

206 IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRM-M-38050-2022

Date of decision: 07.02.2024

M/S AMSONS LABORATORIES PRIVATE LIMITED

...Petitioner

V/s

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Arun Chandra, Advocate  
for the petitioner.

Mr. Subhash Godara, Addl. AG Punjab.

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HARPREET SINGH BRAR J. (ORAL)

1. Present petition has been filed under Section 482 of Cr.P.C. filed by the petitioner for quashing of the complaint No. COMA/31/2018 dated 04.07.2018 under Sections 3K(1), 17, 18, 29 and 33 of Insecticide Act, 1968 (hereinafter 'the Act') and Section 10(4) (III) of Insecticide Rules, 1971 titled '*State of Punjab Vs. M/s Zimidara Trading Company and Others*' and the summoning order dated 04.07.2018 (Annexure P-2) as well as the consequential proceedings arising therefrom.
2. Brief facts of the case are that the complainant visited the premises of M/s Zimidara Trading Company on 01.07.2013 and drew the sample of Glyphosate 41% manufactured by the petitioner company and the sample in question was alleged to have been found to be misbranded by the Insecticide Testing Laboratory, Amritsar on 08.07.2013. The sample was reanalysed by the Central Insecticide Testing Laboratory, Faridabad on 02.04.2014 and yet again it was again found to be misbranded. On the basis of these two reports, prosecution was launched on 04.07.2018 by filing the complaint(supra).

3. Learned counsel for the petitioner has taken a specific ground that no Court can take cognizance of an offence beyond the period of limitation provided under Section 468 Cr.P.C. In the instant case, the sample was drawn on 01.07.2013 and the complaint(supra) was filed on 04.07.2018, therefore, as per the provisions contained in Section 468 of Cr.P.C, learned trial Court cannot take cognizance of the same. While the respondent had filed an application for condonation of delay under Section 473 of Cr.P.C. before the learned trial Court along with the complaint, a perusal of the summoning order does not indicate whether the said delay was condoned.

4. Learned counsel for the petitioner further contends that admittedly, the sanction itself was granted on 01.11.2017 (Annexure P-3) for the purpose of prosecuting the dealer and its proprietor. The complaint was filed without having proper sanction against the petitioners without even fulfilling the mandatory requirement of receiving sanction. He submits that the impugned summoning order dated 04.07.2018 (Annexure P-2) was passed in the most cryptic and mechanical manner and as such the same is liable to be set aside.

5. Per contra, learned State counsel opposes the prayer made by learned counsel for the petitioner on the ground that the petitioner has approached this Court directly and not filed revision petition before the learned Revisional Court. Reliance in this regards is placed upon the judgment of the Hon'ble Supreme Court in **Sonu Gupta Vs. Deepak Gupta and Others 2015(2) RCR Criminal 52** and the judgment of this Court in **Karnal Singh Vs. State of Punjab 2002 (1) RCR Criminal 466**. He further submits that once the complainant-respondent has sought condonation of delay by filing an application (Annexure P-4) under Section 473 of Cr.P.C. and the ground of delay cannot be agitated before this Court, even

if the learned trial Court has passed the summoning order without condoning the delay.

6. Having heard the learned counsel for the parties and after perusing the record, it transpires that the sample in the present case was drawn on 01.07.2013. The report of Insecticides Testing Laboratory, Amritsar was received on 08.07.2013 and the subsequent report of Central Insecticides Testing Laboratory, Faridabad was received on 02.04.2014, whereas the prosecution was launched on 04.07.2018. Section 468 of Cr.P.C. provides limitation period for taking cognizance of offences and bars taking cognizance beyond the period of limitation.

7. The offence under Section 29 of the Act is punishable with 02 years of imprisonment, therefore, as per Section 468(2)(c) of Cr.P.C., the period of limitation for taking cognizance of the same would be three years. No doubt, the Court has the power to extend the period of limitation in certain cases under Section 473 Cr.P.C. and an application to that effect was also filed by the complainant in the present case, but the learned trial Court has erred by passing the impugned summoning order without deciding on the question of delay since the complaint was filed after the expiry of the limitation period. This Court in *M/s Kheti Sewa Centre, Ludhiana v. State of Punjab 2003(1) R.C.R(Criminal) 310* and *M/s Balajit Sales Corporation Vs. State of Punjab CRM-M-18077-2011* decided on 08.10.2012 had set aside the proceedings arising out of complaints under the Act filed after the expiration of the limitation period.

8. Further, as required under Section 31 of the Act, the sanction was granted on 01.11.2017 (Annexure P-3) only against M/s Zimidara Trading Company and its owner Anil Kumar. The name of the petitioner company or its proprietor Ashok Makhija does not figure in the sanction order. This Court in *K.G. Papu and another v. State of Punjab 1996(1) R.C.R.(Criminal) 795* has categorically held

that obtaining sanction under Section 31 of the Act is a condition precedent to launching of prosecution and that the sanction to prosecute a partnership firm cannot be treated as sanction to prosecute its partners. In ***G.V. Devasahayam v. State of Haryana 2002(2) R.C.R.(Criminal) 792*** this Court has held that if name of the petitioner does not figure in the sanction, he cannot be prosecuted as the condition precedent under Section 31 of the Act remains unfulfilled.

9. Lastly, a three Judge bench of the Hon'ble Supreme Court in ***Prabhu Chawla v. State of Rajasthan (2016) 16 SCC 30*** has held that availability of a remedy before the Revisional Court under Section 397 Cr.P.C does not restrict the High Court from exercising its inherent powers under section 482 Cr.P.C. Speaking through Justice Shiva Kirti Singh, the following was observed:

*"6. In our considered view any attempt to explain the law further as regards the issue relating to inherent power of High Court under Section 482 Cr.P.C. is unwarranted. We would simply reiterate that Section 482 begins with a non-obstante clause to state: "Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice." A fortiori, there can be no total ban on the exercise of such wholesome jurisdiction where, in the words of Krishna Iyer, J. "abuse of the process of the Court or other extraordinary situation excites the court's jurisdiction. The limitation is self-restraint, nothing more." We venture to add a further reason in support. Since Section 397 Cr.P.C. is attracted against all orders other than interlocutory, a contrary view would limit the availability of inherent powers under Section 482 Cr.P.C. only to petty interlocutory orders! A situation wholly unwarranted and undesirable."*

10. In view of the above discussion, the instant petition is allowed and the complaint dated 04.07.2018 (Annexure P-1) as well as the summoning order dated

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04.07.2018 (Annexure P-2) and all subsequent proceedings arising therefrom are quashed.

(HARPREET SINGH BRAR)  
JUDGE

07.02.2024

Ajay Goswami

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|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether reportable        | Yes/No |