

A M/S. CHEMINOVA INDIA LTD. & ANR.

v.

STATE OF PUNJAB & ANR.

(Criminal Appeal No.749 of 2021)

B AUGUST 04, 2021

[NAVIN SINHA AND R. SUBHASH REDDY, JJ.]

Code of Criminal Procedure, 1973: s.469 – Commencement of period of limitation – Complaint of misbranding – Samples drawn from dealer on 10.02.2011 and sent to the Insecticide Testing Laboratory on 17.02.2011; and the report of analysis was received on 14.03.2011 – Appellant-manufacturer was served with show cause notice – Request made on 15.04.2011 for reanalysis of second sample – Second sample sent on 02.05.2011 and re-analysis report was received on 09.12.2011 – Complaint filed on 25.03.2014 – Whether complaint was time-barred – Held: The report of analysis received from the Laboratory on 14.03.2011 itself indicated misbranding – Thus period of limitation within meaning of s. 469 commenced from 14.03.2011 only – Complaint was time barred – Limitation – Delay/laches – Insecticides Act, 1968 – ss. 3(k)(i), 17, 18, 29 and 33.

E **Allowing the appeal, the Court**

HELD: 1. The appellants are sought to be prosecuted on the ground of misbranding of the insecticide, i.e., *Trizophos 40% E.C.* It is the allegation in the complaint that upon analysis of the sample, same was found to contain active ingredient to the extent of 34.70% only as against the labelled declaration of 40%. Thus, it is a case of ‘misbranding’ within the meaning of Section 3(k)(i) of the Act and selling of such misbranded item is in violation of Sections 17, 18, and 33 punishable under Section 29 of the Act. From a reading of Section 29, it is clear that the maximum punishment for such offence, if it is first offence, is imprisonment for a term which may extend to two years or with fine which shall not be less than ten thousand rupees which may extend to fifty thousand rupees, or with both. For a second and subsequent offence, the punishment is imprisonment for a term which may extend to three years or with fine which shall not be less than

fifteen thousand rupees which may extend to seventy-five thousand rupees, or with both. Section 468 of Cr.PC prohibits taking cognizance of an offence after the lapse of period of limitation. As per sub-section (2)(c) thereof, the period of limitation is three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years. Section 469 of Cr.PC deals with the 'commencement of the period of limitation'. As per the said provision, the period of limitation, in relation to an offender, shall commence on the date of offence or where the commission of the offence was not known to the person aggrieved by the offence 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. [Para 9][357-C-H]

2. In the present case, it is not in dispute, the complainant received the report of analysis on 14.03.2011 from the Insecticide Testing Laboratory, Ludhiana and the complaint was lodged on 25.03.2014 which was beyond a period of three years from 14.03.2011. The only submission for the State was that further report from the Central Insecticide Testing Laboratory was received on 09.12.2011 which is the conclusive evidence of the facts, as such, the complaint is within the period of limitation. Such submission is not convincing. 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 labelled 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

- A **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, 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**
- B **amounts to abuse of process of law. [Para 10][358-A-G]**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No.749 of 2021.

- C From the Judgment and Order dated 12.05.2020 of the High Court of Punjab and Haryana at Chandigarh in CRM-M No.1162 of 2020.

Guru Krishnakumar, Sidharth Luthra, Sr. Advs., S. Hariharan, Nitin Thatai, Ms. Jaikriti S. Jadeja, Ms. Sneha Ravi Iyer, Advs. for the Appellants.

- D Ms. Jaspreet Gogia, Ms. Mandakini Singh, Karanvir Gogia, Ms. Shivangi Singhal, Ms. Ashima Mandla, Advs. for the Respondents.

The Judgment of the Court was delivered by

R. SUBHASH REDDY, J.

1. Leave granted.

- E 2. This criminal appeal is filed, aggrieved by the order dated 12.05.2020 passed by the High Court of Punjab & Haryana at Chandigarh. By the aforesaid order, High Court has dismissed the petition in CRM-M No.1162-2020 (O&M) so far as the appellants are concerned. Appellants have approached the High Court seeking quashing of
- F Complaint No. 26 dated 25.03.2014 filed by the second respondent – The Insecticide Inspector, Attari, District Amritsar under Section 3(k)(i), 17, 18 and 33 punishable under Section 29 of the Insecticides Act, 1968 (hereinafter referred to as ‘the Act’) read with Rule 27(5) of the Insecticides Rules, 1971.

