

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

**CRM-M No.9632 of 2015
Date of Decision-24.01.2017**

M/s S.S. Fertilizer and another ... Petitioners

Versus

State of Punjab ... Respondent

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

Present: Mr. Arun Chandra, Advocate for the petitioner.
Ms. Rimplejeet Kaur, DAG, Punjab.

RAJ MOHAN SINGH, J.

[1]. Petitioners have sought quashing of criminal complaint No.6702 dated 24.09.2014 under Sections 3K(1), 17, 18, 29 and 33 of the Insecticides Act, 1968 read with Rule 27(5) of the Insecticides Rules, 1971 along with all consequential proceedings undertaken in pursuance thereof.

[2]. Petitioners alleged that petitioner No.1 is a dealer-firm and has obtained the licence for selling, stocking and exhibiting for sale of different types of insecticides and pesticides including that of M/s Unique Farm Aid Pvt. Ltd., New Delhi. Petitioner No.2 is the proprietor of petitioner No.1. Insecticides Inspector

inspected the premises of petitioner No.1 on 16.07.2012 and drew the sample of Monocrotophos 36% SL having manufacturing date April, 2012 and expiry date September, 2013 manufactured by M/s Devi Unique Farm Aid Pvt. Ltd., New Delhi. Para No.4 of the complaint filed by the complainant is to the following effect:-

“4. That after my routine checking of this dealer firm, I found that this firm was holding stock of 10 (ten) litres in 500 ml packing of insecticide Monocrotophos 36% SL bearing Batch No.12-UF-1602 having manufacturing date 04/2012 and expiry date 09/2013 manufactured by M/s Unique Farm-Aid Private Limited. Then I Amanjit Singh, Notified Insecticides Inspector, Baddowal Block, Ludhiana showed my intention to take the sample of Monocrotophos 36% SL to Sh. Subash Chand S/o Sh. Amrit Lal, Proprietor of M/s S.S. Fertilizer 14-New Grain Market, Mullanpur (Ludhiana) and got his signatures on the intimation slip. Then I selected 2 (two) lid sealed containers of 500 ml each for the same Batch No.12-UF-1602 and then prepared 3 (three) test samples being ‘loose’ samples out of these sealed containers from the stock mentioned above manufactured by M/s Unique Farm-Aid Private Limited. I opened these 2 (two) lid sealed containers selected above and poured this insecticide approx. 250 ml each in the 3 (three) neat clean & dry tin containers. Then I closed these containers tightly with lid to avoid leakage. Then I filled 6 (six) copies of Form No.XXI bearing No.25412 as required under Rule 34 of the Insecticides Rules 1971 and marked the sample with Code No.12/M.

Then I filled 4 (four) copies of Form No.XX bearing No.26262 as required under Rule 33 of the Insecticides Rules 1971 and mentioned the details of this insecticide. I had duly signed all these Forms No.XX &, XXI and put my brass seal with the use of ink pad on these forms bearing impression (Il 3 B LDH). Then I had put one test sample tin container of this insecticide into each 3 (three) neat, clean & dry polythene envelopes which were then transferred to 3 (three) empty, clean & dry cloth bags one in each. I had put one duly filled Form No.XXI bearing No.25412 into each test sample portion. These test sample cloth bags were made airtight by folding upper portion of the cloth bags and then by putting white paper folding piece strips duly signed by me. These sample portions were tied with 'seba' and sealed with the use of 'lakh' (sealing wax) with my brass seal bearing seal impression (Il 3 B LDH) by me at the spot on 16.07.2012. That one copy of Form No.XXI duly filled &. signed by me affixed with seal impression was put in the separate paper envelop and addressed to Govt. Analyst. That Sh. Subash Chand S/o Sh. Amrit Lal, Proprietor of M/s S.S. Fertilizer 14-New Grain Market, Mullanpur (Ludhiana) had signed all the 4 (four) copies of Form No.XX bearing No.26262 duly filled by me at the spot on 16.07.2012. That Sh. Pritpal Singh, Agricultural Development Officer (Enforcement) office of the Chief Agricultural Officer, Ludhiana had signed on these Forms No.XX bearing No.26262 duly filled being witness for taking this sample on 16.07.2012. That the detail of this sample was mentioned on the outside of the 3 (three) cloth bags such as name of insecticide,

code number & date of sampling etc. That I had also acknowledged the receipt to the proprietor of this firm that if this sample is found to be on pass strength then the payment of this sample will be made to him against bill. That one part of this sealed sample portion out of 3 (three) test sample portions was handed over to Sh. Subash Chand S/o Sh Amrit Lal, Proprietor of M/s S.S. Fertilizer 14-New Grain Market, Mullanpur (Ludhiana) at the spot along with one copy of Form No.XX duly filled & signed by me for this sample on 16.07.2012. That I had fully followed the procedure for taking this sample as per Section 22 of the provisions of the Insecticides Act, 1968. That a copy of Form No.XX bearing No.26262 duly filled for taking, this sample is annexed as R-3 (original office copy). That a copy of Form No.XXI bearing No.25412 duly filled in annexed as R-4 (original office copy).

