IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-19057 of 2016
Date of Decision: September 07, 2017

Kanwaljit Singh Joson ....Petitioner

Versus

State of Punjab .....Respondent

CORAM:HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr.Rakesh Verma, Advocate
for the petitioner.
Mr.Randeep S.Khaira, Assistant
Advocate General, Punjab

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ARVIND SINGH SANGWAN, J.

Petitioner has filed the present petition under Section 482 of the Code of Criminal Procedure, 1973 for quashing of Complaint No. 67 dated 23.7.2014 under Section 3(k)(i) 17, 18, 29 and 33 of the Insecticides Act, 1968 (`the Act' short) read with Rule 10 and 27(5) of Insecticide Rules, 1971 (`Rules 1971' for short) titled as `*State vs. M/s Jagjit Singh and Sons and Others'*, which is pending adjudication at Taran Taran, (Annexure P1) and summoning order dated 13.1.2015 (Annexure P2) along with all consequential proceedings arising therefrom qua the petitioner.

It is submitted on behalf of the petitioner that the petitioner is one of the Director of the Company, namely, M/s Pioneer Pesticides Pvt. Ltd., Samba (J&K) having its registered Office at Chandigarh (for short `M/s PPPL') . The respondent-complainant has filed the criminal complaint No. 67 dated 23.7.2014 under Section 29 read with Sections 3(k)(i), 17, 18, 29 & 33 of the Act read with Rules 10 and 27(5) of the Rules, 1971.

Petitioner-Kanwaljit Singh Josan is arrayed as accused No.4 in the complaint. After hearing the complainant, the trial Court has issued summoning order dated 13.1.2015 (Annexure P2) against the petitioner. Learned counsel for the petitioner has submitted that the petitioner has already put in appearance before the trial Court and was granted bail.

Learned counsel has further submitted that a perusal of the complaint (Annexure P1), shows that the same has been instituted with the allegations that on 4.12.2012, while inspecting the shop premises of M/s Jagjit Singh and Sons, one Jasbir Singh was selling stocking and exhibiting for the sale of 20 insecticides packets . It is further alleged in the complaint that after drawing a loose sample,as per the procedure laid down in the Act and its Rule 1971, same was sealed and another three test sample out of 20 packets were put into three portion and three sample bags were sealed and out of which two parts of sealed test sample were handed over to Agriculture Development Officer,Tarn Taran and third sample was sent for analysis to Senior Analyst, Insecticides Testing Laboratory, Bathinda. The samples were declared misbranded as it did not confirm IS specification and its active ingredients were found to be less than the standard ingredients. Thereafter, on the basis of the Analyst report, a show cause notice dated 25.1.2013 was issued under Section 24 of the Act to all the accused persons and after affording opportunity to the dealer, distributor and manufacturing firm, the complaint (Annexure P1) was filed before the trial Court in which vide summoning order dated 13.1.2015 (Annexure P2), petitioners and co-accused were summoned.

Learned counsel for the petitioner has argued that the petitioner is a Director of the Company, namely,`M/s PPPL' and under the provisions of the Act, a specific procedure is provided to prosecute the Director of the Company. Learned counsel has referred to Section 33 of the Act which provides that whenever the Company has sought to be prosecuted for an offence under the Act, such person alone can be cited as an accused as was or were Incharge/responsible of the Company for the conduct of its business at the time of commission of offence. Learned counsel for the petitioner has further submitted that the complainant is required to specifically and categorically aver in the complaint that the accused was Incharge or responsible of the Company for the conduct of its business. Counsel for the petitioner further submits that the Company `M/s PPPL' is being represented by accused- Kanchan Lal and Baljit Singh, who are Responsible Officer for Quality Control and conduct of business and Responsible person and Godown Incharge, respectively, of `M/s PPPL' and as such, the impugned complaint and prosecution of the petitioner, in pursuance thereof, could proceed against the Company as also against the responsible/nominated persons. It is further submitted that the present petitioner, merely on account of holding the post of Director could not be summoned to face the trial. Learned counsel for the petitioner in support of his contention referred to paragraphs 15 and 16 of the complaint to submit that the only allegation against the petitioner is that he is the Director and responsible person of `M/s PPPL' and,therefore, it is not sufficient compliance of the mandatory provisions of Section 33(1) of the Act and he cannot be prosecuted and proceeded against vicariously for and on behalf of the Company.

