PP) Malout (hereinafter referred to as “ADO, Malout”) wrote a letter No.698 dated 08.09.2014 to the CAO, Sri Muktsar Sahib seeking grant of sanction to be accorded by the Joint Director Agriculture (PP) Punjab (hereinafter referred to as “JDA (PP) Punjab”) to initiate appropriate proceedings. The copy of the said letter signed by Hassan Singh, ADO (PP) Malout is annexed as Annexure R-1 to the State reply dated 22.10.2019.

7. Thereafter, vide letter No.1862 dated 30.11.2015, the Assistant Plant Officer Hassan Singh wrote yet another letter to the CAO, Sri Muktsar Sahib seeking grant of sanction to be obtained from the JDA (PP) Punjab so that the case could be instituted in time. The copy of the said letter is annexed as Annexure R-2 to the State reply dated 22.10.2019.

8. Thereafter, Hassan Singh, Insecticide Inspector (then Inspection Officer, Fazilka) through the CAO, Sri Muktsar Sahib wrote to the JDA (PP) Punjab a letter dated 07.12.2017 seeking grant of sanction. It was stated in the letter that the file pertaining to the present case had been missing in office because of which sanction could not be sought earlier. The copy of the said letter duly despatched to the JDA (PP) Punjab who is the sanctioning authority is annexed as Annexure R-3 to the State reply dated 22.10.2019.

A perusal of this letter would reveal that it contained 25 pages where all the necessary documents were enclosed by the concerned Insecticide Inspector/complainant Hassan Singh.

9. Based on the aforementioned communication (Annexure R-3),

sanction/written consent for prosecution was granted vide order dated 16.02.2018 by the concerned authority i.e. Joint Director Agriculture.

A perusal of this letter would reveal that the sanction has been granted pursuant to the letter dated 08.12.2017. The copy of the letter granting sanction/written consent is annexed as Annexure P-5 to the petition.

10. Thereafter, on 23.03.2018, the impugned complaint was instituted in the Court of Sub-Divisional Judicial Magistrate, Malout, Sri Muktsar Sahib who took cognizance upon the same vide his order dated 23.03.2018 leading to the passing of the summoning order. The copies of the complaint No.12 of 2018 dated 23.03.2018 and summoning order dated 23.03.2018 passed by the Sub-Divisional Judicial Magistrate, Malout, Sri Muktsar Sahib are annexed as Annexures P-1 and P-2 to the petition.

11. The aforementioned complaint No.12 of 2018 dated 23.03.2018 (Annexure P-1), summoning order dated 23.03.2018 (Annexure P-2) and further proceedings arising therefrom are under challenge before this Court.

12. The primary ground raised in both these petitions for quashing of the complaint and summoning order was that there was a fatal delay in filing of the complaint of as much as 05 years, 01 month and 23 days. In addition, it was contended on behalf of the Bhavesh Shah, Director (petitioner in CRM-M- 28297-2019) that once there was an Authorised Officer/responsible person/nominated person (Firoz Rafiq Ahmed Diwan-petitioner No.3 in CRM-M-49293-2019) who was Incharge of Quality Control, the petitioner could not have been summoned to face Trial.

13. When this petition (CRM-M-28297-2019) for quashing had come up for hearing, proceedings were stayed vide order dated 05.07.2019

and the Insecticide Inspector who had taken the sample was asked to be personally present in Court on the next date of hearing. On 20.09.2019, Hassan Singh Insecticide Inspector, Sri Muktsar Sahib was present in Court and sought time to submit his explanation qua the fatal delay in lodging the complaint. Thereafter, vide order dated 30.10.2019, the Chief Agricultural Officer Beant Singh, Sri Muktsar Sahib was also directed to be present in Court as he was also stated to be responsible for the delay in initiation of proceedings. Thereafter, vide order dated 28.11.2019, a cost of Rs.1 lakh was imposed on the Insecticide Inspector, Hassan Singh which was to be deposited with the District Legal Services Authority, Sri Muktsar Sahib within a period of 15 days from his personal pocket. This was on account of the fact that the Chief Agricultural Officer Beant Singh, Sri Muktsar Sahib had explained to the Court that the fault lay with the Insecticide Inspector for the delay in seeking sanction. Thereafter, the matter was adjourned from time to time.

