234

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

CRM-M No.42377 of 2013 (O&M)
Date of Decision: 13.05.2015

Surinder Singh Kooner

......Petitioner

Vs

State of Punjab

.....Respondent

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. Rakesh Verma, Advocate
for the petitioner.

Mr. Varun Sharma, A.A.G., Punjab.

****

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

RAJ MOHAN SINGH, J.

[1]. Petitioner seeks quashing of complaint No.5/12 dated 27.01.2012, under Section 3 (k) (i), 17, 18, 19 and 33 of Insecticide Act, 1968 read with Rule 10(4) and Rule 27(5) of Insecticide Rules, 1971 titled as ***State vs. M/s Bajwa Kheti Store & Others*** along with summoning order dated 27.01.2012 with all subsequent proceedings. Petitioner is the Director of the company namely M/s Modern Insecticide Ltd., Ludhiana, which is a registered manufacturer of various types of insecticide and pesticides. Company is having a valid licence issued by competent authority under Insecticide Act, 1968.

[2]. On 19.01.2011 Jagwinder Singh-Insecticide Inspector visited the shop of one dealer M/s Bajwa Kheti Store, VPO Jamarai, Tehsil Khadoor Sahib, District Tarn Taran and took sample of insecticide namely Piroxofob Propanyl 15% WP, brand Clipper, batch No.MJ-091210, date of manufacture December-2009, expiry date November-2011.

[3]. The aforesaid material was alleged to be manufactured by the said Company and supplied through the distributors namely Jhand Trading Company, Jandiala Guru, Distt. Amritsar. Out of three parts of the sample, one sample was sent to State Insecticide Testing Lab, Bathina for analysis and was found to be misbranded. Referral part of the sample was found to be misbranded after re-analysis by Central Insecticide Lab, Faridbad showing active ingredients 13.4% against 15%.

[4]. After issuance of show cause by the office of Chief Agriculture Officer, Tarn Taran and receipt of reply, complaint was filed on 27.01.2012 in the Court of Chief Judicial Magistrate, Tarn Taran who took cognizance and passed order dated 27.01.2012 summoning the petitioner.

[5]. Learned counsel for the petitioner relies upon Section 33 of the Insecticide Act, to show whether the person was Incharge and responsible for day to day activity of the Company. Section 33(1) and (2) are reproduced here as under:-

"Section 33 – Offences by companies –

(1) Whenever an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly;

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that he offence was committed without his knowledge or that he exercised all due diligence to prevent such offence.

(2) Notwithstanding anything contained in sub-section (1) where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of , or is attributable to any neglect on the part of any Director, Manager, Secretary or other officer of the company, such Director, Manager, Secretary or other office shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation – For the purposes of this section-

(a) "company" means any body corporate, and includes a firm or other association of individuals; and

(b) "director" in relation to a firm means a partner in the firm"

[6]. While referring to Section 33(2), learned counsel for the petitioner states that word proved used in sub-section has its own connotation that notwithstanding anything contained in sub-section (1) the Director can only be prosecuted if it is proved that the offence has been committed with the consent or connivance of the Director, Manager, Secretary and any other officer then he shall be deemed to be guilty of that offence and shall be liable to be proceeded against.

[7]. According to learned counsel deeming fiction qua proceeding against Director is that if offence under this Act has been proved. He also referred to para 19 of the complaint to show averments made therein in respect of mandatory requirement. Para 19 of the complaint is reproduced hereasunder:-

"19. Whereas, Surinder Singh Kooner s/o Kartar Singh Kooner (Director and Responsible Officer) r/o 50 S.F.I.G. Flat Raj Guru Nagar, Ferozpur Road, Ludhiana. Surinder Kumar s/o Attar Singh (Chemist and Responsible Officer, Quality Control) r/o C-162A, Phase 5, Focal Point, Ludhiana, Amarjit Singh s/o Joginder Singh, Responsible Officer for conduct of business, r/o C-374, Urban Estate,

> *Focal Point, Ludhiana of manufacturing firm-M/s Modern Insecticide Ltd., 2nd Floor, Kesar Complex, Near Molhar Cinema, Gurdev Nagar, Ludhiana are Responsible Officer by manufacturing, selling, stocking and distributing the above said misbranded Piroxofop Propanyl 15% W.P. The firm M/s Modern Insecticide Ltd., Ludhiana did commit an offence punishable under Section 29(1) (a) read with Section 3(i)(i), 18 of the Act and they are all liable for prosecution under Section 33 of the Act."*

[8]. Petitioner has been shown by his name as Surinder Singh Kooner. Word Director and Responsible Officer is bracketed against his name. There is no other pleading in the complaint as to how and in what manner the petitioner was responsible for conduct and affairs of the Company. According to requirement of law, provision in terms of Section 33 are *pari materia* with that of Section 141 of Negotiable Instruments Act.

