**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

205

CRM-M-2441-2017 (O&M)
Date of decision: 01.03.2023

AMARJIT SINGH & ORS

....Petitioner(s)

Versus

STATE OF PUNJAB

...Respondent(s)

CRM-M-17403-2017 (O&M)

KAMALJEET SINGH

....Petitioner(s)

Versus

STATE OF PUNJAB

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

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Present : Mr. Rakesh Verma and Manish Verma, Advocates
for the petitioners in CRM-M-2441-2017

Mr. P.S. Mighlani, Advocate
for the petitioner in CRM-M-17403-2017

Mr. Manipal Singh Atwal, DAG Punjab

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AMAN CHAUDHARY. J.

This common order shall dispose of the above-mentioned petitions, as they arise out of the same complaint, whereby the petitioners have sought quashing of the Complaint Case No.211 dated 29.11.2012, Annexure P-1 registered under Section 3(k) (i), 17, 18, 29 and 33 of the Insecticide Act, 1968 read with Rule 27(5) of Insecticide Rules, 1971 titled as 'State Vs. M/s Grewal Sidhu Khetiwari Sewa Center and others' and

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summoning order dated 29.11.2012, Annexure P-2 alongwith all consequential proceedings arising therefrom.

Learned counsel submits that Petitioner No.2- M/s Grewal Sidhu Khetiwari Sewa Center in CRM-M-2441-2017 is an authorized dealer of M/s Saraswati Agro Chemical (India) Pvt. Ltd.,- manufacturer company, authorized to sell its products in the State of Punjab, which are marketed by M/s Chambal Fertilizers & Chemicals Ltd. Chandigarh, while petitioners-Amarjeet Singh and Kamaljeet Singh are the partners of aforesaid dealer firm and petitioner No.3 in CRM-M-2441-2017 is the supplier of material to shopkeepers. His further submission is that from the complaint filed before the Court of Chief Judicial Magistrate on 29.11.2022 it is apparent that the sample was drawn by the Insecticide Inspector on 15.12.2010 from the premises of the petitioner at random from three sealed packing of Clodinofop Propargul (Weeza) 15% WP and was sent for analysis to the laboratory on 17.12.2010. The report regarding which was received on 30.12.2010, declaring the sample as being misbranded. Thereafter, a show-cause notice was issued to petitioners on 07.01.2011 to which, a reply was submitted on 17.01.2011. The second sample was sent to the laboratory on 15.02.2011 and report whereof was received on 11.03.2011. Subsequently another show-cause notice was issued and the licence of the petitioner was cancelled, which was restored by the Appellate Authority of the Department i.e. Joint Director of Agriculture Plant Protection Punjab.

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It is his submission that the samples were drawn from original sealed and packed containers as these facts are mentioned in para 3 of the petition, which stand admitted in the corresponding para of the reply filed by the State. Therefore, the petitioners being dealer/partners/supplier had no control over the manufacturing process of the said insecticide and thus, cannot be held liable for any misbranding thereof. He relies on the judgments passed by this Court in the case of **M/s Rallies India Ltd. & others Vs. State of Punjab,** CRM-M-20338-2017, decided 20.04.2022 and **Naresh Kumar and others Vs. State of Punjab,** 2011 (2) RCR (Criminal) 202.

Learned State counsel on the other hand submits that the petitioners are liable to be prosecuted as per the provisions of Section 29 of the Act as it is not only the manufacturer, who is liable, even the stockiest is also liable. In the eventuality, it is found that the misbranded product, was not stored properly, which is a matter of trial, it would be the liability of the petitioners as well, thus, prays for the dismissal of the present petitions. He relies on the judgment of this Court in the case of **M/s Gill Pesticides and another Vs. State of Punjab,** CRM-M-27108-2016, decided on 15.05.2018.

In rebuttal learned counsel for the petitioner submits that there is no averment made in the complaint that the product was not stored in proper condition. Still further he submits that it is the responsibility of the concerned official of the department, who took the sample to ascertain facts regarding storage having been done in proper manner or not. In the present

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case, there is no such observations made by the Insecticide Inspector. In order to further buttress his submission with regard to the responsibility of the manufacturing of the product, he makes a reference to definition of misbranding as contained in Section 3(k) of the Act.

Learned State counsel further makes a reference to Section 30 of the Act to submit that merely submitting that they were ignorant of quality and nature of the product as they were not the manufacturers would not be a valid defence.