14. Meanwhile, on 22.10.2019, a reply was submitted by way of an affidavit of Hassan Singh, Insecticide Inspector then posted as Assistant Plant Protection Officer, Malout, Sri Muktsar Sahib on behalf of the respondent. After narrating the admitted facts, the affidavit sought to explain the delay in filing of the complaint by stating that the answering respondent had written letters dated 08.09.2014 (Annexure R-1) and 30.11.2015 (Annexure R-2) to the office of the CAO, Sri Muktsar Sahib for obtaining sanction. In fact, the file was misplaced in the office of the Chief Agricultural Officer, Sri Muktsar Sahib and the same was located in the month of December, 2017. Thereafter, the answering respondent had sent the case to the competent authority i.e. Office of the JDA (PP) Punjab, Agriculture Bhawan, S.A.S. Nagar to accord sanction vide letter dated

07/08.12.2017 (Annexure R-3) pursuant to which sanction was granted vide letter dated 16.02.2018 (Annexure P-5). If the period 08.09.2014 to 16.02.2018 was excluded, then there was no delay in filing of the complaint. It is also contended that in terms of Section 33 of the Insecticides Act, 1968, the petitioners could not escape liability and every person who was Incharge of and liable for the conduct of the business of the Company was to be prosecuted including the Director.

15. The learned Senior counsel for the petitioners contends that there has been a delay of 05 years, 01 month and 23 days in filing the complaint. The offence under the Act is punishable by a maximum of 02 years imprisonment and therefore, the complaint could have been filed only within 03 years from the date of knowledge of commission of offence. The report of the public analyst was available on 29.01.2013 and the complaint was instituted on 23.03.2018. Even if the period between 08.12.2017 (date on which the sanction was sought from the appropriate authority) to the time sanction was granted on 16.02.2018 (by sanctioning authority) was excluded, even then, the complaint was hopelessly time barred. He contends that letters dated 08.09.2014 (Annexure R-1) and 30.11.2015 (Annexure R-2) written by the complainant-Hassan Singh to the CAO (who was not the sanctioning authority) would not in any manner help the case of the complainant by extending the period of limitation. It is his contention that since the said communications were sent to the inappropriate authority the period 08.09.2014 (letter Annexure R-1) to 16.02.2018 (Sanction granted Annexure P-5) cannot be excluded while calculating limitation. He contends that in terms of Section 470 (3) Cr.P.C. the period that was to be excluded was only from the time when the application was made for obtaining sanction upto the time the sanction was obtained. In the present

case, a perusal of the order granting sanction (Annexure P-5) would show that the application was made to the appropriate authority i.e. the CAO, Sri Muktsar Sahib only on 08.12.2017 (Annexure R-3) and sanction was accorded on 16.02.2018. Only this period could be excluded. He thus, contends that the complaint is hopelessly time barred and is liable to be quashed in view of the judgments in *M/s Cheminova India Ltd. & another Vs. State of Punjab & another, 2021(3) R.C.R. (Criminal) 750, M/s Doaba Seed Store & another Vs. State of Punjab, 2018(4) Law Herald 3396, M/s Insecticides India Ltd. & another Vs. State of Punjab, CRM-M-4744-2018, decided on 16.11.2018* and *Zimidara Kheti & another Vs. State of Punjab, 2019(1) R.C.R. (Criminal) 288*.

16. The learned State counsel on the other hand while referring to the reply dated 22.10.2019 contends that the period to be excluded would be from 08.09.2014 i.e. the date on which the ADO, Malout first wrote to the CAO seeking sanction from the JDA (PP) Punjab vide letter dated 08.09.2014 (Annexure R-1) to the actual grant of sanction on 16.02.2018 (Annexure P-5). If this period was excluded, the complaint was filed within limitation. He contends that the delay had taken place on account of the fact that the file had been misplaced. He however admits that Annexures R-1 and R-2 do not refer to any loss of the records of the case. He also admits that the said letters have been addressed to the CAO, Sri Muktsar Sahib who is not the sanctioning authority, the sanctioning authority being the JDA (PP) Punjab. He, however, while referring to the letters submits that the ADO, Malout had written to the CAO, Sri Muktsar Sahib but asked him to obtain sanction from the JDA (PP) Punjab. He thus contends that the letter dated 08.09.2019 (Annexure R-1) is the first letter which had been written for the grant of sanction and therefore, the period upto 16.02.2018

(Annexure P-5) is to be excluded while computing limitation.

