

HIGH COURT OF PUNJAB AND HARYANA

Bench: Hon'ble Mr. Justice Deepak Gupta

Date of Decision: November 16, 2023

CRM-M-6331-2018 (O&M)

Rakesh Kumar and another ...Petitioners

Versus

State of Punjab ...Respondent

CRM-M-20742-2018 (O&M)

M/s Makhteshim Agan India Pvt. Ltd. and others ...Petitioners

Versus

State of Punjab ...Respondent

Legislation:

Section 482 of the Code of Criminal Procedure

Sections 3(k)(i), 17, 18, 29, 24, 31, 33 of the Insecticides Act, 1968

Rule 27(5) of the Insecticides Rules, 1971

Subject: Quashing of a criminal complaint under the Insecticides Act, 1968, on grounds of the limitation period and the non-liability of dealers/marketers for the misbranding of insecticides.

Headnotes:

Limitation Period – Bar of Limitation Applicable to Criminal Complaints – Complaint filed for offences under the Insecticides Act, 1968, challenged for being barred by limitation under Section 468 Cr.P.C. – Accused argued that the complaint, filed after over 5 years from the date of the Public Analyst's report, exceeded the three-year limitation period for offences punishable with imprisonment of up to two years – Reliance placed on Supreme Court's decision in *M/s Cheminova India Ltd. vs State of Punjab and another*, and similar High Court precedents. [Para 3(i), 10, 13, 19]

Criminal Procedure – Computation of Limitation Period – Exclusion of time for obtaining government sanction under Section 470 Cr.P.C. considered – Limitation period still exceeded even after exclusion – No evidence of delay condonation by the court as required under Section 473 Cr.P.C. [Para 12, 16, 17, 18]

Liability of Dealers and Marketers under Insecticides Act – Petitioners, being dealers or marketers and not manufacturers, argued non-liability for misbranding of insecticide – Sample drawn from original sealed packing without evidence of tampering by petitioners – Relying on precedent, court held dealers/marketers not vicariously liable for misbranding by manufacturers. [Para 4, 21]

Decision – Quashing of Criminal Proceedings – Complaint, summoning order, and all subsequent proceedings quashed due to being barred by limitation and non-applicability of misbranding liability to the petitioners as dealers/marketers. [Para 20, 22]

Referred Cases:

- *M/s Cheminova India Ltd. And another Vs. State of Punjab and another*, 2021(3) RCR (CrI) 750.
- *Sandeep Goyal and others Vs. State of Punjab*, CRM-M-3715-2023 decided on 8th May, 2023.
- *Sohan Singh vs. State of Punjab*, 2019 (2) RCR (CrI.) 314.

- Sirajul and others Vs. State of UP and another, 2015(3) RCR (Crl) 661.
- M/s Rallis India Ltd. And others Vs. State of Punjab, CRM-M-20338-2017 decided on 20.04.2022.

Representing Advocates:

For Petitioners: Mr. Rakesh Verma and Mr. Manish Verma, Advocates.

For Respondent (State of Punjab): Mr. Parneet Singh Pandher, AAG, Punjab.

DEEPAK GUPTA , J. (Oral)

This order shall dispose of two petitions as titled above, arising out of the same complaint. Facts are noticed from CRM-M20742-2018 (O&M), as reply by the respondent has been filed only therein.

2. By way of these petitions filed under Section 482 of the Code of Criminal Procedure, prayer has been made to quash complaint case No.1 dated 09.01.2018 titled as "State v. M/s Wadhwa Agro Centre Page no.1 out of 11 pages & Others" 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, pending for adjudication in the Court of learned Chief Judicial Magistrate, Fatehgarh Sahib (Annexure P-1), apart from the summoning order dated 09.01.2018 (Annexure P-2) and all the consequential proceedings arising therefrom qua the petitioners.