- G 3. On 10.02.2011, Insecticide Inspector, Attari, District Amritsar, inspected the premises of firm – M/s. Navneet Singh – on Railway Road, Attari, District Amritsar where its sole proprietor Sh. Navneet Singh was present. M/s. Navneet Singh is a dealer of the first appellant-company which is engaged in the manufacture of insecticides. On the

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day of inspection, Inspecting Officer found 60 tins of insecticide, viz., *Trizophos 40% E.C.* in the premises for sale. The Inspecting Officer has taken three tins, out of the 60 tins, as test samples and on the ground that samples sent for analysis were found to contain active ingredient to the extent of 34.70% only as against the labelled declaration of 40%, alleging that it amounts to 'misbranding' within the meaning of Section 3(k)(i) of the Act and sale of such item is an offence under Sections 17, 18 and 33 punishable under Section 29 of the Act, the second respondent has lodged the complaint before the Chief Judicial Magistrate, Amritsar in Complaint No. 26 of 2014. In the said complaint, along with the dealer from whom samples were seized, the first appellant-company, second appellant-Managing Director and other persons are sought to be prosecuted.

4. The appellants and other accused have approached the High Court seeking quashing of the complaint mainly on the ground that the complaint was *ex facie* barred by limitation and procedure prescribed under Section 24 was not followed. It was the case of the appellants that there were abnormal delays in testing the samples, as such the timelines fixed under Section 24 which are mandatory are breached, thus, the complaint is fit to be quashed. It was also the case of the appellants that the necessary undertakings were already filed indicating the responsible officers of the quality control, as such the appellants herein are not at all liable for prosecution and complaint was filed in a casual manner without examining the necessary aspects. It was also the case of the appellants that the Magistrate has not followed the procedure prescribed under Section 202 of the Code of Criminal Procedure (Cr.PC). The High Court, by the impugned order, has dismissed the petition so far as the appellants are concerned while quashing the proceedings so far as the petitioner no.4 before the High Court, who was Godown Incharge of the firm.

5. We have heard Sri S. Gurukrishna Kumar, learned senior counsel assisted by Ms. Jaikriti S. Jadeja for the appellants and Ms. Jaspreet Gogia, learned counsel appearing for the State of Punjab, at length.

6. Sri Gurukrishna Kumar, learned senior counsel for the appellants, while referring to page 10 of the impugned order, has submitted that samples were drawn from the dealer on 10.02.2011; they were sent to the Insecticide Testing Laboratory, Ludhiana on 17.02.2011; and the report

- A of the analysis was received from the Insecticide Testing Laboratory, Ludhiana on 14.03.2011. Further, it is submitted that after necessary show cause notice was served on the appellant-manufacturer and its office bearers, they made a request, on 15.04.2011 by addressing a letter, for re-analysis of second sample and after depositing necessary demand draft, second sample was sent to Central Insecticide Testing Laboratory, Faridabad for re-analysis on 02.05.2011 and re-analysis report was received belatedly on 09.12.2011 which is clearly in contravention of Section 24(4) of the Act. Learned counsel, by referring to relevant provisions of the Act, has submitted that for the offence of misbranding, as alleged in the complaint, the maximum punishment is imprisonment for a term which may extend to two years or a fine which shall not be less than ten thousand rupees or with both. It is further submitted that the limitation for filing the complaint in such cases is three years from the date of commission of offence. It is submitted that limitation for lodging complaint from the date of report of analysis of Insecticide Testing Laboratory, Ludhiana was only upto 14.03.2014, however, the complaint was filed on 25.03.2014, which is beyond the period of limitation. In spite of the same, the High Court has not considered the same in proper perspective. Learned counsel, while referring to the provisions under Section 24 of the Act, has submitted that the timeline for second report also is fixed, i.e., thirty days from the date of sending the sample, but, in spite of the same the Central Insecticide Testing Laboratory, Faridabad has delayed the report by seven months, which is in clear violation of Section 24(4) of the Act. Learned counsel also has submitted that while issuing the summons, the procedure, as contemplated under Section 202, Cr.PC, is not followed by the Magistrate.
- F 7. On the other hand, Ms. Jaspreet Gogia, learned counsel appearing for the State, while refuting the various submissions made by the learned senior counsel for the appellants, has submitted that though the first report of analysis from the Insecticide Testing Laboratory, Ludhiana was received on 14.03.2011, the appellants have made a request for sending the other sample to the Central Insecticide Testing Laboratory, Faridabad which was duly sent, after deposit of demand draft, on 02.05.2011 and the re-analysis on the second sample was received from the Central Insecticide Testing Laboratory, Faridabad on 09.12.2011. While referring to Section 24(4) of the Act, learned counsel has submitted that the report on such second sample shall be the conclusive evidence, as such, it cannot be said, the complaint is barred by limitation. Further,
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it is the submission of the learned counsel that the timelines under Section 24(4) of the Act were followed and the complaint filed is not barred by limitation and is also not in violation of the procedure contemplated under Section 202, Cr.PC. A

