

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Criminal Misc. No.M-29114 of 2014(O&M)

Date of Decision: July 02, 2015

M/s Cheminova India Lt.Regd. & anotherPetitioners

Versus

The State of Haryana & anotherRespondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

Present: Mr.Pankaj Maini, Advocate for the petitioners.

Mr.MS Sidhu, Additional Advocate General, Haryana.

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TEJINDER SINGH DHINDSA, J.

The instant petition has been filed under Section 482 of the Code of Criminal Procedure seeking quashing of complaint under Section 39(k)(1) read with Sections 17, 18, 29 and 33 of the Insecticides Act, 1968 and Rule 27(5) of the Insecticides Rules, 1971 as also the summoning order dated 2.7.2014 at Annexure P3 passed by the Additional Chief Judicial Magistrate, Fatehabad.

2. Brief facts that may be noticed are that M/s Cheminova India Limited is a Company manufacturing different kinds of pesticides and insecticides. On 16.9.2013, Inder Singh, Quality Control Inspector, Fatehabad (Insecticides Inspector) inspected the premises of M/s Suresh & Company, V&PO Gorkhpur, Tehsil and District Fatehabad and who is stated to be an authorized

dealer for sale of pesticides by M/s Cheminova India Limited. Three samples of Thiamethoxam 25% WG bearing Batch No.13E016 manufacturing dated 15.5.2013 and expiry dated 14.5.2015 from the premises of M/s Suresh & Company were drawn. One sample was handed over to the dealer at the time of sampling and remaining two samples were submitted to Deputy Director Agriculture, Fatehabad. From these two samples, one sample was sent to the State Quality Control Laboratory, Sirsa for analysis. Upon analysis, the result of the sample was conveyed as mis-branded. It is against such brief factual matrix that the impugned complaint dated 2.7.2014 was instituted in the Court of Additional Chief Judicial Magistrate, Fatehabad and taking cognizance thereupon, the summoning order dated 2.7.2014, Annexure P3, has been issued.

3. Learned counsel appearing for the petitioners would contend that petitioner No.2 is holding the post of Managing Director of M/s Cheminova India Limited and under the provisions of the Insecticides Act, 1968 (for short 'the Act') and with particular reference to Section 33 thereof, whenever a Company is sought to be prosecuted for an offence under the Act, such persons alone can be cited as accused as were in charge of or were responsible to the Company for the conduct of its business at the time of commission of the offence. Learned counsel would argue that the complaint is required to specifically and categorically aver that the accused were in charge of or were responsible to the Company for the conduct of its business. Learned counsel has further contended that in the present case,

the Company i.e. M/s Cheminova India Limited has already appointed one person under Section 33 of the Act i.e. Mr.D.J.Reddy, Senior Manager, Quality Control and as such, the impugned complaint and prosecution in pursuance thereto could proceed against the Company as also the responsible/nominated person alone. It has been argued that petitioner No.2 merely on account of holding the position of Managing Director could not have been summoned to face trial.

4. Per contra, learned State counsel would contend that while initiating prosecution under the Act, it is not necessary to reproduce the words contained in Section 33 of the Act. Learned State counsel has further argued that a perusal of the complaint would, in itself, show that the requirement of Section 33 of the Act has been complied with and as such, no interference by this Court in exercise of the powers under Section 482 of the Code of Criminal Procedure is called for.

5. Learned counsel for the parties have been heard at length.

6. The sole issue arising in the present case is no longer *res integra*. The Hon'ble Supreme Court in **State of NCT of Delhi Vs. Rajiv Khurana, 2010(3) RCR(Criminal) 912** has considered the scope of Section 33 of the Act and having referred to previous decisions in **Municipal Corporation of Delhi v. Ram Kishan Rohtagi & Others 1983(1) RCR(Criminal) 73**, **State of Haryana Vs. Brij Lal Mittal & Others, 1998(2) RCR(Criminal) 608**, **K.P.G. Nair v. Jindal Menthol India Ltd., 2001(10) SCC 218**, **Katta Sujatha (Smt.) v. Fertilizers & Chemicals Travancore Ltd. &**

another, 2002(4) RCR (Criminal) 502, Sabitha Ramamurthy and another v. R.B.S. Channabasavaradhya, 2006(4) RCR(Criminal) 296 and K.K. Ahuja v. V.K. Vora and another, 2009(3) RCR (Criminal) 571 held as follows :-

“The ratio of all these cases is that the complainant is required to state in the complaint how a Director who is sought to be made an accused, was in charge of the business of the company or responsible for the conduct of company's business. Every Director need not be and is not in charge of the business of the company. If that is the position with regard to a Director, it is needless to emphasis that in the case of non-Director officers, there is all the more necessary to state what were his duties and responsibilities in the conduct of business of the company and how and in what manner he is responsible or liable.”

7. The legal position as enunciated by the Hon'ble Apex Court is that it would be imperative to specifically aver in the complaint that the accused was/were in charge of and was/were responsible for the conduct of business of the company. It has further been held that unless clear averments are specifically incorporated in the complaint, the accused cannot be compelled to face the rigmarole of a criminal trial.

8. In the facts of the present case, the impugned complaint dated 2.7.2014 has been placed on record at Annexure

P1. Insofar as petitioner No.2, namely, Shri P.N.Karlekar, the averments are confined only to the extent that he being the Managing Director of M/s Cheminova India Limited is the responsible person and, thus, rendered himself liable for committing the offence under Section 39(1) of the Act and Rules made thereunder.

9. Clearly, the averments contained in the complaint insofar as petitioner No.2 are concerned, are short of the mandatory requirements of Section 33 of the Act as has held in the **State of NCT of Delhi** (supra) that a person(s) cited as accused are or were at the time of commission of the offence in charge of or responsible to the Company for the conduct of its business.

10. In view of the reasons recorded above, the present petition is allowed to the extent of quashing the complaint dated 2.7.2014 and all subsequent proceedings emanating therefrom qua petitioner No.2.

11. It would, however, be open for the respondent-Authorities to prosecute the petitioner-Company i.e. M/s Cheminova India Limited strictly in accordance with law and through the duly nominated and responsible person under Section 33 of the Act.

12. Petition allowed in the aforesaid terms.

(TEJINDER SINGH DHINDSA)
JUDGE

July 02, 2015
SRM

Note: Whether referred to Reporter? (Yes/No)