In rebuttal, learned counsel for the petitioner makes a reference to Section 30(3) of the Act as per which, he submits that in case a person has acquired a product from the importer, or a duly licensed manufacturer/distributor or a dealer, he cannot be held liable. In the present case as has been submitted the manufacturer was registered and authorized by the Government of Punjab for selling its product within the said State and the petitioners cannot be held liable for the product, the sample of which was taken from sealed packets, having been found misbranded.

Heard.

It would be apposite to make a reference to the relevant part of Section 30 of the Act, which reads thus:

> 30. Defences which may or may not be allowed in prosecutions under this Act.—
>
> (1 & 2) xx xx xx
>
> (3) A person not being an importer or a manufacturer of an insecticide or his agent for the distribution thereof, shall not be liable for a contravention of any provision of this Act, if he proves—

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> (a) that he acquired the insecticide from an importer or a duly licensed manufacturer, distributor or dealer thereof;
>
> (b) that he did not know and could not, with reasonable diligence, have ascertained that the insecticide in any way contravened any provision of this Act; and
>
> (c) that the insecticide, while in his possession, was properly stored and remained in the same state as when he acquired it.

It is an admitted position between the parties that the samples were drawn from original sealed and packed containers, a fact specifically averred in para 3 of the petition and responded to as being matter of record, in the reply. Still further, in the test reports dated 30.12.2010 and 11.11.2011, in para 6 thereof it was recorded thus:

> "6. Condition of the seals on the package state whether:
>
> i) the sample of properly sealed and fastened: YES
>
> ii) the seal was intact and unbroken: YES
>
> (iii) the seal fixed on the container and the outer cover of the sample tailed with specimen impression of seal separately sent by the Insecticides Inspector: YES
>
> iv) the sample was in a condition fit for analysis: YES
>
> v) the sample received was in original container: YES"

This Court in the case of **M/S Rallis India Limited** (supra), filed by a marketing agent quashed the complaint and summoning order while observing that, "It is not a subject matter of dispute that the sample was drawn from a sealed packet and it is nowhere alleged that the sample had not been stored in accordance with the provisions contained under the Insecticides Act and Rules framed thereunder. There is also no allegation that the petitioners were responsible for the quality of the product as also for ensuring the labelled ingredients of the same. The petitioners are not

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nominated as the authorized/responsible officers in terms of Section 33 of the Insecticides Act."

In the case of **Naresh Kumar and others** (supra), filed by a licencee allowed the petition for quashing the complaint and summoning order by observing thus:

> "7.It is evident from above that sample was taken from original packing.
>
> 8.Affidavit dated 06.12.2010 of S Navtej Singh, Insecticide Inspector, District Kapurthala has been filed. Para 1 of the said affidavit reads under:-
>
> "1. Original packing as per Form XX refers to the stock in possession of accused, which at the time of sampling is in a sealed condition which is purported to be same as packed, lebelled and sealed by the manufacturer. Although, it is stated in the subsequent paragraph that it is yet to be determined whether the insecticide in question (Monocrotophos 36% SL of one liter each) was in original sealed packing or as to whether the sealed packing was tampered with or not, the allegation in the complaint and Form No. XX speaks for themselves. There is no doubt left that the sample was drawn from the originally sealed and packed containers weighing one liter and packed by the registered and authorized manufacturing company. There is no allegation that in the said complaint that the said seal was tampered with or the originally packing was tampered with. There is no allegation that the said sample was not stored in the same state."

The Dealer and Distributor had filed case titled **Jindal Fetilizers and Chemicals Vs. State of Punjab,** 2010 (4) RCR (Criminal) 146, wherein also the sample was drawn from original packing and it was held by this Court that, "Admittedly, the petitioners are not the manufacturers of the insecticides but the dealer and the distributor. Hence, they cannot be held responsible for misbranding the insecticide, which was not manufactured by them. The petitioners were only involved in the sale of

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insecticide. The complaint qua manufacturers is pending. There is nothing on record to suggest that the insecticide had not been properly stored by the petitioners".

