

(2002) 12 P&H CK 0006

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 42885-M of 2002

M/s. Kheti Sewa Centre, Ludhiana

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 20-12-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 29(1), 467, 468, 468(2)(c)
Essential Commodities Act, 1955 — Section 3
Insecticides Act, 1968 — Section 13, 17, 18, 29, 31(1)

Citation : (2002) 4 CriminalCC 665 : (2003) 1 RCR(Criminal) 310

Hon'ble Judges : R.C. Kathuria, J

Bench : Single Bench

Advocate : Rakesh Verma, for the Appellant; J.S. Bedi, Assistant Advocate General, Punjab, for the Respondent

Final Decision : Allowed

Judgement

R.C. Kathuria, J.—Petitioner seeks quashing of complaint dated 28.11.2001, Annexure P-1 and the summoning order dated 28.11.2001, Annexure P-2, passed by the Chief Judicial Magistrate, Ludhiana, whereby petitioner has been summoned to face trial for offences punishable under Sections 3k(i), (ii), (iv), 13, 17 and 18 of the Insecticides Act, 1968 (hereinafter referred to as, "Act") read with Insecticide Rules, 1971 (hereinafter referred to as, "Rules") in the complaint filed by Insecticides Inspector, Ludhiana against the petitioner.

2. A few facts have to be focused in order to adjudicate the controversy involved in the present petition. Kanwaljit Lal, Insecticides Inspector visited the premises of M/s.Kheti Sewa Centre. Nirankari Market. Ludhiana on 5.11.1997. The said firm was found to be in possession of the stock of insecticides VITA VAX 75 W.P. (Carboxing 75% W/W) manufactured by Markfed Agro Chemicals, SAS Nagar, Mohali. The: said insecticides did not have batch number, date of manufacture, date of expiry and even the price was not mentioned on the packs which were weighing 500 grams each. At that time, firm was having total of 1.5 kg in three

packs of 500 grams each. As the firm was found selling the insecticides in contravention of Sections 3K(i)(ii),(iv), 13, 17 and 18 and in contravention of Rules 10, 15, 16, 17, 18 and 19 of the Rules, the stock of insecticides was seized by him vide seizure memo, Annexure R-6 in this regard. The firm had also sold the aforesaid insecticides by issuing bogus cash memo under the name of Kisan Agro Chemicals in violation of provisions of Sections 3 and 4 of the Insecticides (Price, Stock and Display and submission of reports) Order, 1986 and also in violation of Section 3 of Essential Commodities Act, 1955. The matter was reported to the Manager, Markfed Agro Chemicals, SAS Nagar, Mohali which confirmed that above said firm was not their dealer and the stock in question was not supplied to the firm in question. Two show cause notices were issued to the petitioner-firm by the Chief Agricultural Officer/Licensing Officer in this regard and after considering the reply filed by the firm the Licensing Officer cancelled the license of the firm vide letter No.5305 dated 30.12.1997, Annexure R-14. Thereafter appeal was preferred on 6.1.1998 by the petitioner-firm before the Joint Director. Agriculture (Plant Protection) Punjab, Chandigarh which was accepted and license of the firm in question was restored, however, the firm was not allowed to sell the insecticides manufactured by M/s.Markfed Agro Chemicals. Thereafter sanction for prosecution of the petitioner was obtained u/s 31(1) of the Act and the present complaint was filed against the petitioner-accused, wherein prosecution of the petitioner-accused was sought only in respect of the aforesaid offences under the Act of 1968 and Rules of 1971 and not under any other Act. Taking into account the allegations made in the complaint and after hearing the State Counsel, petitioner-accused was summoned to face trial in respect of the aforesaid offences as per order dated 28.11.2001 passed by the Chief Judicial Magistrate, Ludhiana. Hence the present petition.

3. I heard counsel for the petitioner as well as the State Counsel at length.

4. The sole ground on which the quashing of the complaint in question and the summoning order has been sought on behalf of the petitioner is that the premises of the petitioner-firm was inspected on 5.11.1997 by Kanwaljit Lal, Insecticides Inspector, who took into possession the three packs of insecticides VITA VAX 75 W.P. (Carboxing 75% W/W) manufactured by Markfed Agro Chemicals, SAS Nagar, Mohali while the present complaint was filed on 28.11.2001 so as to say after a lapse of more than four years. The cognizance was taken by the Chief Judicial Magistrate, Ludhiana vide order dated 28.11.2001 altogether ignoring the legal position because offence in question was punishable for two year and the cognizance was taken u/s 468 of the Code of Criminal Procedure (hereinafter referred to as, "Code"). In support of the stand taken, reliance was placed by him on case State of Rajasthan v. Sanjay Kumar, 1998(3) RCR (Cri) 846 (SC) and Smt.Shailaja v. State of Karnataka, 2002(2) RCR(Cri) 423.

5. The factual position as spelled out from the record was not controverted by the State counsel. It is not the case of the prosecution that accused had

committed the offence second time meaning thereby it has violated the provisions of Section 29 of the Act. Commission of the alleged offence is punishable with imprisonment of two years with fine which may be extended to two thousand rupees, or both.

