



207-1

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

Date of Decision: August 06, 2024

1. CRM-M-31776-2020 (O&M)

SURESH PALPetitioner(s)

VERSUS

STATE OF PUNJABRespondent(s)

2. CRM-M-56321-2023

MANOJ KUMAR GUPTAPetitioner(s)

VERSUS

STATE OF PUNJAB AND ANOTHERRespondent(s)

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. S.S. Salar, Advocate
for the petitioner in CRM-M-31776-2020.

Mr. Abdul Sattar, Advocate
for the petitioner in CRM-M-56321-2023.

Mr. Rajiv Verma, DAG, Punjab.

SANDEEP MOUDGIL, J.(ORAL)

Vide this common order, both the aforesaid petitions are being
disposed off as common question of law is involved in both the petitions.

For convenience, facts are being drawn from CRM-M-31776-2020.



This petition has been filed under Section 482 Cr.P.C. seeking quashing of complaint COMA No.509/2018 dated 01.11.2018 under Section 29(1)(a) of the Insecticide Act 1968 (Registration date 02.11.2018) titled as *State of Punjab vs. M/s Ganesh Pesticide Store and ors.* pending in the Court of Sub-Divisional Judicial Magistrate, Phul (Annexure P-28) along with all consequential proceedings including order dated 18.07.2019 (Annexure P-30) whereby the petitioner along with other have been summoned to face trial of the offence under Section 29(1)(a) of the Insecticide Act, 1968.

Factual matrix of the case unfolds that the petitioner was an employee of M/s Kamdhenu Krishsi Rasayan Export Pvt. Ltd. Mujaaffarnagar U.P. and was working as Godown Incharge and responsible person at Bathinda Godown wherein his duty was to receive the consignments from his employer in a packed condition and to distribute the same to various wholesalers and retailers in a packed condition. There was no occasion to open the sealed packets/containers at godown and the insecticides were forwarded as were received from the marketing proprietorship of M/s Kamdhenu Krishsi Rasayan Export Pvt. Ltd.

That on 27.07.2011, an Insecticide Inspector namely Dharminderjit Singh raided retail of M/S Ganesh Pesticide Store at village Chauke, District and sample of Cypermerthrin 25% was taken and on analysis it was found to be containing 11.25% EC instead of 25% to which show cause notice was issued to Surinder Singh s/o Jarnail Singh as Godown Incharge and name of the petitioner was nowhere to be mentioned. Further, violation of provisions of Insecticide Act 1968 (hereinafter referred to as



‘The Act’ in short) attracts initiation of criminal proceedings for which a written permission is required which was granted against the petitioner by the Joint Director Agriculture in an arbitrary manner on 11.02.2013 without taking into consideration the fact that show cause notice was never issued in the name of the petitioner.

Thereafter to rectify the mistake of Joint Director, the petitioner submitted number of letters to the competent authority dated 10.09.2013 uptill 11.10.2018(Annexures P-6 to P-27) wherein vide letter dated 11.10.2018 it was clarified that the petitioner was responsible as he had replaced the earlier godown incharge Shri Surinder singh.

Counsel for the petitioner at the very outset contends that the complaint under section 3K,17,18,29,33 of The Act r/w Rule 27(5) of the Insecticide Rules,1971 was registered on 02.11.2018 along with an application u/s 473 Cr.P.C which was allowed by merely stating that the complainant was busy in multifarious duties without hearing the petitioner vide order dated 18.07.2019 added with the fact that summoning was also made on the same date(Annexure P-30).

On the other hand, learned State counsel has laid much stress to the fact that there is no such mandatory provision laid down in The Act or even in Section 468 Cr.P.C. qua condonation of delay without issuing notice to the petitioner and produced a copy of the order dated 18.07.2019 while further submitting that reasons were not required to be recorded as the application was moved by a public servant and on that account his preliminary evidence was exempted under Section 200 Cr.P.C.

Heard learned counsel for the respective parties.



Be that as it may, this Court is sanguine of the provisions laid down for lodging of the complaint wherein limitation would be of three years if Section 29(1)(a) of Insecticide Act, 1986 is made out and application under Section 473 Cr.P.C. was preferred for condonation of delay admittedly after expiry of three years period as is envisaged in Section 468 Cr.P.C. It would be of utmost importance to reproduce both the provisions for ready reference, which would read as under:-

“Section 29(1) in The Insecticides Act, 1968

(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 license; 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.

Section 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 a 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.”

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.