Paragraphs 15 and 16 of the complaint (Annexure P1) read as under:-

"15. Whereas Kanwaljit Singh Joson s/o Harbans Singh Josan, r/o Kothi No.37, Sector 8, Chandigarh (Director and Responsible Person), Kanchan Lal s/o Phalwan Singh, r/o Industrial Growth Centre,Sambha(Jammu) (Responsible Officer for Quality Control and conduct of business), Baljit Singh s/o Nirmal Singh, r/o Tajpur Road, Iqbal Nagar, Ludhiana (Responsible Person and Godown Incharge) through M/s Pioneer Pesticides Pvt. Ltd., Sambha (Jammu), Gobind Bene of firm M/s Synzenta India Ltd., Banner road, Pune (Director), Karanvir Nagpal s/o Kashmir Chand Nagpal, r/o H.No.831, Phase-3, Model Town, Bathinda (Responsible Person for conduct of business), Amarjit Singh s/o Joga Singh r/o H.No. 2692/1, B-Vishkarma Town, Dhuri, Railway Line Crossing, Ludhiana-143003 (Responsible Person and Godown Incharge of M/s Synzenta India Ltd.) (attested copy of affidavits of responsible person as Annexure U) by manufacturing, selling, stocking and distributing the above said misbranded Clodinofop propergyl 15% WP Branch Topic, the firm M/s Pioneer Pesticides Pvt. Ltd., Sambha (Jammu) did commit an offence punishable u/s 29(1)(a) read with Section 3(k)(1), 17,18 of the Act and they are all liable for prosecution under Section 33 of the Act.

16. The above mentioned accused form Sr.No.1 to 10 are liable under joint trail and punishment under 3(k)(I), 17, 18, 29,33 of the Act and Rule 10 and 27(5) of Insecticide Rules 1971 as in this case, the activity of manufacturer and dealer are sufficiently connected in manufacturing and sale of misbranded Clodinofop

Propergyl 15% WP Branch Topic with their knowledge, consent and connivance of all the above said accused, the offence was done in concert, present to the pre-arranged plan to get more profits."

Learned counsel for the petitioner, while relying upon Section 33 of the Act, has submitted that, as per Section 33(2), the word "proved" used in its 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.

Section 33 of the Act reads as under:-

> (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, or 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 under this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence. tc "Provided that nothing contained in this sub-section shall render any such person liable to any punishment under this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence."
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> 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 connivance of, or is attributable to any neglect on the part of, any rector, Manager, Secretary or other officer of the company, such

Director, Manager, Secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. tc "(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 officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly."

Explanation.—For the purpose of this section,—

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

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

In support of his arguments, learned counsel for the petitioner has relied upon the judgment of the Hon'ble Apex Court **State of NCT of Delhi vs. Rajiv Khurana** 2010(3)RCR(Criminal) 912 where it is held that no specific averments in the complaint are made that a Director was Incharge and Responsible for day to day business of the Company. The proceedings under the Act are not maintainable and are liable to be quashed.

Learned counsel has also relied upon the judgments in **Surinder Singh Kooner vs. State of Punjab 2015(4)RCR(Criminal) 996 and S.K.Jindal vs. State of Haryana** 2005(4) RCR(Criminal) 68 wherein it is held that mere arraying a person as Director and Responsible Person in the complaint, without specifically pleading that how and in what manner the said Director was incharge of and was responsible for the conduct of the business of the company, except mentioning the word 'Director and responsible person', is not sufficient compliance of the mandatory provisions of Section 33(1) of the Act. That it is submitted that petitioner is not liable to be prosecuted and proceeded against vicariously for and on behalf of the company and,therefore, criminal proceedings against the said Director are nothing but an abuse of the process of the Court of law, hence, are liable to be quashed under Section 482 of the Code of Criminal Procedure,1973.

On the other hand, learned counsel for the respondent-State opposed the prayer and has submitted that, while initiating the prosecution under the Act, it is not necessary to reproduce the words contained under Section 33 of the Act and a perusal of the complaint would itself shows that the requirement of Section 33 of the Act has been complied with and,therefore, no interference is called for by this Court .

After hearing the learned counsel for the parties at length, I find that the issue arising in the present case is no longer res-intergra in view of the judgment of the Hon'ble Supreme Court in the State of NCT(supra). In the said case, the Hon'ble Supreme Court, while considering the scope of Section 33 of the Act and having referred to the previous decisions of the Hon'ble Supreme Court has held as under:-

> " 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 emphasize 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.

The legal position which emerges from a series of judgments is clear and consistent that it is imperative to specifically aver in the complaint that the accused was in charge of and was responsible for the conduct of business of the company. Unless clear averments are specifically incorporated in the complaint, the respondent cannot be compelled to face the rigmarole of a criminal trial.."

