



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-22175-2019

BHAGWAN DASS AND OTHERS

. . . . Petitioners

Vs.

STATE OF PUNJAB

. . . . Respondent

Reserved on: 14.03.2024
Pronounced on: 27.05.2024

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Rakesh Verma, Advocate, for the petitioners.

Mr. Sahil R. Bakshi, AAG, Punjab.

DEEPAK GUPTA, J.

This order shall dispose of 10 petitions, namely, *CRM-M-22175-2019* titled as *Bhagwan Dass and Others Vs. State of Punjab*, *CRM-M-22187-2019* titled as *Bhagwan Dass and Others Vs. State of Punjab*, *CRM-M-28360-2019* titled as *Bhagwan Dass Vs. State of Punjab*, *CRM-M-30819-2019* titled as *Manoj d. Patel and another Vs. State of Punjab*, *CRM-M-40164-2019* titled as *Ragumoorthy R. Vs. State of Punjab*, *CRM-M-23365-2019* titled as *Sham Lal and another Vs. State of Punjab*, *CRM-M-23369-2019* titled as *Sham Lal and others Vs. State of Punjab*, *CRM-M-28783-2019* titled as *M.V.S.L.V. Prasad Vs. State of Punjab*, *CRM-M-32946-2019* titled as *M.V.S.L.V. Prasad Vs. State of Punjab* and *CRM-M-46829-2019* titled as *Pradeep Sharma Vs. State of Punjab*, involving common questions of law, which have arisen out of four criminal complaints, pending in different Courts of Punjab, seeking prosecution of the accused 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 Insecticides Rules, 1971 (hereinafter referred to as ‘the Rules’). Necessary details of complaints, the capacity of petitioners etc. are as under:-

Sr. N:	CRM-M - N:	Arising out of Complaint N:	Capacity of Petitioners
1	22175 - 2019	66 of 2018 [Before CJM, Sangrur]	Marketing Company
2	23365 - 2019		Dealer/ Distributor
3	22187 - 2019	15 of 2018 [Before CJM, Sangrur]	Marketing Company
4	23369 - 2019		Dealer/ Distributor
5	28783 - 2019	14 of 2018 [Before SDJM, Malout, Distt. Sri Muktsar Sahib]	Office Bearers of the Marketing Company
6	28360 - 2019		
7	30819 - 2019		
8	32946 - 2019	207 of 2014 [Before JMIC, Amritsar]	Office Bearers of the Distributor Company
9	40164 - 2019		
10	46829 - 2019		

2. Details of sampled products, dealers, marketers & manufacturers in the four complaints, are as under:

Sr. N:	Complaint N:	Sampled Product (Insecticide)	Dealer/ Distributor	Marketing Company	Manufacturer
1	66 of 2018	Cartap Hydrochloride 4% GR	M/s Har Har Mahadev Trading Company, Sangrur	M/s Makhteshim Agan India Ltd, Hyderabad	M/s Agri Care, Bharuch (Gujarat)
2	15 of 2018	Cartap Hydrochloride 4% GR	M/s Ghuman Kheti Sewa Centre, Gharachon, Sangrur; M/s Har Har Mahadev Trading Company, Sangrur (Distributor)	M/s Makhteshim Agan India Ltd, Hyderabad	M/s Agri Care, Bharuch (Gujarat)
3	14 of 2018	Cartap Hydrochloride 4% GR	M/s Malout Beej Bhandar, Malout	-	M/s Makhteshim Agan India Ltd, Hyderabad
4	207 of 2014	Clodinofop Propargyl 15 % WP	M/s New Joshan Kheti Store, Jandiala Guru (Amritsar)	M/s Makhteshim Agan India Ltd, Hyderabad	M/s Ravi Plant Bio Technology Ltd, Panchalamz, Gujarat

In all the four complaints, the sampled products were found to be misbranded.

3. The relevant dates in the four complaints are as under: -

Complaint N:	66 of 2018	15 of 2018	14 of 2018	207 of 2014
Relevant Dates:				
<i>Date of Sample</i>	13.07.2012	07.07.2012	15.06.2012	01.01.2010
<i>Date of receipt report of the Public Analyst</i>	19.07.2012	13.07.2012	09.07.2012	04.01.2010
<i>Date of receipt report of the Central Lab</i>	23.10..2012	23.10.2012	17.12.2012	15.06.2010
<i>Sanction applied on</i>	11.04.2016	11.04.2016	08.12.2017	19.06.2012
<i>Sanction allowed on</i>	25.09.2017	22.09.2017	16.02.2018	22.11.2013
<i>Date of filing of the complaint</i>	09.05.2018	15.02.2018	23.03.2018	22.01.2014

4. In all the 10 petitions, petitioners are either the marketing company or the dealer/ distributor of the sampled products, besides their respective representatives.