17. I have heard the learned counsel for the parties at length.

18. Before proceeding in the matter, it would be apposite to examine the relevant provisions of law in this regard:-

Section 29 of the Insecticides Act, 1968, reads as under:-

29. Offences and punishment.-(1) Whoever,-

(a) imports, manufactures, sells, stocks or exhibits for sale or distributes any insecticide deemed to be misbranded under sub-clause (i) or sub-clause (iii) or sub-clause (viii) of clause (k) of section 3; or

(b) imports or manufactures any insecticide without a certificate of registration; or

(c) manufactures, sells, stocks or exhibits for sale or distributes an insecticide without a licence; or

(d) sells or distributes an insecticide, in contravention of section 27; or

(e) causes an insecticide, the use of which has been prohibited under section 27, to be used by any worker; or

(f) obstructs an Insecticide Inspector in the exercise of his powers or discharge of his duties under this Act or the rules made thereunder, [shall be punishable—

(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;

(ii) for the second and a subsequent offence, with 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.]

(2) Whoever uses an insecticide in contravention of any provision of this act or any rule made thereunder shall be punishable with fine [which shall not be less than five hundred rupees but which may extend to five thousand

rupees, or imprisonment for a term which may extend to six months, or with both].

(3) Whoever contravenes any of the other provisions of this Act or any rule made thereunder or any condition of a certificate of registration or licence granted thereunder, shall be punishable—

(i) for the first offence, with imprisonment for a term which may extend to [one year, or with fine which shall not be less than five thousand rupees but which may extend to twenty-five thousand rupees, or with both],

(ii) for the second and a subsequent 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].

(4) If any person convicted of an offence under this Act commits a like offence afterwards it shall be lawful for the court before which the second or subsequent conviction takes place to cause the offender's name and place of residence, the offence and the penalty imposed to be published in such newspapers or in such other manner as the court may direct.

Section 31 of the Insecticides Act, 1968, reads as under:-

31. Cognizance and trial of offences.-(1) No prosecution for an offence under this Act shall be instituted except by, or with the written consent of, the State Government or a person authorised in this behalf by the State Government.

(2) No court inferior to that of a 1[Metropolitan Magistrate or a Judicial Magistrate of the first class] shall try any offence under this Act.

Section 33 of the Insecticides Act, 1968 reads as under:-

33. Offences by companies.-(1) Whenever an offence under this Act has been committed by a company, every person who at the time the offence was committed, was in charge of, or was responsible to the company for the

conduct of the business of, the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment under this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any Director, Manager, Secretary or other officer of the company, such Director, Manager, Secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purpose of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

Section 468 of the Cr.P.C. reads as under:-

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 as under:-

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 as under:-

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 473 of the Cr.P.C. reads as under:-

473. Extension of period of limitation in certain cases.- Notwithstanding anything contained in the foregoing provisions of this Chapter, any Court may take cognizance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice.

19. It would also be relevant to examine the various judgments on the issue of limitation.

The Hon'ble Supreme Court in the case of M/s Cheminova India Ltd. (supra), 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.”

(emphasis supplied)

This Court in the case of **M/s Doaba Seed Store** (supra), held

as under:-

13. In Sanjay Kumar’s case (supra), Hon’ble Supreme Court held that the limitation to file complaint starts from the date of receipt of report of Public Analyst and not from the date of collection of sample by the Drug Inspector. Similarly, this Court in Om Parkash Aggarwal’s case (supra), held that the limitation for filing a complaint under the Act is three years from the date of receipt of State Public Analyst Report and the complaint instituted after a period of three years is barred under Section 468 Cr.P.C., 1973.

14. In the case in hand, the sample was drawn on 18.07.2012 and the analysis report was received on 22.08.2012, whereas the complaint was filed in the Court on 01.07.2016, as is apparent from Annexure P-1. Therefore, this Court finds that there appears to be substance in the argument of learned counsel for the petitioners. Merely because the sample was sent for a second laboratory test on the request of accused is of no help for the complainant to delay the filing of the complaint. The petitioners cannot be held responsible for

the delay, if any, as the same is solely at the behest of the complainant.

15. It would be pertinent to mention here that though the petitioners could have availed the remedy of revision, but when from the face of it, this Court finds that the complaint was filed by the complainant beyond the period of limitation, in case the said complaint is allowed to be continued, it would be a futile exercise. Therefore, this Court while invoking the provisions of Section 482 Cr.P.C. 1973 can entertain the present petition. In this regard, this Court finds support from Prabhu Chawla Versus State of Rajasthan and another 2016(4) RCR (Criminal) 270, wherein Hon'ble Supreme Court has held that a petition for quashing the order of Magistrate is maintainable and the availability of remedy under Section 397 Cr.PC would not make a petition under Section 482 Cr.PC not maintainable.

