

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

CRM-M No.38485 of 2011
Date of Decision: March 10, 2015.

M/s Unikil Pesticides Pvt. Ltd.

....Petitioner.

VERSUS

State of Punjab and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

1. Whether the judgment should be reported in the digest? Yes/No
2. Whether to be referred to the Reporter or not? Yes/No

Present: Mr. Arihant Jain, Advocate for the petitioner.

Mr. Ashish Sanghi, Deputy Advocate General, Punjab,
for respondent no.1-State.

Mr. Harsh Bunker, Advocate for respondents no.2 and 3.

Mr. Dinesh Goel, Advocate for respondents no.4 and 5.

SNEH PRASHAR, J.

Aggrieved by the order dated 07.06.2011 passed by learned Sessions Judge, Faridkot, setting aside the order dated 03.05.2011 passed by Judicial Magistrate Ist Class, Faridkot, and allowing the application filed by accused-applicants Janak Raj and Sat Pal for M/s Sat Pal Janak Raj under Section 319 of the Code of Criminal Procedure (in short, "Cr.P.C.") for summoning Managing Director, Unikil Pesticides Pvt. Ltd. as additional accused to face trial in a complaint filed by prosecution-complainant under

Section 3(k) (i) 13, 17, 18, 29, 33 of Insecticides Act, 1968 (in short, “the Act of 1968”) read with Section 27(5) and Section 10(4) and 31 of the Insecticides Rules, 1971 (in short, “the Insecticides Rules”), the petitioner M/s Unikil Pesticides Pvt. Ltd. filed the instant criminal miscellaneous.

2. Precisely, the facts which led to the initiation of the instant petition are that the Insecticide Inspector Rattan Singh, A.D.O. in terms of Rule 27(5) of the Insecticides Rules framed under the provisions of the Act of 1968 filed a complaint impleading accused no.1(a) M/s Sat Pal Janak Raj, 1(b) Janak Raj son of Khem Chand, being dealer, accused no.2(a) M/s Som Nath & Company and 2(b) Som Nath being the distributor, on the allegations that during discharge of his official duties on 27.07.2001 Insecticide Inspector alongwith his team conducted checking of the premises of the dealer firm and took samples of Chlorpyrifos 20% EC W/S (brand name Chlorpyrifos) bearing manufacturing date “May, 2001” and expiry date “April, 2003” manufactured by M/s Unikil Pesticides Pvt. Limited, Vidisha (M.P.). The insecticide had been purchased by the dealer from the distributor namely M/s Som Nath and Company vide Bill bearing no.3057 dated 13.07.2001. The samples were drawn as per the rules and were sent to the Laboratory for analysis and on receipt of report of analysis that the same were found to be misbranded on account of lesser active ingredients, the complaint was filed.

During the course of trial, an application under Section 319 of Cr.P.C. was moved by accused Janak Raj and Som Nath for summoning the manufacturing company M/s Unikil Pesticides Pvt. Ltd., Vidisha (M.P.)

(hereinafter referred to as “the manufacturer) alongwith its official responsible for conducting the business as an additional accused.

3. The State contested the application on the ground that the dealers were not authorized dealers of the manufacturer and therefore, there was no cause to summon the manufacturer. The learned trial court vide order dated 03.05.2011 dismissed the application.

4. Feeling unsatisfied, accused Janak Raj and Som Nath filed a revision petition which was allowed by learned Sessions Judge, Faridkot vide order dated 07.06.2011. Resultantly, the order of learned trial court was set aside and the application filed under Section 319 of Cr.P.C. was allowed.

5. Feeling aggrieved by the order dated 07.06.2011, the manufacturer (M/s Unikil Pesticides Pvt. Ltd.) filed the instant criminal miscellaneous invoking the provisions of Section 482 of Cr.P.C.

6. The submissions made by Mr. Arihant Jain, learned counsel representing the petitioner, Mr. Ashish Sanghi, Deputy Advocate General representing respondent no.1-State of Punjab, Mr. Harsh Bungar, learned counsel representing respondents no.2 and 3 and Mr. Dinesh Goel, learned counsel representing respondents no.4 and 5 have been considered.