2.As it emerges on perusal of the paper book that on 11.07.2012, Insecticide Inspector, Bassi Pathana, visited the premises of M/s Wadhwa Agro Centre, Old Anaj Mandi, Bassi Pathana, District Fatehgarh Sahib [petitioner N: 2 in CRM-M-6331-2018]. Petitioner N: 1 the said petition is the proprietor of petitioner N: 2. After making necessary statutory compliances, he drew a sample of insecticide Cartap Hydrochloride 4% GR (Boregan), Batch No. MA20322CA, with manufacturing date as 23rd March, 2012 and expiry date as 22nd March, 2014, manufactured by M/s Agri Care, 228, GIDC Estate, Panoli (Gujarat); and marketed by M/s Makhteshim Agan India Pvt. Ltd., Hyderabad [[petitioner N: 1 in CRM-M-20742-2018, whereas petitioners N: 2 to 4 are the representatives thereof]. Out of three samples collected by the

Insecticide Inspector, one of them was sent to the State Insecticide Testing Lab, Amritsar on 12.07.2012. The report of the Insecticide Testing Laboratory, Amritsar dated 17.07.2012 was received, as per which sample was found to be mis-branded. Thereafter, show cause notice was issued by the office of Chief Agriculture Officer, Fatehgarh sahib to the petitioners and at their request, reference sample portion was sent to Central Insecticide Testing Lab, Faridabad. Vide re-test report, sample was again found to be mis-branded. After obtaining necessary sanction from the competent authority, complaint was filed on 09.01.2018 to prosecute the dealer, marketing company as well as manufacturer and their representatives under Sections 3(k)(i), 17, 18, 29, 33 of the Act. Learned Chief Judicial Magistrate, Fatehgarh Sahib, vide order dated 09.01.2018 ordered summoning of all the accused to face prosecution.

3. (i) Although the Complaint as well as summoning order have been assailed by the petitioners i.e., the dealer (M/s Wadhwa Agro Centre) as well as the marketing company (M/s Makhteshim Agan India Pvt. Ltd., Hyderabad) and their respective representatives on various grounds, but before this court, Id. Counsel has confined his arguments to the main contention that complaint in question is barred by limitation, as all the alleged offences under the Act are punishable under Section 29 of the Act up to two years imprisonment and so, as per mandatory provision of Section 468 Cr.P.C., the limitation to launch prosecution is three years, but in the present case, the impugned complaint has been instituted after a delay of 5 years, 5 months and 23 days from the date of receipt of the Public Analyst report and so, being hopelessly barred by limitation, the same is not maintainable.

(ii) 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, in which reliance had been placed upon a decision of Hon'ble Supreme Court titled Page no.3 out of 11 pages 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**.

(iii) Ld. Counsel contends that as the case is covered by the statutory bar of limitation, 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**. (iv) Still further, it is urged that petitioners are either the dealers or the marketers and not the manufacturer. Sample was drawn from the original sealed packing and duly packed by the registered and authorized/ licensed manufacturing company. There is no

allegation that the petitioners i.e., dealers or marketers tampered with the original seal of the sampled product and, so in these circumstances, petitioners are not concerned with the quality of the alleged material and so, they cannot be held liable for misbranding of the same. Reliance is placed on **CRM-M-20338-2017** titled as **M/s Rallis India Ltd. and others Vs. State of Punjab** decided on 20.04.2022.

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

4. Replying to the aforesaid contentions, it is urged by learned State counsel that time consumed for obtaining sanction to prosecute the accused is liable to be excluded, in view of Section 470 Cr.P.C. Besides, along with the complaint filed on 9.1.2018, an application under Section 473 Cr.P.C. was moved before the Magistrate to condone the delay in filing the complaint. It is 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, Id. trial Court rightly issued the impugned summoning order. It is lastly urged that no prejudice has been caused to the petitioners in any manner and so, they should face trial. With these submissions, prayer is made for dismissal of both the petitions.

5. I have considered submissions of both the sides and have also perused the record carefully.

6. Various offences as provided under the 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 shall be three years to take cognizance of the offence. 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:

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“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 the present case, sample was taken on 11.07.2012. It is on 19.07.2012, when the report of the Public Analyst was received that it became known to the complainant that due to misbranding, the offences had been committed by the petitioners-accused. Therefore, in view of Section 469 (1)(a) Cr.P.C., the period of limitation shall commence from this date i.e., 19.07.2012. Complaint was filed on 09.01.2018, i.e., after a gap of 5 years, 5 months and 23 days from the date of commencement of limitation.
9. The contention of Ld. State counsel for the respondent to the effect that as accused – dealer as well as manufacturer had applied for re-analysis of the second part of the sample through Central Insecticide Laboratory, Faridabad, so limitation shall commence from the date of receipt of the report of Central Insecticide Lab, has no merit, in view of the legal position explained by the Hon'ble Supreme Court in case of “M/s Cheminova India Ltd. & Anr. vs State of Punjab and Anr.”, reported as 2021(3) R.C.R. (Criminal) 750 and also by this Court in case of **Sandeep Goyal and others Vs. State of Punjab (supra)** and “Sohan Singh and others v State of Punjab” (supra), wherein a similar issue was raised.
10. 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. ---- ”

