

2024:PHHC:071754



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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Reserved on : May 18, 2024
Date of Decision : May 21, 2024

(I) CRM-M-1068-2024
DHARAM PAL GOEL AND OTHERS ...Petitioners
Versus
State of Punjab ...Respondent

(II) CRM-M-4976-2024
MAKHAN LAL AND ANOTHER ...Petitioners
Versus
State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

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

Mr. Sahil R. Bakshi, DAG, Punjab.

DEEPAK GUPTA, J. (Oral)

In these two petitions, both filed under Section 482 of the Code of Criminal Procedure, prayer has been made by the petitioners for quashing of complaint No.84 of 2016 titled as “State Vs. M/s Varindra Agro Traders and others” (*Annexure P-1*) under Sections 3(k)(i), 17, 18, 29 & 33 of the Insecticides Act, 1968 (hereinafter referred as 'the Act') read with Rule 27(5) of the Insecticides Rules, 1971 (hereinafter referred as 'the Rules'), pending in the Court of learned SDJM, Phul, District Bathinda, apart from the summoning order dated 16.12.2023 (*Annexure P6*) and all the consequential proceedings arising therefrom qua the petitioners.

2. Petitioners in CRM-M-1068-2024 are manufacturing firm and its representatives; whereas in CRM-M-4976-2024, petitioners are the dealer firm and its proprietor.

3.1 It is contended by ld. counsel that sample of the insecticide in question was taken by the Insecticide Inspector on 26.07.2011. Report of the Public Analyst dated 04.08.2011 was received on 12.08.2011 and it is from this date of 12.08.2011 that period of limitation shall commence for filing of the complaint and for taking cognizance offence. Ld. counsel contends that offences in question are being punishable with maximum sentence of two years, therefore, cognizance for such an offence is barred beyond the period of three years in view of Section 468 CrPC. However, in the present case, the complaint has been filed on 30.03.2016 i.e. after a huge delay of 4 years 7 months and 19 days. It is contended further that even if the period of 1 year 4 months and 26 days, consumed for obtaining the sanction to prosecute, is excluded, still the complaint has been filed beyond the period of 3 years and so, the concerned Magistrate was statutorily debarred from taking cognizance thereof.

3.2 To support the contention, Ld. counsel has relied upon a decision of this Court in **CRM-M-3715-2023** titled as ***Sandeep Goyal and others Vs. State of Punjab*** decided on 8th May, 2023 and **CRM-M-11828-2019** titled as ***Tejinderpal Singh and others Vs. State of Punjab***, decided on 19.03.2024, in which reliance had been placed upon a decision of Hon'ble Supreme Court titled as ***M/s Cheminova India Ltd. and another Vs. State of Punjab and another***, 2021(3) RCR (Crl) 750; and ***Sohan Singh vs. State of Punjab*** 2019 (2) RCR (Crl.) 314.

3.3 Ld. Counsel also contends that earlier petitioners had filed CRM-M-6926-2018 seeking quashing of the complaint as well as summoning order dated 30.03.2016 (Annexure P2). By way of order dated 02.09.2023 (*Annexure P5*), this Court quashed the summoning order but directed the ld. Magistrate to pass order on application for extension of time, which had been moved by the complainant under Section 473 CrPC, as was pending before the Court and then proceed further in accordance with law. Pursuant to the said order dated 02.09.2023, ld. Magistrate passed order dated 16.12.2023 (*Annexure P6*), allowing the application under Section 473 CrPC and ordered fresh summoning order.

3.4 Assailing the impugned order dated 16.12.2023, Ld. counsel contends that ld. Magistrate has counted the period of limitation from the date of receipt of the second sample from the Central Insecticides Laboratory, Faridabad, instead of the report of the Public Analyst, by ignoring the legal position explained by Hon'ble Supreme Court in the case of *M/s Cheminova India Ltd. and another (supra)*.

3.5 Ld. counsel contends that as the cognizance of the complaint is statutorily barred, so the same is liable to be quashed without any further inquiry, as has been held by Hon'ble Supreme Court in *Sirajul and others Vs. State of UP and another, 2015(3) RCR (Crl) 661*.

With the aforesaid submissions, prayer is made for quashing the complaint in question along with summoning order and all subsequent proceedings.

4. Opposing the petitions, ld. State counsel contends that complaint is not liable to be quashed simply for the technical reasons, as application of

the complainant-respondent under Section 473 CrPC has already been allowed, thereby extending the period of limitation and therefore, complaint is maintainable.