7. At the very outset, learned counsel for the petitioner argued that as per the provisions of Section 31(1) of the Act of 1968, no prosecution for an offence under the said Act can be instituted unless written consent/sanction of the State Government or the person authorized in that behalf by the State Government is obtained. In the instant case,

admittedly no sanction for prosecution had been given by the State Government against the petitioner-manufacturer who is sought to be summoned as an additional accused. Referring to the sanction order dated 19.03.2002 annexed as Annexure-P5 with the petition, learned counsel pointed out that in the instant case required sanction for prosecution had been given by the competent authority i.e. Joint Director (Agriculture) (Plants Security) only against M/s Sat Pal Janak Raj, Janak Raj being proprietor of M/s Sat Pal Janak Raj, M/s Som Nath & Company and Som Nath being proprietor of M/s Som Nath & Company. It was, therefore, an admitted position that no sanction was taken/given qua the present petitioner. In the said set of facts, no prosecution could be initiated against the petitioner-manufacturer. To support his argument, learned counsel relied upon H.C. Aggarwal vs. State of Punjab through Kuldeep Singh Insecticide Inspector, Tarsikka, 2010(4) R.C.R. (Criminal) 149; Sant Lal Surekha vs. State of Punjab, 2009(4) R.C.R. (Criminal) 981; and K.N. Dwivedi vs. State of Punjab, 2007(4) R.C.R. (Criminal) 1033.

8. On the other hand, learned counsel for respondents no.2 to 5 argued that undoubtedly the petitioner is the manufacture of the insecticide which has been analyzed and stated to be “misbranded”. A show cause notice regarding violation of Section 3 (k) (i), 17 of provisions of the Act of 1968 and the Insecticide Rules was sent by the Chief Agriculture Officer, Faridkot to the petitioner-manufacturer, but thereafter for the reasons best known to the said authority, the name of the manufacturer did not appear in the sanction order even though the manufacturer in its reply did not deny

that it had manufactured the insecticide namely Chlorpyrifos 20% EC W/S (brand name Chlorpyrifos) bearing manufacturing date “May, 2001” and expiry date “April, 2003”. It was labelled as the manufacturer and supplier. The bottle of insecticide was recovered in sealed condition which means that it was lying in the same condition as had been supplied by the manufacturer. When the insecticide is alleged to be “misbranded”, there was no reason for not initiating prosecution against the manufacturer.

9. Learned counsel further contended that the petitioner was ordered to be summoned invoking the powers conferred under Section 319 Cr.P.C. Relying upon Lok Ram vs. Nihal Singh, 2006(2) R.C.R. (Criminal) 707, learned counsel contended that when a person is summoned as an additional accused, it will be presumed that the said newly added person had been an accused person when the court took cognizance of the offence upon which the inquiry or trial had commenced.

To further fortify his argument that proceedings are not liable to be quashed on the ground of irregularity in sanction and that the Court can add an accused on the basis of material before the court without a separate sanction as required under Section 31(i) of the Act of 1968, learned counsel relied upon M/s Ajai Ferti Chem (Bombay) Pvt. Ltd. vs. State of Punjab, 2002(4) R.C.R. (Criminal) 528.

10. In the case in hand, admittedly the petitioner was the manufacturer of the insecticide i.e. five liter of Chlorpyrifos 20% ECW which was found stored by the complainant-Inspector in the shop of M/s Sat Pal Janak Raj out of which samples were taken. The supplier of the said

stock was M/s Som Nath & Company vide Bill no.3057 dated 13.07.2001 being the dealer. Adopting the process as per law, the sample was sent to Senior Analyst Insecticide Assistant Lab, Bathinda which on analysis found that the sample did not confirm to I.S. Specification with respect to present active ingredient contents and hence was “misbranded”.

Since no complaint was filed against the petitioner, though it was the manufacturer, an application by the respondent was filed before the court under Section 319 Cr.P.C. for summoning the petitioner as an additional accused.

11. In Food Inspector, Ernakulam and another v. P.S.

Sreenivasa Shenoy, 2000(6) SCC 348, the Apex Court observed as under:-

“once proceedings are instituted in a Court after grant of sanction, bar of sanction will not apply on account of fresh developments, which were not taken into account by the sanctioning authority. If sanction is once granted, no fresh sanction will be required and the bar under Section 216(5) Criminal Procedure Code or other provision requiring sanction will not operate in respect of person against whom sanction is granted or against a person, who may appear to be guilty because the object of providing a safeguard against vexatious prosecution by requiring sanction will be fulfilled by the Court's scrutiny of the material on record.”