[9]. In ***S.M.S. Pharmaceuticals Ltd. v. Neeta Bhall and anr., 2005(4) R.C.R. (Criminal) 141***, Hon'ble Supreme Court while interpreting provisions of Sections 138 and 141 of Negotiable Instruments Act held that necessary averments ought to be contained in complaint before a person can be subjected to criminal process. The principle accused being the Company, therefore clear case should be spelled out in the complaint against the persons sought to be prosecuted. The persons who are Incharge and

responsible for day-to-day conduct of business of the Company can be made liable if there are necessary pleadings to this effect in the complaint. It has to be specifically averred in the complaint that at the time of offence the present accused was Incharge and responsible for the conduct of business of the Company. Without such an averments being made in the complaint, mandatory requirement shall not be complied and vicarious liability on behalf of Company is not attracted.

[10]. The aforesaid view was reiterated by Apex Court in subsequent judgments ***2010(11) SCC 203 Central Bank of India v. Asian Global Limited and others***, ***2011(3) SCC 351 Harshanda Kumar 'D" vs. Rehati Lata Killey and others***, ***2012(2) R.C.R. (Criminal) 854 Anita Handa v. M/s Godfather Tour and Travers Pvt. Ltd.*** and ***2015(1) SCC 103 Golwal Sales Private Limited v. Anu Mehta and others***.

[11]. The requirement of law in respect of creating vicarious liability must be strictly construed. Since it is a penal provision, creating vicarious liability, therefore, it is not sufficient to make bald, cursory statement in the complaint that Director is Incharge and responsible to the Company for the conduct of business of the Company without anything more role of the Director. The complaint must spell out as to how and in what manner Director was Incharge or was responsible to the Company in conduct of its business. This should be in consonance with strict interpretation of penal statutes,

especially, where such statute creates vicarious liability.

[12]. In case of ***National Small Industries Corporation v. Harmeet Singh Paintal and another, 2010(3) SCC 330***, the Apex Court has interpreted on the aforesaid lines that requirement in terms of pleading has to be strictly construed not only to the extent of mentioning the Director to be Incharge of and responsible to the Company for doing its business but strictly spell out as to how and in what manner he was Incharge and responsible for the conduct of its business.

[13]. Learned counsel further cites ***2010(3) R.C.R. (Criminal) 912, State of NCT of Delhi v. Rajiv Khurana*** wherein the Apex Court has formulated the same principles of vicarious liability for quashing of the proceedings arising out of Insecticide Act and the provisions were also *pari materia* with that of Sections 141 of N.I. Act.

[14]. In ***2005 (4) R.C.R. (Criminal) 68, S.K. Jindal v. State of Haryana***, this Court held that in the absence of specific averments in the complaint, no Director can be proceeded against. No Director is required to prove his innocence by leading evidence in the trial, once the averments to this effect are not incorporated in complaint. By relying upon ***2005(1) R.C.R. (Criminal) 31, Shabbir Itarsi and another v. State of Haryan***a and ***2005(3) R.C.R. (Criminal) M/s Oswal Agro Sales Corporation v. State of Punjab***, this Court held that the averments made in complaint in the context of Incharge and

Responsible for the conduct of Company fell short of statutory requirement.

[15]. Similarly in case of ***__2014(2) R.C.R. (Criminal) 945 P.D. Garg and others v. State of Punjab__***, this Court considered the similar issue and while interpreting Section 33 of the Act came to the conclusion that prosecution against Director cannot be held sustainable in the absence of aforesaid requirement of pleadings in the complaint.

[16]. Learned counsel for the petitioner further submitted that samples were drawn on 19.01.2011 and report of Chemical Examiner was received on 16.02.2011 and complaint was filed on 27.01.2012. The sanction allegedly granted on 16.09.2011 has been claimed to be illegal and no specific details and reasons have been given by sanctioning authority against each of the Director sought to be prosecuted. Leaving the factual details aside, this Court intends to appreciate the plea on first principle.

[17]. In view of aforesaid, this Court is of the considered opinion that prosecution against petitioner is based upon the averments in the complaint which are short of mandatory requirement and, therefore, vicarious liability upon petitioner cannot be fastened merely by citing him to be Director of the Company.

[18]. Consequently, complaint No.5/12 dated 27.01.2012, Section 3 (k) (i), 17, 18, 19 and 33 of Insecticide Act, 1968 read with

Rule 10(4) and Rule 27(5) of Insecticide Rules, 1971 titled as ***State v. M/s Bajwa Kheti Store and Others,*** summoning order dated 27.01.2012 passed by Chief Judicial Magistrate, Tarn Taran and entire subsequent proceedings arising therefrom stand quashed.

[19]. Petition is allowed.

May 13, 2015 **(RAJ MOHAN SINGH)**
Atik **JUDGE**