IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M No.32995 of 2015
Date of Decision: 07.03.2017

C.K. Sabharwal ......Petitioner

Versus

State of Punjab ... Respondent

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

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

Mr. Deepak Garg, AAG, Punjab.

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RAJ MOHAN SINGH, J.

[1]. Petitioner has filed this petition under Section 482 Cr.P.C for quashing of complaint No.5/4 dated 05.01.2010 registered under Sections 3 (k) (i), 17, 18, 29 and 33 of Insecticides Act, 1968 read with Rule 27(5) of Insecticide Rules, 1971 titled “State Vs. M/s Kissan Kheti Sewa Centre and others” along with summoning order dated 08.01.2010 and entire subsequent proceedings undertaken in pursuance thereof.

[2]. Petitioner alleged that petitioner is a Director of the company namely M/s Crop Health Products Ltd., Ghazibad. M/s Crop Health Products Ltd., Ghaziabad was a registered manufacturer of various types of insecticides and pesticides since1966. The company was having a valid licence issued by the appropriate authority under the Act. There was a laboratory

as per ISO 9001 fitted with fully modern equipments of testing in the factory premises of the company. The entire material manufactured by the company was being tested by the laboratory before sale in the market and there was no scope of issuance of any misbranded insecticide/pesticide in the market for sale.

[3]. A complaint was filed by the complainant with the allegations that on 17.07.2007, Kuldeep Singh Sekhon, Insecticide Inspector, Khanna, District Ludhiana had visited the shop of one dealer i.e. M/s Kissan Kheti Sewa Centre, Samrala Road, Khanna, District Ludhiana and drew a sample of insecticide namely Cartap Hydrochloride 4 % GR “Syncarp” brand Clipper, bearing batch No.SCH7G532, manufacturing date as 07.07.2007 and expiry date as 06.07.2009. The material was alleged to be manufactured by the aforesaid company and was marketed through one distributor namely M/s Syngenta Crop Protection Pvt. Ltd., Mumbai. Three representative samples were taken. One part of the sample was sent to State Insecticide Testing Laboratory, Amritsar and the same was found to be misbranded after analysis. The referral part of the sample was also found to be misbranded by the Central Insecticide Laboratory, Faridabad. Thereafter, show cause notice was issued by Chief Agricultural Officer, Ludhiana to the

manufacturing company as well as to the Distributors and dealers. Manufacturing company replied the show cause notice to the Chief Agricultural Officer, but the same was not considered. On 08.01.2010, the complaint in question was filed in the trial Court. Trial Court vide order dated 08.01.2010 passed the impugned order of summoning.

[4]. Since the company stopped its manufacturing unit and production activities w.e.f 15.01.2009, therefore, petitioner was never served with any notice of complaint and impugned order. Petitioner came to know about the filing of the complaint and passing of summoning order in September, 2015 and thereafter, petitioner filed the present petition.

[5]. Petitioner further alleged that every manufacturing company/firm is to nominate and appoint one of its officer as responsible person under Section 33 of the Insecticides Act (for short 'the Act') who used to maintain the quality and control of the product so manufactured by the unit. Such a person is nominated for fixing responsibility on behalf of the company under Section 33 of the Act. For ready reference, Section 33 of the Act is reproduced hereasunder:-

> *“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 the 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 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-

(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]. Bare perusal of the aforesaid provisions would show that if the offence is committed by the company, then the person who is incharge and responsible for day to day activity and conduct of the business of the company is liable, besides the company shall be deemed to have committed the offence. Further as per Section 33 (1) of the Act, merely being a responsible person is not enough. He should be responsible to the company for the conduct of the business at the material time. Sub Section (2) of the Act makes it clear that the word “proved” used in sub section has its significance notwithstanding anything contained in sub Section(1). Director can only be prosecuted if it is proved that the offence has been committed with the consent or in connivance of the Director, Manager, Secretary or other officer. In such an eventuality, he shall be deemed to be guilty of that offence and shall be liable to be prosecuted accordingly.

[7]. Learned counsel for the petitioner contended that the company M/s Crop Health Products Ltd., Ghazibad had already appointed a person in terms of Section 33 of the Act who is being prosecuted. In view of aforesaid provisions and requirement of law, prosecution against the petitioner is claimed to be illegal and without any basis. In this regard, reference has been made to affidavits filed by Mr. M.P.S. Rathi, Sr. General

Manager-cum-Responsible Person of the company. The very purpose of appointing responsible person in terms of Section 33 of the Act would be frustrated if the office bearers of the company are prosecuted for the offences committed by the company. The responsible person appointed in this regard has already been prosecuted against for and on behalf of the company, therefore, learned counsel for the petitioner vehemently submitted that the filing of complaint against the petitioner (Director of the Company) and order of summoning are totally an abuse of process of law and are not legally sustainable.

[8]. Learned counsel further submitted that petitioner was working as a Director of Oriental Bank of Commerce i.e. Government of India undertaking from 07.09.2005 to 06.09.2008 and 16.09.2008 to 15.09.2011. In such an event, prior sanction from appropriate authority was legally required to be taken before launching prosecution against the petitioner. Section 31 of the Act is mandatory in nature which requires that a sanction must be taken from the appropriate authority of the Government before launching prosecution under Insecticide Act. The sanction accorded vide order dated 18.03.2009 is not legal inasmuch as that the same is discrepant viz-a-viz each and every person sought to be prosecuted for and on behalf of the

manufacturing company.

[9]. Learned counsel by relying upon ***Surinder Singh Kooner Vs. State of Punjab, 2015(4) RCR (Criminal) 996*** contended that the present controversy is covered by the aforesaid judgment and therefore, prosecution against the petitioner is liable to be quashed. Provisions in terms of Section 33 of the Insecticides Act and Section 141 of the Negotiable Instruments Act are *para materia* with each other.

[10]. 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.

[11]. 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***.

[12]. 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.

[13]. 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.

[14]. 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.

[15]. Learned State counsel very fairly admitted the legal position and conceded that the case is fully covered with the ratio laid down in ***Surinder Singh Kooner's case (supra)***.

[16]. In view of aforesaid, I find no reasons to differ with the conclusion drawn by this Court in the cited judgment. Therefore, I am of the view that the prosecution against the petitioner is in violation of mandatory requirement of law and the petitioner cannot be held to be vicariously liable being Director of the Company for want of necessary material on record. Consequently, the present petition is allowed. Complaint No.5/4 dated 05.01.2010 registered under Sections 3 (k) (i), 17, 18, 29 and 33 of Insecticide Act, 1968 read with Rule 27(5) of

Insecticide Rules, 1971 titled as “State Vs. M/s Kissan Kheti Sewa Centre and others” along with summoning order dated 08.01.2010 and entire subsequent proceedings undertaken in pursuance thereof are hereby quashed.

(RAJ MOHAN SINGH)
07.03.2017 **JUDGE**
prince

Whether Reasoned/Speaking **Yes/No**

Whether Reportable **Yes/No**