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

6. Various offences as provided under the Insecticides 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.

7. 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 to take cognizance is 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”

8. In present case, it is not in dispute that sample of insecticide in question i.e. Imidacloprid was taken from the premises of M/s Varindra Agro Traders, Rampura, District Bathinda (*petitioner No.2 in CRM-M-4976-2024*) and the said product had been supplied by M/s Agri Science India (*petitioner No.4 in CRM-M-1068-2024*). Sample was taken on 26.07.2011 and the report of Public Analyst was received on 12.08.2011.

9. In *M/s Cheminova India Ltd.'s case (supra)*, 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, 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 labeled 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 mis- branding, 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. ---- "

10. Similar view was taken by this court *Sandeep Goyal (supra)*; *Sohan Singh (supra)* and also in *CRM-M-17705-2018* titled as "*Sher Singh and another vs State of Punjab*" decided on 05.02.2019; and *CRM-M-1358-2018*, titled as "*Sanjay Gupta and others vs State of Punjab*" decided on 30.04.2019.

11. Thus, as per the legal position explained by Hon'ble Supreme Court in *M/s Cheminova India Ltd. and another (supra)* and *Suraj Mal's Case*, the limitation will commence from the date of receipt of the report of the Public Analyst and so, in this case, the limitation period shall commence on 12.08.2011. Section 470 CrPC permits exclusion of time taken by the sanctioning authority for granting permission to lodge the complaint.

12. In this case, as is evident from sanction letter dated 01.01.2014 of Joint Director of Agriculture (PP) Punjab, Chandigarh (*Annexure P9*), the sanction had been applied to him by Chief Agriculture Officer, Bathinda on 06.08.2012 and the same was granted on 01.01.2014 and so, this period of 1 year 4 months and 26 days is liable to be excluded for computing the period of limitation. The complaint has been filed on 30.03.2016. Even if the period of 1 year 4 months and 26 days, consumed for taking sanction to prosecute is

excluded, the complaint filed on 30.03.2016 is beyond the period of 3 years from the date of commencement of the limitation i.e. 12.08.2011 and as such, Id. Magistrate was statutorily debarred from taking cognizance of the offence in view of Section 468 CrPC.

13. As far as the order dated 16.12.2023 (*Annexure P6*) passed by Id. SDJM, Bathinda, allowing the application under Section 473 CrPC, is concerned, it is based on wrong premise that the limitation period shall commence from the date of receipt of the second sample, which in this case was received on 17.11.2011. As per the legal position explained by Hon'ble Supreme Court in *M/s Cheminova India Ltd.'s case (supra)*, as discussed above, the limitation period is to commence from the date of receipt of the report of Public Analyst in respect of the first sample, which is in this case is 12.08.2011.

14. As such, the order dated 16.12.2023 of Id. Magistrate extending the period of limitation under Section 473 CrPC, cannot be sustained in the eyes of law. There is another reason for holding so. The only reason pleaded by the respondent-complaint seeking extension of time to file the complaint is that office of the Chief Agriculture Officer, Bathinda applied for sanction to Joint Director Agriculture and that the necessary sanction was received on 09.11.2014 and since the file remained in the office of Chief Agriculture Officer, Bathinda and was not entrusted to the complainant prior to 25.08.2015, so it resulted in delay in filing the complaint and as such, there was no mala fide on the part of the complainant. There is no merit in this contention.

15. As is evident from the sanction/written consent (*Annexure P9*), necessary sanction was accorded on 01.01.2014. The said sanction was sent to the Chief Agriculture Officer, Bathinda with another copy to the Insecticide Inspector, Rampura for information and necessary action and with further direction to file the complaint in the Court within one week. Despite the fact that by way of this letter dated 01.01.2014, the Insecticide Inspector-complainant had been asked to file the complaint within a week, the complaint was filed on 30.03.2016 i.e. more than 2 years after the grant of sanction by the competent authority. As such, complainant cannot be allowed to plead that file remained pending in the office of Chief Agriculture Officer, due to which complaint could not be filed in time.

16. In view of the aforesaid discussion, there cannot be any hesitation to conclude that complaint in question being time barred, is not maintainable. Such cases covered by statutory bar of limitation are liable to be quashed without any further inquiry.

17. In view of the aforesaid discussion, complaint (*Annexure P1*), the summoning order (*Annexure P6*) and all subsequent proceedings arising therefrom, are hereby quashed for the reasons that complaint itself is not maintainable, being barred by limitation.

Photocopy of this order be placed on the connected case file.

MAY 21, 2024

Vivek

(DEEPAK GUPTA)
JUDGE

Whether reasoned/speaking: Yes
Whether reportable: Yes