This was also the view taken by the Apex Court in Bhagwan Dass v. Delhi Admn., AIR 1975 Supreme Court 1309 wherein it was held that *“Court could add an accused on the basis of material before the Court, without a separate sanction.”* The said case was interpretation of Section 20 of the P.F.A. Act, 1954, which interpretation will hold good, if power under Section 319 Criminal Procedure Code is invoked.

12. Reverting to the instant case, perusal of the impugned order

shows that dealing with the developments subsequent to the show cause notice given by the Insecticide Inspector to the petitioner-manufacturer for violation of the provisions of Section 31 and Section 33 of the Act of 1968, the findings of learned Sessions Judge were as under:-

“it is a clear cut case of the complainant Insecticides Inspector that the insecticide so found to be misbranded was manufactured by M/s Unikil Pesticides Private Limited, Vidisha (MP) and to whom a Show Cause Notice was issued for violation of these provisions along with the Distributor and the Dealer and it has been rightly argued and pointed out by Shri K.S. Sekhon, Advocate on behalf of the Revision Petitioners that the own document of the prosecution Ex.DW01/H reflects the stand of the Manufacturer for having manufactured this insecticide and the only objection that has sought to be raised in response to the show cause notice by the Manufacture written statement that they have sold the same to M/s Sat Pal Janak Raj when it is not the case of the prosecution that it was sold directly by the Manufacture to the Dealer and it was routed through the Distributor and, therefore, by this stand along with Cash memo of the Distributor issued for sale of the same to the Dealer “Annexure-G”/Mark-A shows this sale by the accused Distributor to the accused Dealer. Learned Public Prosecutor for the State was squarely at loss of words when confronted as to why in view of this evidence and the stands of the parties the complaint against the Manufacture was not preferred and rather throughout the trial the learned Public Prosecutor and so the Court have remained mute spectators in oblivion to the provisions of Section 23 of the Insecticides Act, 1968, which mandates the disclosure of place where the insecticide is manufactured or is kept for sale or distribution to disclose to the Insecticides Inspector as to place where the insecticide is being manufactured etc. and further Section 31 of the Act empowers the Magistrate to take cognizance of such an offence and Section 33 of the Act carries within its ambit that where an offence has been committed by a company, every person who at the time of the offence was committed was Incharge of or was responsible to the company for the conduct of the business, shall be deemed to be guilty of the offence and by which provision an obligation is created to prosecute the company/firm, who is the Manufacturer of such an insecticide and a conjoint reading of Section 31 and Section 33 of the Act it becomes clear that the prosecution has to be launched against the company or the person(s) Incharge of the company or an

officer of the company after due according of sanction to prosecute and it is the case of the prosecution that Notification No.15/1/93 Agri. 2(1) 1132 dated 10.2.1994 sanction has been duly accorded to launch prosecution under Section 31(1) of the Act and it is the own case of the complainant/prosecution that the Dealer and the Distributor have been according due sanction to sell such an insecticide in terms of Rule 10 of the Insecticides Rules, 1971 and in the light of the averments of the State Counsel that the insecticide so found to be misbranded has been found in a sealed intact packing of the Manufacturer certainly is a strong circumstance in terms of Section 33 of the Act against the Company/ Manufacturer and which allegations are well elicited in the own statement of Rattan Singh complainant. From this over all evidence it clearly ensues that the accused are the Dealer and the Distributor and that the Manufacturer has been wrongly kept away from being prosecuted for the reasons best known to the prosecution and under the very provisions of Section 319 of the Criminal Procedure Code where during the course of any enquiry or trial of an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court is vested with ample powers to proceed against such an accused.”

13. Indeed, under Section 31 of the Act of 1968 before launching prosecution, sanction of the competent authority has to be obtained but where a person who prima facie appears to be guilty had not been impleaded as an accused, the Court exercising the power in terms of Section 319 of Cr.P.C. can certainly add such person as an accused on the basis of the material before it without a separate sanction as has been laid down in **Food Inspector, Ernakulam and another's case (supra)** and **Bhagwan Dass's case (supra)**. In the light of facts in hand, it is apparent that the indulgence of the Court was more sensitively required since the manufacturer of the “insecticide” found to be “misbranded” had been allowed to escape from the heavy hands of law.

14. Learned counsel for the petitioner could not demonstrate any

illegality or perversity in the impugned order of learned Sessions Judge arising out of misappreciation or misreading of the material available on record.

Thus, finding no ground warranting intervention in the impugned order passed by learned trial court, the petition is dismissed.

(SNEH PRASHAR)
JUDGE

March 10, 2015
jitender