

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

CRM-M-801 of 2015 (O&M)

Reserved on : 24.03.2017

Date of Decision: 09.05.2017

M/s Cheminova India Limited and another

....Petitioners

vs.

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

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

Mr. C.S. Bakshi, Addl. A.G. Haryana.

TEJINDER SINGH DHINDSA, J.

The instant petition has been filed under Section 482 of the Code of Criminal Procedure seeking quashing of complaint No.186 of 2014 dated 03.12.2014 under Section 29(1) read with Sections 3(k)(1) and Sections 17, 18, 29 and 33 of the Insecticides Act 1968 and Rule 27(5) of the Insecticides Rules, 1971. Challenge is also raised to the summoning order carrying even date i.e. 03.12.2014 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 12.12.2013, the then Sub Divisional Agriculture Officer, Fatehabad (Insecticides Inspector) inspected the premises of M/s Chaudhary Chemical Store, Booth No.29, Bhatu Kalan, Tehsil and District Fatehabad and which was an authorized dealer for the sale of pesticides manufactured by M/s Cheminova

India Limited Three samples of Dimethoate 30% EC bearing Batch No.13D117 carrying manufacturing date 20.04.2013 and expiry date 19.10.2014 from M/s Chaudhary Chemical Store were taken. Out of the three samples, one portion of the sample was handed over to the dealer at the time of sampling and remaining two samples were submitted to Deputy Director of Agriculture, Fatehabad. Out of these two samples, one sample was sent to the State Quality Control Laboratory, Karnal vide letter dated 16.12.2013 through Director of Agriculture, Panchkula (Haryana). After analyzing the sample, the Insecticides Analyst, Quality Control Laboratory, Karnal, conveyed the results as mis-branded. It is against such brief factual matrix that the impugned complaint dated 03.12.2014, was instituted in the Court of Additional Chief Judicial Magistrate, Fatehabad and taking cognizance thereupon, the summoning order dated 03.12.2014 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 person(s) 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. Sh. Sanjay Kumar Rajnikant Shah 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 Limited, 2001(10) SCC 218, Katta Sujatha (Smt.) v. Fertilizers & Chemicals Travancore Limited & 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 (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 03.12.2014 has been placed on record at Annexure P-4. Insofar as, petitioner No.2, namely Sh. 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 29(1) of the Act and Rules made thereunder.

9. Clearly, the averments contained in the complaint insofar as petitioner No.2, is concerned, are short of the mandatory requirement of Section 33 of the Act as has been 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. At this stage, it would apposite to take note of the document placed on record and appended at Annexure P-8 i.e. memo dated 31.03.2011 issued from the office of the Director of Agriculture, Haryana and addressed to all the Deputy Directors of Agriculture in the State of Haryana and in which, it has clearly been noticed that insofar as M/s Cheminova India Limited is concerned, Sh. Sanjay Kumar Rajnikant Shah stands nominated as the responsible person(s) of the company w.e.f. 01.06.2010. That apart prior to initiation of proceedings in the light of the impugned complaint dated 03.12.2014, a showcause notice dated 17.01.2014 (Annexure P-2) had also been issued by the Sub-Divisional

Agriculture Officer, Fatehabad to M/s Chaudhary Chemical Store as also to Sh. Sanjay Kumar Rajnikant Shah, in the capacity of being the “responsible person” working as Quality Control at M/s Cheminova India Limited

11. The documents adverted to at Annexure P-2 and Annexure P-8 hereinabove as also in the light of dictum laid down by the Apex Court in **State of NCT of Delhi** (supra) leads to the irresistible conclusion that petitioner No.2 herein in the capacity of Managing Director of M/s Cheminova India Limited cannot be proceeded against in furtherance of the impugned complaint.

12. In view of the reasons recorded above, the present petition is allowed to the extent of quashing the complaint dated 03.12.2014 and all subsequent proceedings emanating therefrom qua petitioner No.2.

13. 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 duly nominated and responsible person under Section 33 of the Act.

14. Petition is allowed in the aforesaid terms.

(TEJINDER SINGH DHINDSA)
JUDGE

09.05.2017
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Whether speaking/reasoned : **Yes/No**
Whether reportable : **Yes/No**