[3]. Apparently, the complainant selected 2 lid sealed containers of SCO ml each for the same Batch No.12-UF-1602 and then prepared 3 test samples as loose samples out of the sealed containers from the stock manufactured by M/s Unique Farm Aid Private Limited. After drawing the sample and dividing the same into three parts, one part of the sample was given to the petitioner-firm and the remaining two parts were retained by the Insecticides Inspector. Out of two parts, one part of the sample was sent to Insecticide Testing Laboratory, Amritsar and the same was alleged to be misbranded. On the basis of the report, the complaint was filed in the Court and petitioners were summoned.

[4]. Learned counsel for the petitioners submitted that sample was taken from the original sealed containers, therefore, petitioners were not liable in terms of protection granted under Section 30(3) of the Insecticides Act. No prosecution could be launched against the petitioners as the petitioners were selling the insecticides in sealed containers in the original form as obtained from the registered manufacturers. In the complaint, there was no averment that the samples were not in the sealed containers. Section 33 of the Insecticides Act is to the following effect:-

“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”

[5]. Learned counsel further submitted that the sample was drawn on 16.07.2012 and the same reached the laboratory on 20.07.2012 i.e, after a delay of 4 days. In terms of Section 22(6) of the Insecticides Act, the Insecticide Inspector after drawing the sample and after dividing the same into three parts was to give one part of the sample to the person from whose premises the sample was drawn and remaining two parts were to be retained by him. Out of two parts, one part of the sample was to be sent for its analysis to the laboratory forthwith. The sample was not sent for its analysis forthwith which was in violation of Section 22(6) of the Insecticides Act, 1968. The delay in sending the sample was fatal to the prosecution.

[6]. Learned counsel relied upon **1990 SCC (Criminal) 623, M/s Kisan Beej Bhandar, Abohar Vs. Chief Agricultural Officer, Ferozepur and another, 2010 (4) RCR (Criminal) 146, Jindal Fertilizers and Chemicals and others Vs. State of Punjab** and **2011 (2) RCR (Criminal) 395, M/s Garg Agro Chemicals and another Vs. State of Punjab** to contend that if

the samples were drawn from the original packing, only liability of

the manufacturer could have been alleged, complaint qua the petitioners was not maintainable.

[7]. Learned counsel by referring to Section 30(3) of the Insecticides Act submitted that the liability of the dealer was questioned as they were involved in sale of pesticides and in the event of finding the pesticides to be mis-branded, the dealer could not be held liable as he was merely selling the packing as supplied by the manufacturer. There was no allegation that sealed were tampered or the packing were not properly stored. The complaint was conspicuously silent about the aforesaid allegation. Since the samples were drawn from the original packing as per para No.4 of the complaint, therefore, provision in terms of Section 30(3) of the Insecticides Act was duly attracted.

[8]. The provisions of Section 33 of the Insecticides Act are *pari materia* with that of Section 141 of the Negotiable Instruments Act. Petitioner No.1 is the firm of which petitioner No.2 is the proprietor and responsible person. In case of company, interpretation of law was considered in terms of Section 33 of the Insecticides Act which was considered to be *pari materia* with Section 141 of the Negotiable Instruments Act by the Hon'ble Apex Court in **S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhall and another, 2005(4) RCR (Criminal) 141**. The principal accused being the company, could not be held liable for want of necessary averments ought to have been made in the

complaint in terms of analogous provisions of Negotiable Instruments Act.

[9]. 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.

[10]. 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.

[11]. In the light of aforesaid, I am of the considered view that the prosecution against the petitioners in terms of the offences as mentioned in the complaint is not sustainable in the eyes of law. Consequently, this criminal petition is allowed. Criminal complaint No.6702 dated 24.09.2014 under Sections 3K (1), 17, 18, 29 and 33 of the Insecticides Act, 1968 read with Rule 27(5) of the Insecticides Rules, 1971 titled as State through Insecticide Inspector, Baddowal Vs. M/s S.S. Fertilizers and others pending in the Court of Chief Judicial Magistrate Ist Class,

Ludhiana and entire consequential proceedings undertaken in pursuance thereof are hereby quashed.

(RAJ MOHAN SINGH)
JUDGE

24.01.2017
Prince

Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No