

2024:PHHC:135835



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

204

CRM-M-41699-2022 (O&M)

Date of decision: 05.11.2024

Sohan Singh and others

...Petitioners

Versus

State of Punjab through Insecticides Inspector

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

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

Ms. Ruchika Sabherwal, Sr. DAG, Punjab.

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed by the petitioners under Section 482 of Code of Criminal Procedure (*for short 'Cr.P.C.'*) seeking quashing of Criminal complaint bearing No. 105 dated 21.03.2018, titled as ***State vs. M/s Mann Beej Bhandar & others***, filed under Sections 3(k)(i), 17, 18, 29 and 33 of the Insecticides Act, 1968 (*for short 'the Act, 1968'*) read with Rule 27(5) of the Insecticides Rules, 1971 (*for short 'Rules, 1971'*), pending in the Court of Sub Divisional Judicial Magistrate, Talwandi Sabo, District Bathinda as well as for quashing of order dated 21.03.2018, passed in the aforesaid complaint, thereby issuing process against the present petitioners.

2. Brief facts of the case relevant for the purpose of disposal of the present petition are that the aforementioned complaint has been filed by the State of Punjab through Insecticide Inspector against the present petitioners

2024:PHHC:135835



alleging therein that on 30.09.2014, Harjas Pal Sharma, Agricultural Development Officer, Maur, declared as Insecticide Inspector by virtue of a Govt. Notification, had inspected the shop of M/s Mann Beej Bhandar, Maur Mandi. Pala Singh, proprietor of the said shop, was found present at the shop. On inspection, 25 liters of *Buprofezin* 25% SC kept in the containers of 01 liter capacity, which was shown to be supplied by M/s Indoshine Chemicals, Mansa, was found kept in the shop for sale purpose. A container of 01 liter was selected for sampling. It was purchased by the Insecticide Inspector. The requisite consent of the dealer was taken before taking sample from the container. Forms No. XX and XXI were prepared and read over to the proprietor of M/s Mann Beej Bhandar, who signed the same. A sample, after being drawn in a proper manner, was properly shaken and converted into 03 different samples. These samples were sealed. One of the same was handed over to Pala Singh. The remaining 02 samples were deposited with the Chief Agriculture Officer, Bathinda in intact condition on the same day and one of the same was sent to Senior Analyst, Insecticide Testing Laboratory, Bathinda on 13.10.2014. It was alleged that on receipt of the test report, the sample, sent to the laboratory, was found to be misbranded as it did not conform to I.S. specifications in its active ingredients as content of SC Buprofezin was found to be 14.63% instead of 25%. Copy of analysis report was delivered to the proprietor of the firm along with a show cause notice dated 02.12.2014. Simultaneously, a show cause notice along with analysis report was sent to manufacturer firm on the same day. The dealer, marketing firm and manufacturer firm submitted their respective replies. On the request of the dealer and manufacturer firm, reference sample was sent to Central Insecticide

2024:PHHC:135835



Laboratory, Faridabad, which too was declared to be misbranded, vide letter dated 17.07.2015 as the active ingredient contents were found to be only 5.57%, which did not conform to I.S. specification. Since the insecticide in question was manufactured by M/s Vikas Organic Ind. Corporation, Panjgrain Kalan, Faridkot and sold by M/s Mann Beej Bhandar, which was not as per specification and was misbranded and stocking and selling of the same amounted to causing loss to farmers, therefore, a complaint has been filed against the aforesaid firms, their proprietors and the persons responsible for conduct of business of the firms.

3. On presentation of the complaint before the Court of Sub Divisional Judicial Magistrate, Talwandi Sabo, he passed order dated 21.03.2018, thereby issuing process against the petitioners, who are manufacturer, proprietor of the manufacturing firm and employee of this firm, respectively and proprietor of M/s Mann Beej Bhandar.