- CRM-M-22175-2019 & CRM-M-23365-2019 have arisen out of complaint No.66 of 2018 pending before CJM, Sangrur.
- CRM-M-22187-2019 & CRM-M-23369-2019 have arisen out of complaint No.15 of 2018, pending before CJM, Sangrur.
- CRM-M-28783-2019, CRM-M-28360-2019 & CRM-M-30819-2019 have arisen out of complaint No.14 of 2018 pending before SDJM, Malaut.

In the above seven petitions, the common ground to challenge the complaints and the respective summoning orders passed therein is that cognizance of the offences in question could not have been taken, as complaints have been filed beyond the period of limitation, as permitted under Section 468 CrPC. To support this 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.

5. Apart from ground of limitation taken in 7 petitions arising out of 3 complaints as referred above, the common ground in all the 10 petitions to challenge the 4 complaints and the respective summoning orders passed therein, is that the sample was drawn out of the original sealed packing and the product in question had been manufactured by accused other than the petitioners, who are either the dealer/distributor or the marketer and that except the manufacturing company, nobody else can be prosecuted for the offence, in case sampled product has been found to be misbranded. Reliance is placed on **M/S Rallis India Limited And Ors vs State Of Punjab Law Finder Doc Id # 1990978.**

6. All the petitions have been contested by the respondent state.

(i) Opposing the petition, Ld. State Counsel argues that after the samples were found to be misbranded as per report of Insecticide Analyst, show cause notices were sent to accused and at their request, second representative samples were sent to central Lab and when the report of central lab confirmed the sample to be misbranded, the process to seek sanction to prosecute the accused was initiated in all the complaints and after receipt of sanction in this regard, the complaints were filed. Ld. state counsel submits that the time consumed for obtaining sanction to prosecute the accused is liable to be excluded, in view of Section 470 Cr.P.C. It is further contended that period of limitation will start from the date of receiving report from the Central Insecticide Laboratory, as it is the accused-petitioners, who were not satisfied with the report of the Public Analyst and had made a request for re-testing. Still further, it is contended that after applying the judicious mind, ld. trial Court rightly issued the impugned

summoning order. It is also urged that no prejudice has been caused to the petitioners in any manner and so, they should face trial.

(ii) Ld. State counsel also urges that it would be improper to put the state on same footing as an individual, as it is the impersonal machinery, which operates through its officers and that considering the impact of offence on the society and institutional interests of the state, lethargy or negligence on the part of some of the functionary should not be considered as a bar to prosecute the offender on ground of limitation. Ld. State counsel refers to *Sheo Raj Singh vs. Union of India (2023) 10 SCC 531*; and *State of Manipur vs. Koting Lamkang (2019) 10 SCC 408*.

(ii) It is further contended by Ld. State counsel on the basis of reply submitted that petitioners being dealer/ distributors or the marketing company are presumed to know the actual ingredients of packed sample products and therefore, they are also liable to face prosecution along with the manufacturing company. However, it is not disputed that samples in all the four complaints were drawn from original sealed packings.

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

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

Point of Limitation:

8. 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.

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 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”

10. Learned counsel for the petitioners has also relied upon *State of Rajasthan Vs. Sanjay Kumar, 1998(3) R.C.R. (Criminal) 846*, wherein it was held by Hon’ble Supreme Court that limitation to file a complaint starts from the date of receipt of the report of the Public Analyst and not from the date of collection of the sample by the Inspector.

11. 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 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. ---- "

12. 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.

13. 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. Section 470 CrPC permits exclusion of time taken by the sanctioning authority for granting permission to lodge the complaint.

14. In CRM-M-22175-2019 and CRM-M-23365-2019 arising out of Complaint No.66 of 2018, pending in the Court of learned Chief Judicial Magistrate, Sangrur, sample was drawn on 13.07.2012 and the report of Public Analyst dated 17.07.2012 was received in the office of Chief Agricultural Officer, Bathinda on 19.07.2012. It is this date of 19.07.2012 that period of limitation is to commence in view of the legal position as discussed above. However, the complaint has been filed on 09.05.2018, i.e. after a gap of 05 years, 09 months and 20 days. Although, the period from 11.04.2016, when the sanction to prosecute the accused was applied till 25.09.2017, when the sanction to prosecute was granted, is liable to be deducted in view of Section 470(3) Cr.P.C., but even after deduction of this period, the complaint has been filed after a period of more than 04 years. It is also important to notice that even the sanction was applied on 11.04.2016, i.e. after lapse of more than 03 years from the date, when period of limitation commenced on 19.07.2012.