Adhering to the facts of the present case in the impugned complaint (Annexure P1), so far as allegations against the present petitioner- Kanwaljit Singh Josan are concerned, the averments are that the petitioner is the Director and Responsible person of *`M/s PPPL'.*

This Court, while dealing with identical proposition of law, in the judgment KCS Bhatti (supra) has made following observations:-

> "7. On perusal of Section 33 of the Act, it is clear that in case of violation by the Company/firm under Insecticide Act, the provisions of Section 33 of the Act are required to be complied with. As per provisions of Section 33 of the Act, in case any offence has been committed by the company, every person who was incharge or was responsible for the conduct of the business in company shall be deemed to be guilty of the offence and he shall be

liable to be proceeded against and punished accordingly. Sub section (2) makes it clear that when it is proved that the offence has been committed with the consent and connivance of the Director, Manager, Secretary or other officer of the company, he shall be liable to be proceeded against and punished accordingly. For commission of said offence, there is to be specific averments in the complaint by the complainant that such person against whom the complaint was filed was the incharge and was responsible for the conduct of the company at a particular time and alleged offence has been committed with his consent and connivance. Section 305 of Cr.P.C. is also relevant in the circumstances of the case which is reproduced as under :

> "305. Procedure when corporation or registered society is an accused.
> (1) In this section, "corporation" means an incorporated company or other body corporate, and includes a society registered under the Societies Registration Act, 1860 (21 of 1860).
> (2) Where a corporation is the accused person or one of the accused persons in an inquiry or trial, it may appoint a representative for the purpose of the inquiry or trial and such appointment need not be under the seal of the corporation.
> (3) Where a representative of a corporation appears, any requirement of this Code that anything shall be done in the presence of the accused or shall be read or stated or explained to the accused, shall be construed as a requirement that that thing shall be done in the presence of the representative or read or stated or explained to the representative, and any requirement that the accused shall be examined shall be construed as a requirement that the representative shall be examined.

(4) Where a representative of a corporation does not appear, any such requirement as is referred to in sub-section (3) shall not apply.

(5) Where a statement in writing purporting to be signed by the managing director of the corporation or by any person (by whatever name called) having, or being one of the persons having the management of the affairs of the corporation to the effect that the person named in the statement has been appointed as the representative of the corporation for the purposes of this section, is filed, the Court shall, unless the contrary is proved, presume that such person has been so appointed.

(6) If a question arises as to whether any person, appearing as the representative of a corporation in an inquiry or trial before a Court is or is not such representative, the question shall be determined by the Court.

8. From perusal of section 305 CrPC, it is clear that whenever any offence is committed by the company and the company is prosecuted, then it is for the company to decide that by whom the company is to be represented during trial. The company cannot be compelled to be represented by a particular or a specific officer. Nowhere in the complaint, it is mentioned that the petitioner was incharge and was responsible for the day to day conduct of business of the company at the relevant period or the alleged contravention took place in the company with its consent or connivance. This onus lies upon the prosecution to prove and only then a person can be prosecuted. These requirements have not been fulfilled while filing this complaint as neither requirement of section 33 of the Act has been complied with nor specific averments have been made. The controversy in the present case is squarely covered by the judgment of case in ***P.D. Gara and others v. State of Punjab, 2014(2) RCR (Criminal) 945.***The relevant part of the judgment is reproduced as under :

"The sole issue arising in the present case is no longer resintegra. The Hon'ble Supreme Court in ***State of NCT of Delhi v. 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 v. 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,Sabltha 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 :-
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> "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."

9. In view of the facts as mentioned above and law position explained as discussed in the above said paras, I am of the considered opinion that mandatory provisions of section 33 of the Act have not been complied with as the complaint does not contain any specific averments with regard to role of the present petitioner. Moreover, in absence of impleading company as party, the proceedings cannot be initiated against this petitioner. This view has been taken by the Apex Court in ***Monaheb Ketanbhai Shah & another v. State of Gujarat & others, 2004(3) RCR (Criminal) 800*** which is reproduced as under :

> "The primary responsibility is on the complainant to make necessary averments in the complaint so to make the accused vicariously liable. For fastening the criminal

> liability, there is no presumption that every partner knows about the transaction. The obligation of the appellants to prove that at the time the offence was committed they were not in charge of and were not responsible to the firm for the conduct of the business of the firm, would arise only when first the complainant makes necessary averments in the complaint and establishes that fact. The present case is of total absence of requisite averments in the complaint."

In view of the aforesaid discussions, this Court is of considered opinion that the prosecution against the petitioner rest upon the averments made in the complaint, do not fulfill the mandatory requirements and, therefore, vicarious liability cannot be fastened on the petitioner merely by citing him to be the Director of the Company.

Accordingly, this petition is allowed. Complaint No. 67 dated 23.7.2014 under Sectiona 3(k)(i) 17, 18, 29 and 33 of the Act, read with Rule 10 and 27(5) of the Rules 1971 titled as `State vs. M/s Jagjit Singh and Sons and Others', and the summoning order dated 13.1.2015 (Annexure P2) passed by the trial Court and subsequent proceedings arising therefrom are quashed against the petitioner.

(ARVIND SINGH SANGWAN)
JUDGE

September 07, 2017
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Whether speaking/reasoned: Yes
Whether Reportable: Yes