4. It is argued by learned counsel for the petitioners that they have been falsely implicated in the aforesaid complaint. The complaint in question is otherwise not maintainable in the eyes of law as the same was barred by limitation. As per prosecution, the sample of insecticide was drawn on 30.09.2014, whereas the Public Analyst Report dated 27.10.2014 was received in the office of Chief Agriculture Officer, Bathinda on 03.11.2014. However, the impugned complaint was filed on 21.03.2018, i.e. after a period of 03 years, 04 months and 18 days from the date of receipt of analysis report and, therefore, the complaint was barred by limitation. It is further submitted that there is complete absence of chain evidence and the alleged material cannot be linked with the petitioners. A perusal of the impugned complaint would show

2024:PHHC:135835



that the sample was drawn on 30.09.2014 but it was sent to State Public Analyst on 13.10.2014, i.e. after a period of 13 days, which was in violation of the provisions of the Act, 1968. More so, the samples were not kept safely in the custody of Chief Agriculture Officer and even the proper procedure was not followed during sampling. It is further argued that the analysis report dated 27.10.2014 was communicated to the petitioners on 02.12.2014, which was in violation of the mandatory provisions of the Act, 1968, as per which, it was mandatorily required to be delivered within a period of thirty days. The trial Court has exceeded its jurisdiction while issuing process to the petitioners on 21.03.2018 as the petitioners were residing beyond the jurisdiction of learned SDJM, Talwandi Sabo. Even otherwise, the order dated 21.03.2018 is a totally non-speaking order, which has been passed without application of judicious mind. With these broad submissions, it is urged that the present petition deserves to be allowed and the impugned complaint as well as order dated 21.03.2018 including all the subsequent proceeding arising therefrom are liable to be quashed. To fortify his argument, learned counsel for the petitioners has relied upon the authorities cited as *M/s Cheminova India Ltd. and another vs. State of Punjab and another : 2021 (3) RCR (Criminal) 750, Sirajul & Ors. vs. State of U.P. and Anr. : 2015 (3) RCR (Criminal) 661, Sher Singh & Anr. vs. State of Punjab, CRM-M-17705-2018, decided on 05.02.2019 and Bhavesh Shah vs. State of Punjab, CRM-M-28297-2019, decided on 06.01.2023.*

5. *Per contra*, learned State counsel has opposed the submissions made by learned counsel for the petitioners by arguing that the petitioners, being proprietor and responsible persons of the firm, the manufacturing firm

2024:PHHC:135835



and employee of the firm, were directly responsible for the affairs of the firm, particularly for ensuring the quality of its insecticides. They have committed the offences punishable under the aforesaid sections of the Act, 1968. As regards the argument of learned counsel for the petitioners qua delay in sending the samples for analysis, it is submitted that the samples were kept in a sealed, intact and unbroken condition and were also found to be fit for analysis. It is also submitted that since the shelf life of the sample was upto August, 2016, the delay of 13 days in sending the same for analysis cannot be considered prejudicial to the rights of the petitioners, especially in view of the fact that on their request, the sample was sent for re-analysis and both the laboratories had found the same to be fit for analysis and had reported the same to be misbranded. While submitting that no grounds have been made out for quashing the complaint and the order issuing process to the petitioners, it is urged that the petition is liable to be dismissed. To fortify her argument, learned State counsel has relied upon the judgment rendered by a coordinate Bench of this Court in ***Ranjit Singh and another vs. State of Punjab, CRM-M-20380-2022***, decided on 20.08.2024.

6. I have heard learned counsel for the parties at considerable length and have also gone through the material placed on record.