15. Similarly, in CRM-M-22187-2019 and CRM-M-23369-2019 arising out of complaint No.15 of 2018 pending in the Court of learned Chief Judicial Magistrate, Sangrur, sample was drawn on 07.07.2012 and the report of Public Analyst dated 13.07.2012 was received in the office of Chief Agricultural Officer on 16.07.2012. It is this date of 16.07.2012 that period of limitation is to commence in view of the legal position as discussed above. However, the complaint has been filed on 15.02.2018, i.e. after a gap of 05 years, 06 months and 30 days. Although, the period from 11.04.2016, when the sanction to prosecute the accused was applied till 22.07.2017, when the sanction to prosecute was granted, is liable to be deducted in view of Section

470(3) Cr.P.C., but even after deduction of this period, the complaint has been filed after a period of more than 04 years. It is also important to notice that even the sanction was applied on 11.04.2016, i.e. after lapse of more than 03 years from the date when period of limitation commenced on 16.07.2012.

16. In CRM-M-28783-2019, CRM-M-28360-2019 and CRM-M-30819-2019, all arising out of complaint No.14 of 2018 pending before learned Sub Divisional Judicial Magistrate, Malout, District Sri Muktsar Sahib, sample was drawn on 15.06.2012 and the report of the Insecticide Officer was received in the office of Chief Agricultural Officer on 09.07.2012. It is this date of 09.07.2012 that period of limitation is to commence in view of the legal position. However, the complaint has been filed on 23.03.2018, i.e. after a gap of 05 years, 08 months and 14 days. Although, the period from 08.12.2017, when the sanction to prosecute the accused was applied till 16.02.2018, when the sanction to prosecute was granted may be liable to be deducted in view of Section 470(3) Cr.P.C., but even after deduction of this period, the complaint has been filed after a period of more than 04 years. It is also important to notice that even the sanction was applied on 08.12.2017, i.e. after lapse of more than 05 years from the date, when period of limitation commenced on 09.07.2012.

17. In view of the factual and legal position as per aforesaid discussion, there cannot be any hesitation to conclude that complaints N: 66 of 2018 pending before CJM, Sangrur; No.15 of 2018, pending before CJM, Sangrur; and No.14 of 2018 pending before SDJM, Malout, being time barred, are not maintainable, and so, these cases being covered by statutory bar of limitation alongwith respective summoning orders passed therein are liable to be quashed. It has been held by Hon'ble Supreme Court in ***"Sirajul & Ors. v. The State of U.P. & Anr."***, 2015(3) R.C.R.(Criminal) 661, that cases covered by statutory bar of limitation may be liable to be quashed without any further

inquiry, although for the cases not covered by statutory bar, ground of delay can be pleaded in appropriate cases due to violation of the speedy trial.

18. As far as *Sheo Raj Singh's case (supra)* and *State of Manipur vs. Koting Lamkang (supra)*, relied by Ld. State counsel are concerned, in those cases, civil appeals were filed beyond limitation by the State in those cases. Hon'ble Supreme Court had allowed the condonation of delay by observing that state can not be put on same footing as an individual, as impersonal machinery operates through its officers.

19. Above cited authorities can not be applied to the facts and circumstances of present cases, because cognizance of an offence is required to be taken strictly in accordance with the provisions of Code of criminal procedure within the time allowed by law; and unless and until a case falls within the permissible exceptions, delay can not be condoned.

Whether any body else other than the manufacturer liable?:

20. Proceeding further, it is undisputed that in all the four complaints, out of which these 10 petitions have arisen, the petitioners are either the dealers/distributors or the marketers of the sampled products and their respective representatives. It is also not disputed that in all the four complaints, samples were drawn from original sealed packings. There is no allegation that there was any tampering on the part of the dealer/distributor or the marketers and thus, the samples were taken in the same condition, in which the products in question were supplied by the manufacturer to the marketing company and then marketing company to the dealer/distributor.

21. In the above facts and circumstance, whether anybody else except the manufacturer company can be held liable, is the question to be considered.

22. **CRM-M-11528-2013** was filed before this court by the dealer. This Court (co-ordinate Bench) held in its order dated 16.09.2013, as under:

“Admittedly, the Insecticide Inspector drew sample of Butachlor 50% EC from 5 litres of sealed packing and the petitioners were selling the insecticide in dispute in a sealed container in the original form. It is not the case of the respondent that the insecticide was not properly stored or was not in the same stage after packing or there was tampering with the seal of the packing. In absence of such averment in the complaint, the petitioner is entitled to the protection provided under Section 30(3) of the Insecticides Act. Section 30(3) of the Act is reproduced as under:

“30. Defences which may or may not be allowed in prosecutions under this Act.

(3) A person not being an importer or a manufacturer of an insecticide or his agent for the distribution thereof, shall not be liable for a contravention of any provision of this Act, if he proves.