16. Thus, for the reasons stated hereinabove, the present petitions are allowed and there being a statutory bar of limitation, this Court has no hesitation to quash the complaint dated 01.07.2016 (Annexure P-1) as well as the summoning order dated 04.08.2016 (Annexure P-3) passed by learned Chief Judicial Magistrate, SBS Nagar."

(emphasis supplied)

In the case of **M/s Insecticides India Ltd.** (supra), held as

under:-

6. Having given thoughtful consideration to the rival submissions made by learned counsel for the parties, this Court finds merit in the instant petition for the reasons to follow:-

1. Undisputedly, the premises of M/s Sitara Lal Raghvir Parkash was raided by the complainant on 16.07.2011. Report qua misbranding of first sample was received on 25.07.2011 and second report from Faridabad authority was received on 01.02.2012. The impugned complaint was filed on 22.07.2015 i.e. after a period of 3 years, 5 months

and 10 days. The period of limitation for filing the complaint under sub clause 2(c) of Section 468 Cr.P.C, 1973 is three years. Therefore, after expiry of three years, the impugned complaint could not have been filed. Sanction letter (P-3) shows that the complainant applied for sanction on 19.08.2014 and the same was granted on 10.11.2014 i.e. within three months. In case, the period of three months is excluded, the impugned complaint filed on 22.07.2015 can still easily be declared being hopelessly time barred.

7. In the rulings referred above, it is held that limitation to prosecute under the Act starts from the date of receipt of report of public analysts and not from the date of collection of sample and if, the complaint is filed beyond the period of limitation of three years, the same is not maintainable.”

(emphasis supplied)

In the case of **M/s Zimidara Kheti** (supra), held as under:-

10. 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. Since taking of cognizance by the Court itself is prohibited; in case the complaint not filed within the prescribed period, therefore, the subsequent proceeding in

the form of summoning, order also stands vitiated. This Court has already considered this aspect in the case of Sohan Singh and others(supra). The case of the present petitioner is further fortified by the fact that in the same complaint, the manufacturer, who is primarily responsible for manufacturing of spurious insecticide, already stands discharged on the basis of complaint being time barred only. Learned State counsel has not brought on record anything to show that the State has even challenged that order in favour of the manufacturer. In view of this, there is no legal justification, whatsoever, for continuing the proceedings against the petitioners; who happens to be only a retailer of the product; found to be spurious.”

(emphasis supplied)

20. A combined reading of the aforementioned 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. The period of limitation is 03 years from the said date. However, the time spent in obtaining sanction is to be excluded.

21. Coming back to the facts of the present case, it would be relevant to note certain dates and events which have been enumerated below in a tabulated form:-

<i>Raid/shop visit/sample collected</i>	<i>29.12.2012</i>	<i>--</i>
<i>Sent for sampling</i>	<i>02.01.2013</i>	<i>--</i>
<i>1st sample of Insecticide Quality Control Laboratory, Bathinda.</i>	<i>29.01.2013</i>	<i>Annexure P-3</i>
<i>2nd Sample of Central Insecticides Laboratory, NH-IV, Faridabad.</i>	<i>14.03.2013</i>	<i>Annexure P-4</i>
<i>Letter No.698 sent by Hassan Singh, ADO (PP), Malout to CAO, Sri Muktsar Sahib seeking sanction to be accorded from JDA (PP) Punjab.</i>	<i>08.09.2014</i>	<i>Annexure R-1</i>
<i>Letter No.1862 sent by Hassan Singh, Asst. Plant Protection Officer, Malout, Distt.</i>	<i>30.11.2015</i>	<i>Annexure R-2</i>