7. As per case of the prosecution, the Insecticide Inspector had visited the shop premises of M/s Mann Beej Bhandar, Maur Mandi, Bathinda on 30.09.2014 and had drawn a sample of Buprofezin 25% SC, having expiry date as August, 2016. The insecticide in question was found to be supplied by M/s Indoshine Chemicals, Mansa and manufactured by petitioner M/s Vikas Organic Industries Corporation, Faridkot. The sample was converted into

2024:PHHC:135835



three samples of 250 ml each and two sample parcels were deposited with the office of Chief Agriculture Officer, Bathinda on the same day. Thereafter, on 13.10.2014, one sample parcel was sent to Senior Analyst, Insecticide Testing Laboratory, Bathinda for analysis, which was found to be misbranded, vide analysis report dated 27.10.2014. This report was received in the office of Chief Agriculture Officer on 03.11.2014. Thereafter, on the request of the dealer and manufacturer firm, reference sample was sent to Central Insecticide Laboratory, Faridabad for re-analysis, which too reported it to be misbranded, vide letter dated 17.07.2015 as the active ingredient content was found to be only 5.57%, which did not conform to I.S. specification. Hence, after obtaining necessary sanction from the competent authority, the impugned complaint was filed. The first question that arises before this Court is as to whether the impugned complaint was filed within limitation i.e. within a period of 03 years?

8. As per Section 29(f)(i) of the Act, 1968, a first offender, who commits the offences punishable under the provisions of this Act, shall be punished 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. Since it is clear that the subject offences were punishable with maximum imprisonment for two years, hence, as per Section 468 of Cr.P.C., the period of limitation shall be three years. It is now well established principle that the period of limitation in the cases under the Act, 1968 shall start from the date of receipt of first analysis report. Reliance in this regard can be placed upon *M/s Cheminova's* case (supra). In the present case, the first analysis report was received in the office of Chief

2024:PHHC:135835



Agriculture Officer, Bathinda on 03.11.2014 confirming that the sample was misbranded. Hence, as per Section 469(b) of Cr.P.C. and as per ratio of law as laid down in *M/s Cheminova*'s case (supra), the period of limitation shall start from 03.11.2014. However, the sample was then sent for re-analysis on the request of dealer, marketing and manufacturing firm to Central Insecticide Laboratory, Faridabad, which too reported it to be misbranded as mentioned above. Thereafter, necessary sanction for prosecution was sought by the Chief Agriculture Officer from the Joint Director Agriculture on 30.06.2016, which was granted by the competent authority on 22.12.2017 and then the complaint was instituted on 21.03.2018. The claim of the petitioners is that since the period of limitation has started from 03.11.2014 but the complaint was filed only on 21.03.2018, therefore, the same was barred by limitation as it was filed after a period of 03 years, 04 months and 18 days from the date of knowledge of commission of offence. This argument of learned counsel for the petitioners cannot be accepted at all. Section 470(3) of Cr.P.C. provides that 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, which means 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. Hence, if the period from 30.06.2016

2024:PHHC:135835



to 22.12.2017 is excluded from the period of 03 years, 04 months, 18 days (i.e. from 03.11.2014 to 21.03.2018), the total time which was taken by the respondent to file the impugned complaint after receipt of the first analysis report comes to 01 year, 10 months and 26 days. Therefore, it cannot be stated that the complaint was filed beyond the period of limitation i.e. 03 years as the same was very much within limitation.

9. The next argument advanced by learned counsel for the petitioners is that there was delay of 13 days in sending the sample for analysis to Laboratory at Bathinda as the same was drawn on 30.09.2014 but it was sent for analysis on 13.10.2014, which was in clear violation of the provisions of Section 22(6) of the Act, 1968, as per which, the Insecticide Inspector shall forthwith send the sample for analysis. Hence, on this ground alone, the complaint deserves to be quashed. In this regard, he has placed reliance upon *Sohan Singh*'s case (supra), wherein the complaint was quashed by a coordinate Bench of this Court on the ground of delay of 06 days in sending the sample for analysis. However, this Court respectfully disagrees with the view taken by the coordinate Bench in this regard. Although, Section 22(6) of the Act, 1968 prescribes for sending the sample forthwith for analysis, however, a minor delay of 13 days, which is well explained by the prosecution, could not cause any harm to the rights of the petitioners. Although, the petitioners have sought quashing of the complaint on this ground too, but it is not the case of the petitioners that the samples were either tampered with before sending the same for analysis or as to what kind of prejudice has been caused to their rights. In the considered opinion of this Court, the impact of such delays must be evaluated on the basis of the