(a) that he acquired the insecticide from an importer or a duly licensed manufacturer, distributor or dealer thereof;

(b) that he did not know and could not, with reasonable diligence, have ascertained that the insecticide in any way contravened any provision of this Act; and

(c) that the insecticide, while in his possession, was properly stored and remained in the same state as when he acquired it.”

A perusal of Section 30(3) of the Act shows that the petitioners are entitled to protection as sample was taken from the sealed container as seal was not found to be tampered with when it was recovered from the shop of the petitioner. It is also not the case of the respondent State that the insecticide was not properly stored or there was tampering with the seal.

The case of the petitioners is squarely covered by judgment of Apex Court in case **M/s Kisan Beej Bhandar, Abohar v. Chief Agricultural Officers, Ferozepur 1990 Supreme Court Cases (Crl.) 623.**

In view of the facts and law position explained above, the present petition is allowed. The complaint No.235 dated 23.1.2013 under Sections 29 read with Section 3(k)(i), 17, 18, 29 and 33 of the Insecticides Act, 1968 and Rules 10 and 27 (5) of the Insecticides Rules 1971 as well as summoning order dated 23.1.2013 and subsequent proceedings arising therefrom qua the petitioners are quashed.”

23. In **M/S Rallis India Limited’s case (supra)**, this court considered following question:

“The question which arises for consideration in the instant petition is as to whether a marketing agency/licensed dealer can be held responsible under the Insecticides Act, 1968, for the contents of the samples when it is not disputed that the seal of the sample was intact at the time of sampling ?

After referring to various provisions of Insecticides Act, 1968, the court concluded as under:

“22. It is evident from a perusal of the petition as well as documents appended along with the same that the undisputed case of the respondent-State is that the petitioners were a marketing agent of the insecticides. It has been repeatedly so affirmed by the respondent in various paragraphs of the complaint instituted through Insecticide Inspector and already extracted above. It is also not a subject matter of dispute that the sample was drawn from a sealed packet and it is nowhere alleged that the sample had not been stored in accordance with the provisions contained under the Insecticides Act and Rules framed thereunder. There is also no allegation that the petitioners were responsible for the quality of the product as also for ensuring the labelled ingredients of the same. The petitioners are not nominated as the authorised/responsible officers in terms of Section 33 of the Insecticides Act. The statutory mandate intends to penalize a person who has committed an offence. It does not intend to prosecute the people who are merely dealing with the said product and for which they have no control as regards its quality and content. The petitioners cannot be held vicariously liable and to be penalized for misbranding of a product where they were not involved in the manufacturing process at all merely for having traded in the same. Section 3(k)(i) defines misbranding. The same relates to the label of products and its contents. It is not the case that any of the activities referred to under section 3 (k) attracting misbranding was undertaken by the petitioners. Further, Section 17 of the Act is also not attracted against the petitioners inasmuch as the petitioners are neither the importer of the misbranded insecticides, nor manufacturer thereof. Further, the ingredients of Section 18 of the Act are also not satisfied and there is no allegation that the petitioners had indulged in the sale of the insecticides, which was either not registered under the Act or was prohibited under Section 27. Similarly, Section 29 also would not be applicable against the petitioners inasmuch as the same contemplates punishment for offences as stated above. Once the necessary ingredients of the said Sections are not satisfied against the petitioners, they cannot be penalized for the same.”

24. Thus, as per the legal position as discussed above, mandate is to penalize a person who has committed an offence and not to prosecute the people, who are merely dealing with the said product and for which they have

no control as regards its quality and content. The petitioners cannot be held vicariously liable and be penalized for misbranding of a product, where they were not involved in the manufacturing process at all merely for having traded in the same.

25. Consequent to the entire discussion as above, all the ten petitions are accepted. The complaint No.66 of 2018; complaint No.15 of 2018 and complaint No.14 of 2018, which have been filed beyond the period of limitation, are hereby quashed alongwith respective summoning orders passed therein and the 07 petitions arising out of these 03 complaints are allowed accordingly. As far as CRM-M-32946-2019, CRM-M-40164-2019 and CRM-M-46829-2019 arising out of complaint No.207 of 2014 pending before learned Judicial Magistrate 1st Class, Amritsar, are concerned, said complaint No.207 of 2014 and the summoning order passed therein are quashed only qua the petitioner(s) concerned, who are the office bearers of the distributor company.

Pending application(s), if any, also stand disposed of.

A photocopy of this order be placed on the file of other connected case.

27.05.2024
Vivek

(DEEPAK GUPTA)
JUDGE

<i>Whether speaking/reasoned?</i>	<i>Yes</i>
<i>Whether reportable?</i>	<i>Yes</i>