It is a settled proposition of law that the maximum punishment provided u/s 29 of The Act is two years and in that case, the period shall be charged from the receipt of analysis report from the analyst wherein in the instant case, the analysis report declaring the insecticide as misbranded was



received on 29.08.2011 therefore the complaint would have been lodged on or before 29.08.2014 which was indeed registered on 02.11.2018 much later to the expiration of the limitation period.

Further, a bare reading of section 473 Cr.P.C makes it clear that it provides discretion to the trial court to take cognizance even after expiry of limitation of 3 years provided the delay has been properly explained or that it is necessary to do so in the interest of justice. The perusal of the order dated 18.07.2019, makes its crystal clear that it is cryptic in nature wherein the delay has only been condoned on the ground that the Inspector is a public servant who has filed the complaint and he being engaged in multifarious activities was unable to file the complaint in time.

It is the question as intervened in ***State of Maharashtra vs. Sharadchandra Vinayak Dongre***, 1995 SCC(1) 42 wherein the Hon'ble Apex Court held as under:-

“5. In our view, the High Court was perfectly justified in holding that the delay, if any, for launching the prosecution, could not have been condoned without notice to the respondents and behind their back and without recording any reasons for condonation of the delay. However, having come to that conclusion, it would have been appropriate for the High Court, without going into the merits of the case to have remitted the case to the Trial Court, with a direction to decide the application for condonation of delay afresh after hearing both sides. The High Court, however, did not adopt that course and proceeded further to hold that the trial Court could not have taken cognizance of the offence in view of the application filed by the prosecution seeking permission of the Court to file a "supplementary charge- sheet" on the basis of an 'incomplete charge-sheet' and quashed the order of the CJM dated



21.11.1986 on this ground also. This view of the High Court, in the facts and circumstances of the case is patently erroneous.

8. In the instant case, the Chief Judicial Magistrate was obviously satisfied with sufficiency of the material placed by the prosecution before him with the report for taking cognizance of the offence and he therefore proceeded further after taking cognizance and directed the issuance of process against the respondents. The prayer of the Investigating agency seeking permission to further investigate and submit a 'supplementary charge-sheet' could not vitiate the cognizance taken by the Chief Judicial Magistrate nor denude him of his jurisdiction to take cognizance of the offence. The High Court while quashing the order dated 21.11.1986, did not record any finding to the effect that the exercise of discretion by the Magistrate in taking cognizance of the offence and issuing process was in any way improper or that the cognizance was taken on the basis of the material on which no reasonable person could have taken cognizance. The High Court quashed the order only because it was influenced by the application filed by the prosecution seeking permission to record additional evidence and file a 'supplementary charge-sheet' and from that it inferred that the report filed by the prosecution was 'incomplete. High Court even over-looked the fact that the application filed by the prosecution had not even been allowed by the Chief Judicial Magistrate and had been only adjourned for orders. We cannot persuade ourselves to accept the view of the High Court that if the investigating officer term a police report as "Incomplete". It takes away the jurisdiction of the Magistrate to take cognizance of the offence, even if in the opinion of the Magistrate, the material is sufficient for him to be satisfied that it was a fit case for him to take cognizance of the offence. The Magistrate is not bound by the label given to the report or the charge-sheet by the investigating officer and it is for him to decide whether the report and the material on



which it is based, is sufficient for him to take cognizance or not. It is pertinent to notice that the police report submitted before the Chief Judicial Magistrate did not even say that it was an "incomplete" charge-sheet or police report. The High Court was, therefore, not at all justified in opining that since the charge sheet on the prosecution's own showing was "Incomplete", the Chief Judicial Magistrate could not have taken cognizance and quash the order of the CJM taking cognizance of the offence. We may also record at this stage that Shri Dholakia, the learned Senior counsel appearing for the appellant submitted before us that apart from the material already filed with the police report/charge-sheet, on the basis of which the Chief Judicial Magistrate took cognizance on 21.11.1986, the State does not intend to file any further material by way of any supplementary charge-sheet before the Trial Court. The statement of Shri Dholakia, adequately protects the interest of the respondents. In view of the statement of Mr. Dholakia, we are relieved of the necessity to deal with the effect of Section 173(8) Criminal Procedure Code, 1973 in this case."

In the light of above, giving the considerable thought to this effect followed in the instant petition as well as law discussed herein above, submission of learned counsel for the petitioner carries weight and convincing, hence, this petition deserves to be allowed. Complaint COMA No. 509/2018 is ordered to be quashed along with all consequential proceedings arising therefrom including order dated 18.07.2019 (Annexure P-30)

(SANDEEP MOUDGIL)
JUDGE

06.08.2024
Sangeeta

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