6. In State of Rajasthan (supra), the senior drug inspector had collected the samples of drugs named therein on 29.2.1998 mentioned in the complaint which were sent for analysis to the Government Analyst, Food and Drugs Laboratory, Baroda on March 2, 1998. In his report dated 2.7.1998, the Government Analyst opined that those drugs were not of standard quality. Drug Controller had ordered prosecution of the respondents on 3.2.1990 but the complaint came to the instituted in the Court of Additional Civil Judge, Jaipur on 28.6.1991. The said Court issued the summons to the respondents. The summoning order was questioned by them before the High Court on the ground that the complaint was barred by limitation u/s 468(2)(c) of the Code. The complaint in question was quashed. Two issues came up for consideration before the High Court. First was whether the period of limitation is to be counted from the date of collecting sample or from the date of report of Government Analyst. The Apex Court observed that it is only when the report of Government Analyst was received, that it came to light that provisions of the Act had been violated and offence was committed and for that reason, it was laid down that Clause (a) of Section 469 (1) was not attracted. As the fact of drug sold being substandard came to the knowledge of the Drug Inspector only on 2.7.1988 when the report of the Government Analyst was received by him, therefore, Clause (b) of Section 469(1) would be attracted. In this view of the matter, prosecution was held to have been lodged within three years of the report of Government Analyst and for that reason, appeal filed by the State was accepted and impugned order of the High Court was set aside and the case was remanded to the Additional Civil Judge and Chief Judicial Magistrate, Jaipur for disposal in accordance with law. For coming to the conclusion, notice was also taken of decisions in R.S.Arora v. State, 1987 Cri.L.J.1215. Omprakash Gulabchandji Partani Vs. Ashok and another, and M/s.Satyanarayana General Traders v. State, 1993(2) Crimes 203. Similar view was also taken in Shailaja's case (supra). It would be relevant to extract the observations contained in paras 6 to 8 of the State of Rajasthan's case (supra), as it has a bearing qua the facts of the present case:-

"6. In the Code of Criminal Procedure, 1973, Chapter XXXVI has been added prescribing limitation for taking cognizance of certain offences with a view to expedite the process of detection and investigation of crimes and also to ensure observance of the principle of fairness in the trial of the offences by barring belated prosecution. Delay in prosecution of offences causes undue hardship as it keeps the sword hanging on the heads of accused person and it also results in the material evidence getting vanished. This chapter applies to all such offences for which punishment prescribed is less than three years. But it does not apply to offences for which punishment prescribed is more than three years and to economic offences under various Acts, which are excluded under Central Act 12

of 1974 or any State Acts. It contains seven Sections (467-473). Section 467 defines the expression period of limitation used in the chapter. Sections 468 to 473 deal with various aspects of computation of limitation. Of the aforesaid provisions, we are concerned with Sections 468 and 469. Sub-section (1) of Section 468 ordains that no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the periods of limitation prescribed thereunder. This, however, is subject to the other provisions of the Code. Sub-section (2) postulates different periods of limitation for offences with reference to the punishment provided for them; if the punishment provided for an offence in any Act is only fine, the period of limitation fixed is six months; if the offence is punishable with imprisonment for a term not exceeding one year, the period of limitation prescribed is one year and if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years, the period of limitation laid down is three years. And sub-section (3) spells out the rule of limitation in cases of joinder of charges; if a person is tried for more offences than one, then the period of limitation will 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; for example, if a person is tried for various offences and some of them are punishable with fine and some with imprisonment for a term less than a year and some for which the punishment is provided upto three years, then the period of limitation for all the offences, if they are tried together, will be three years.

7. Section 469 deals with commencement of the period of limitation and it reads thus:-

469. Commencement of the period of limitation:- (1) The period of limitation, in relation to an offender, shall commence:-

(a) on the date of the offence; or

(b) where the commission of the offence was not known to the person aggrieved by the offences or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier, or

(c) where it is not known by whom the offence was committed the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier.

8. A plain reading of the provision extracted above shows that in sub-section (1) three alternative starting points of limitation have been specified - (a) the date of the offence; (b) the first day on which an offence came to the knowledge of the person aggrieved by the offence or to any police officer, whichever is earlier, in a case where the commission of the offence was not known to any of them; or (c) the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier, but this can be called in aid in a case where it is not

known by whom the offence was committed Basically from the date of offence the period of limitation will start but there will be cases where the commission of offence or identity of the offender comes to knowledge of those concerned with it long thereafter so in such situations Clauses (b) and (c), as the case may be, would be the date of commencement of period of limitation.

7. Coming to the facts of the present case, it was not disputed by the State counsel that the sample in question was not sent for analysis to the Analysis Laboratory. Sample in question was taken by the Inspector on 5.11.1997 while the present complaint came to be filed on 28.11.2001 and no explanation has been rendered as to why the complaint came to be filed after the expiry of four years. Even no prayer for condonation of delay was sought by the complainant. It is somewhat surprising to note that the Joint Director, Agriculture (Plant Protection) Punjab, Chandigarh vide order dated 19.1.1998 restored the license of the petitioner. The sanction for the prosecution was received as per endorsement No.2775 dated 16.4.1998 but no action was taken for filing the complaint within the period prescribed.

8. The punishment provided u/s 29(1) is two years as already noticed above. Manifestly, the complaint has not been filed within the period of three years in terms of the provisions of Section 468 of the Code, the Magistrate could not have taken the cognizance of the said offence and for that reason, the summoning order passed as such is illegal. In the result the petition is accepted and the complaint and summoning order dated 28.11.2001 are quashed as barred by limitation.