In case of **Lochen Kheti Sewa Centre Vs. State of Punjab,** 2008 (2) RCR (Criminal) 22**,** this Court had observed that, "Learned counsel appearing for the respondent/State has very fairly stated that the petitioner is not the manufacturer. The sample was drawn from sealed packets and there is no material to indicate that it was properly stored. Under the circumstances the petitioner cannot be held liable for misbranding of the insecticide. Only the manufacturer, who is being proceeded against would be responsible". Likewise, in the case of **Deepak Sharma Vs. State of Punjab,** 2008(2) RCR (Criminal) 24, this Court observed that, "The sample seized, on analysis, was found to be misbranded. The plea raised on behalf of the petitioner is that a seller cannot be prosecuted. In support thereof, reliance is placed upon **M/s Kisan Beej Bhandar, Abohar vs. Chief Agricultural Officer, Ferozepur and another**, 1990 (supp) Supreme Court Cases 11 and **M/s Vimal and Co. Grain Market, Mullanpur v. State of Punjab**, 2002(2) RCR (Criminal) 56. The former judicial pronouncement was rendered by the Apex Court, while the latter was rendered by this Court. Both these judicial pronouncements are fully supportive of the advocate point of view". Similarly, this Court in the case of **Surinder Kumar Vs. State of Punjab,** 2011 (1) RCR (Criminal) 211 held thus:-

> "2. Learned counsel for the petitioner contends that the petitioner is a licensee under Insecticide Act, 1968 to deal with various kinds of insecticides and pesticides of

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registered and approved manufacturers. It has further been clarified that the petitioner sells only sealed and packed insecticides/pesticides. A sample of insecticide that has been manufactured by a company approved by Government of Punjab was drawn on 25.05.2001. The sample was drawn from originally sealed and packed container. In above regards, learned counsel has referred to para No.3 of the petition which is extracted hereunder:

> "3. That as per complainant version on 25.05.2001, he drew a sample of one insecticide i.e. Metalyax 8% + Mancozeb 64% EC bearing Batch No.KG-09, Mfg. November, 2000 and Expiry October, 2002 out of two 500 gms. Originally sealed and packed containers lying properly from the shop premises of the petitioner-firm as manufactured by M/s. Fungicide India Ltd. Jammu. The said manufacturing company i.e. M/s Fungicide Ltd. Jammu is the registered and authorised manufacturing company by Govt. of Punjab to sell its products in the State of Punjab"

3 & 4 xx xx xx

5. It is not in dispute that the petitioner has a licence to sell insecticides and pesticides manufactured by companies approved by Government of India and Government of Punjab. It is further not in dispute that the sample that has been drawn has been manufactured by approved manufacturer. There is no material available on the file to indicate that the insecticide was stored in violation of rules. It is also the admitted position that sample was drawn from originally sealed and packed containers.

6. In view of the above, the only conclusion that can be drawn is that the petitioner who is merely selling the insecticide had no occasion to tamper with the contents of the container/insecticide.

7. In view of the above, I am of the considered opinion that continuance of proceedings against the petitioner would he abuse of process of law and abuse of process of Court. The petitioners being only involved in sale of insecticide, cannot be held responsible for the contents of the container from which the sample has been drawn."

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In the case of **Cheminova India Limited and another Vs. State of Punjab and others**, decided on 04.08.2021 passed in Criminal Appeal No.750 of 2021, Hon'ble The Supreme Court of India held that the proceedings under the Insecticides Act cannot be instituted against all and sundry persons of the company and that as per the mandate of Section 33 of the Act, it is clear that responsible persons of the company alone can be proceeded against and found the prosecution against the Managing Director to be nothing but, abuse of the process of law.

The statutory provision mandates to penalise only the person, who has committed the offence under the Insecticides Act and does not intend to prosecute persons, who are merely dealing with the said product, within whose domain is neither the process of manufacturing nor control over its content and quality. The petitioners are incontrovertibly, the dealer/ partners/ supplier of the insecticides, that had been found to be misbranded, the sample of which was taken from sealed packets. There is neither any averment in the complaint nor in the reply to the present petition that it was not stored properly. They have merely traded the product manufactured by the company, which was authorised to sell its product within the State of Punjab. Therefore, once the necessary ingredients of the offences are not attracted, the continuation of the proceedings against the petitioners to prosecute them would amount to abuse of process of law and thus, the same deserve to be quashed.

The judgment relied upon by the learned State counsel is distinguishable on facts.

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In view of the forgoing discussion, the present petitions are allowed. Consequently, the Complaint Case No.211 dated 29.11.2012, Annexure P-1 as also the summoning order dated 29.11.2012, Annexure P-2 are quashed qua the petitioners.

Photocopy of the judgment be placed on the file of the connected case.

(AMAN CHAUDHARY)
JUDGE

March 01, 2023
S.Sharma(syr)

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

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