11. Similar view was taken by this court **Sandeep Goyal (supra); Sohan Singh (supra)** and also in CRM-M-17705-2018 (O&M) titled as “Sher Singh and another vs State of Punjab” decided on 05.02.2019; and CRM-M-1358-2018 (O&M), titled as “Sanjay Gupta and others vs State of Punjab” decided on 30.04.2019.
12. It is no doubt true that period consumed for obtaining the consent of the State Government to launch the prosecution is liable to be excluded while computing the limitation period, as per Section 470 (3) Cr.P.C., but in this case, even if the said period is excluded, the complaint will still be beyond limitation.

13. The sanction was applied by the Insecticide Inspector on 30.01.2015 (as evident from Annexure R3) and the same was allowed on 17.07.2015 and therefore, this period of 5 months and 17 days is liable to be excluded for computing the period of limitation. Even if, this period of 5 months and 17 days is excluded for the purpose of computation of limitation, the complaint instituted on 09.01.2018 is still after 5 years, 6 days from the date of commencement of limitation and thus, beyond limitation period.
16. It is argued by learned State counsel that while filing the complaint, an application under Section 473 Cr.P.C. was moved to condone the delay. However, no order is produced as to whether the delay was condoned before taking cognizance and issuing the impugned summoning order.
17. Although an application under Section 473 Cr.P.C. dated 16.04.2018 (Annexure R4), is alleged to have been moved along with the complaint, but perusal of the complaint (Annexure P-1) filed on 9.1.2018 reveals that there is absolutely no reference of any such application under Section 473 Cr.P.C., for condoning the delay in filing the complaint. Not only this, neither in the complaint nor in the summoning order dated 09.01.2018 (Annexure P-2), there is any reference that any such application under Section 473 Cr.P.C., as is alleged by the complainant, was ever moved before the Court.
18. Assuming for the sake of arguments that any such application had been moved as is contended by learned State counsel, copy of which is made available on record, even if it is taken into consideration, it is revealed that the only reason stated for seeking condonation was the heavy work load. Even this delay was sought to be condoned only from the date of receipt of the report of the Chemical Analyst. No explanation is given even in this application for applying for sanction on 30.01.2015, despite the fact that report of Chemical Analyst, declaring the sample as mis-branded, had been received way back on 19.07.2012, i.e., 2-1/2 years prior to the applying for sanction.
19. In view of the aforesaid discussion, there cannot be any hesitation to conclude that complaint in question being time barred, is not maintainable. 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.

20. In the present case, the complaint in question is statutorily barred by limitation and so, being not maintainable, is liable to be quashed without any further inquiry.

21. Apart from above, it is conceded case of the complainant-respondent that M/s Wadhwa Agro Centre (*petitioner in CRM-M-6331- 2018*) is the dealer; whereas M/s Makhteshim Agan India Pvt. Ltd. (*petitioner in CRM-M-20742-2018*) is the licensed marketer of the product in question. The complaint (Annexure P1) clearly reveals that sample of original sealed packing of the insecticide in question, was taken, on which its batch number, manufacturing and expiry date, the name of marketing company as well as that of the manufacturer was duly mentioned. It is not the case of the complainant-respondent that any of the petitioners i.e., dealer or marketer tampered with the original seal of the alleged material. In these circumstances, petitioners being the dealer / marketer only cannot be concerned with the quality of the material and so, they cannot be liable for misbranding the same. This Court in the case of ***M/s Rallis India Ltd. and others (Supra)*** has clearly held that petitioners cannot be held vicariously liable and to be penalized for misbranding of product, where they were not involved in manufacturing process at all merely for having traded in same.

22. In view of the aforesaid discussion, complaint, the summoning order and all subsequent proceedings arising therefrom, are hereby quashed for the reasons that complaint itself is not maintainable, being barred by limitation.

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