8. Having heard the learned counsel for the parties, we have perused the impugned order and other material placed on record. B

9. In view of the undisputed fact that after drawing the sample from the dealer on 10.02.2011 report of analysis was received from the Insecticide Testing Laboratory at Ludhiana on 14.03.2011, we are of the firm view that the complaint filed is barred by limitation. It is not in dispute that report from Insecticide Testing Laboratory, Ludhiana was received by the Inspector on 14.03.2011. Section 29 of the Act deals with the 'offences and punishment'. The appellants are sought to be prosecuted on the ground of misbranding of the insecticide, i.e., *Trizophos 40% E.C.* It is the allegation in the complaint that upon analysis of the sample, same was found to contain active ingredient to the extent of 34.70% only as against the labelled declaration of 40%. Thus, it is a case of 'misbranding' within the meaning of Section 3(k)(i) of the Act and selling of such misbranded item is in violation of Sections 17, 18, and 33 punishable under Section 29 of the Act. From a reading of Section 29, it is clear that the maximum punishment for such offence, if it is first offence, is imprisonment for a term which may extend to two years or with fine which shall not be less than ten thousand rupees which may extend to fifty thousand rupees, or with both. For a second and subsequent offence, the punishment is imprisonment for a term which may extend to three years or with fine which shall not be less than fifteen thousand rupees which may extend to seventy-five thousand rupees, or with both. Section 468 of Cr.PC prohibits taking cognizance of an offence after the lapse of period of limitation. As per sub-section (2)(c) thereof, the period of limitation is three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years. Section 469 of Cr.PC deals with the 'commencement of the period of limitation'. As per the said provision, the period of limitation, in relation to an offender, shall commence on the date of offence or where the commission of the offence was not known to the person aggrieved by the offence 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. C
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A 10. In the present case, it is not in dispute, the complainant-2nd
respondent has received the report of analysis on 14.03.2011 from the
Insecticide Testing Laboratory, Ludhiana and the complaint was lodged
on 25.03.2014 which is beyond a period of three years from 14.03.2011.
The only submission of the learned counsel for the State is that further
report from the Central Insecticide Testing Laboratory was received on
B 09.12.2011 which is the conclusive evidence of the facts, as such, the
complaint is within the period of limitation. 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
C 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
D 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 labelled declaration
of 40%, it is clear that it is the date of offence allegedly committed by
E 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
F 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
G but amounts to abuse of process of law. Though the learned counsel has
also raised other grounds in support of quashing, as we are persuaded to
accept his submission that complaint filed is barred by limitation, it is not
necessary to deal with such other grounds raised.

H 11. For the aforesaid reasons, this criminal appeal is allowed. The
impugned order dated 12.05.2020 passed by the High Court of Punjab

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& Haryana at Chandigarh in CRM-M No.1162-2020 (O&M) is set aside. A
Consequently, Complaint No. 26 dated 25.03.2014 filed by the second
respondent before the Chief Judicial Magistrate, Amritsar stands quashed.

Devika Gujral

Appeal allowed.