<i>Muktsar Sahib to CAO, Sri Muktsar Sahib seeking sanction to be accorded from JDA, (PP) Punjab.</i>		
<i>Letter from Hassan Singh, Insecticide Inspector (then Inspection Officer, Fazilka) through the CAO, Sri Muktsar Sahib to JDA (PP) Punjab seeking grant of sanction.</i>	<i>07/08.12.2017</i>	<i>Annexure R-3</i>
<i>Sanction for prosecution granted by JDA (PP) Punjab.</i>	<i>16.02.2018</i>	<i>Annexure P-5</i>
<i>Complaint No.12 of 2018 dated 23.03.2018 registered under Sections 3(k)(i), 17, 18 and 33 punishable under Section 29(2) of Insecticides Act, 1968 read with Rules 27(5) of Insecticides Rules, 1971.</i>	<i>23.03.2018</i>	<i>Annexure P-1</i>
<i>Summoning order</i>	<i>23.03.2018</i>	<i>Annexure P-2</i>

22. As per the learned Senior counsel for the petitioner(s), in terms of Section 470 Cr.P.C., only the period between 07/08.12.2017 and 16.02.2018 could be excluded since that time was utilized to obtain sanction. On the other hand, as per the respondent/complainant, the period between 08.09.2014 to 16.02.2018 was to be excluded which would make the filing of the complaint within the period of limitation.

A perusal of Annexures R-1 and R-2 would show that the said communications have been despatched by the ADO, Malout to the CAO, Sri Muktsar Sahib. The CAO, Sri Muktsar Sahib is not the sanctioning authority as is apparent from the letters themselves. The sanctioning authority was the JDA (PP) Punjab. Nothing prevented the ADO, Malout in writing to the JDA (PP) Punjab seeking grant of sanction. In fact, the last application dated 07.12.2017 was addressed by the complainant/Hassan Singh to the JDA (PP) Punjab though routed through the CAO, Sri Muktsar

Sahib. It was on this application only that the sanction was actually granted. A perusal of the explanation to Section 470(3) Cr.P.C. explanation would reveal that the time which was to be excluded was from the date on which the application was made for obtaining the consent or sanction and the date of receipt of the order granting consent/sanction by the Government. In the present case, a perusal of Annexure P-5 i.e. the sanctioning order would show that it is based on a communication dated 07/08.12.2017 (Annexure R-3) and not on the earlier communications dated 08.09.2014 (Annexure R-1) or 30.11.2015 (Annexure R-2). In fact, if the arguments of the State was accepted that Annexures R-1 and Annexure R-2 were part of the process of obtaining sanction, then the process of obtaining sanction would be a never ending process. The complainant would repeatedly write to an authority which is admittedly not the appropriate sanctioning authority, thereby causing significant delay in prosecution and unending misery for a prospective accused as well.

Though, there has been a reference in the letter dated 07/08.12.2017 (Annexure R-3) of the record being missing from the office leading to the delay, this fact of the record being missing does not find mention in either letters Annexures R-1 or R-2. Further, if the complainant had tried to explain the delay in filing of the complaint on account of the record being misplaced, nothing prevented him from moving an appropriate application under Section 473 Cr.P.C. seeking extension of period of limitation. In that eventuality, the summoning Court could have been considered the prayer on the basis of the facts of the case. However, the same for inexplicable reasons has not been done. Therefore, it is apparent that the period to be excluded in calculating limitation of three years was only between 07/08.12.2017 (Annexure R-3) and 16.02.2018 (Annexure

P-5) and not 08.09.2019 (Annexure R-1) to 16.02.2018 (Annexure P-5) as is being canvassed by the State.

Going by the aforementioned discussion, the period of limitation would begin from 29.01.2013 when the report of the sample was first obtained from the Insecticide Quality Control Laboratory, Bathinda, Department of Agriculture, Punjab. However, the complaint has been filed on 23.03.2018. Excluding the period 07/08.12.2017 to 16.02.2018, it can be seen that the complaint has been filed after approximately five years though it should have been filed within three years from 29.01.2013 excluding the time spent in obtaining sanction. Therefore, the complaint No.12 of 2018 dated 23.03.2018 (Annexure P-1) is hopelessly barred by time.

23. In view of the aforementioned discussion, the present petitions are allowed and the complaint No.12 of 2018 dated 23.03.2018 (Annexure P-1) registered under Sections 3(k)(i), 17, 18 and 33 punishable under Section 29(2) of Insecticides Act, 1968 read with Rules 27(5) of Insecticides Rules, 1971, the summoning order dated 23.03.2018 (Annexure P-2) along with all subsequent proceedings arising therefrom are hereby quashed.

06.01.2023

Jitesh

(JASJIT SINGH BEDI)
JUDGE

Whether speaking/reasoned:-
Whether Reportable:-

Yes/No
Yes/No