2024:PHHC:135835



facts and circumstances of each case individually and there cannot be a blanket formula in this regard, leading to quashing of the complaint solely on this ground, especially when the sample was properly sealed, fastened, intact and unbroken and was found to be fit for analysis by both the laboratories. Reference can be made to ***Ranjit Singh***'s case (supra), wherein a coordinate Bench of this Court had taken similar view and had declined the prayer of the accused to quash the complaint on the ground of delay in sending the sample for analysis.

10. Learned counsel for the petitioners has also argued that the analysis report dated 27.10.2014 was communicated to the petitioners on 02.12.2014 i.e. after a period of 63 days from the date of sampling, which was in violation of the mandatory provisions of the Act, 1968 as the same was required to be communicated within a period of 30 days. However, a perusal of the record reveals that analysis report dated 27.10.2014 was received in the office of Chief Agriculture Officer only on 03.11.2014 and as per own case of the petitioners, it was communicated to them on 02.12.2014, which means it was communicated to them within a period of 30 days from the receipt of the analysis report. Hence, this argument too cannot be accepted.

11. It has also been argued by learned counsel for the petitioners that since they were not the residents of Bathinda, the Magistrate concerned had erred in summoning them to face trial without following the mandatory provisions of Section 202 of Cr.P.C. This argument too cannot be accepted as with regard to the procedure contemplated under Section 202 of Cr.P.C., the same is to be viewed, keeping in mind that the complainant is a public servant who has filed the complaint in discharge of his official duty. The legislature in

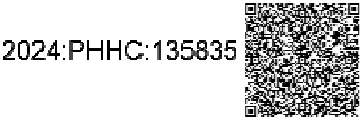
2024:PHHC:135835



its wisdom has itself placed the public servant on a different pedestal, as would be evident from a perusal of proviso to Section 200 of Cr.P.C. Object of holding an inquiry / investigation before taking cognizance, in cases where accused resides outside the territorial jurisdiction of such Magistrate, is to ensure that innocents are not harassed unnecessarily. By virtue of proviso to Section 200 of Cr.P.C., the Magistrate, while taking cognizance, need not record statement of such public servant, who has filed the complaint in discharge of his official duty. Reliance in this regard can be placed upon *M/s Cheminova's* case (supra), wherein similar observations have been made by Hon'ble Supreme Court.

12. So far as the arguments raised by learned counsel for the petitioners with regard to lacunas in the procedure adopted during sampling or there being no chain evidence against the petitioners are concerned, this Court cannot dilate upon the same in a petition filed under Section 482 of Cr.P.C. as the same can be decided only by the trial Court after evaluating and assessing the entire material placed on record before it during trial.

13. While perusing the record as well as the judgments relied upon by the parties, this Court has noticed a surprising fact that *Sohan Singh's* case (supra) was also filed by petitioner No. 1 and he was represented by the same counsel before the coordinate Bench. However, the fact that a similar complaint was earlier filed against petitioner Sohan Singh, though it was quashed on the ground of delay in sending the sample to laboratory for analysis, has neither been mentioned in the petition nor was it brought to the notice of the Court during the course of argument. This fact alone gives a



prima facie impression that the petitioner and his firm are indulged in misbranding the pesticides, thereby causing loss to the innocent farmers.

14. In view of the discussion as made above, no ground has been made out by the petitioners for quashing of the impugned complaint or summoning order. Hence, the present petition stands dismissed. Stay operating on the further proceedings before the trial Court, by virtue of order dated 13.09.2022, stands vacated. The trial Court may proceed in trial in accordance with law.

15. However, it is made clear that the observations made hereinabove are only for the purpose of deciding the present petition and the same shall not be construed as an expression of opinion on the merits of the case.

05.11.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>