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

**1. CRM-M No.22611 of 2014
Date of Decision: 26.02.2018**

**KUCHIMANCHI VENKATA SATYA SARVESWARA SAIRAM
.....Petitioner**

Vs

STATE OF PUNJABRespondent

2. CRM-M No.22612 of 2014

PRADEEP REDDYPetitioner

Vs

STATE OF PUNJABRespondent

3. CRM-M No.33929 of 2016

**Dr. N.J. SINGH AND ANR
.....Petitioners**

Vs

STATE OF PUNJABRespondent

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

Present:Mr. Rakesh Verma Advocate
for the petitioner(s).

Mr. R.S. Thind, D.A.G., Punjab.

RAJ MOHAN SINGH, J.

[1]. Vide this common order CRM-M Nos.22611 and 22612
of 2014 and CRM-M No.33929 of 2016 are being disposed of.

As common question of law is involved in the aforesaid cases,

therefore, the facts are being taken from CRM-M No.22611 of 2014.

[2]. At the time of issuance of notice of motion, learned counsel for the petitioner(s) emphasized that in view of ratio laid down by the Hon'ble Apex Court in **Aneeta Hada vs. M/s Godfather Travels and Tours Pvt. Ltd., 2012(2) Recent Apex Judgments (R.A.J.) 562** and **Suresh Kumar Kochhar and another vs. State of Punjab, 2014(2) R.C.R. (Criminal) 206**, the complaint against the petitioner would be the result of misuse of power in the absence of impleading the Company as an accused.

[3]. In CRM-M No.22611 of 2014, petitioner is the Managing Director of M/s Prathista Industries Ltd., Secunderabad (Telangana). In CRM-M No.22612 of 2014, petitioner is an employee of M/s Prathista Industries Ltd., and working as a Quality Control Officer. In CRM-M No.33929 of 2016, petitioner No.1 is the Director (EHS) of M/s DCM Shriram Consolidated Ltd., and M/s Shriram Fertilizers & Chemicals. Petitioner No.2 is the Godown Incharge of M/s Shriram Fertilizers & Chemicals.

[4]. The issue involved in all the aforesaid cases is whether in the absence of Company being one of the accused, the complaint can proceed.

[5]. Learned counsel for the petitioner(s) submitted that respective Companies of the petitioners have not been arrayed as an accused in the complaint as per requirement of law. Learned counsel further submitted that Section 33 of the Insecticide Act, 1968, Section 141 of the Negotiable Instruments Act and Section 10 of the Essential Commodities Act are *para materia* to some extent.

[6]. Section 33 of the Insecticide Act, 1968 stipulates 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 subsection 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 subsection (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”

[7]. Section 10 of the Essential Commodities Act, 1955 is also reproduced here as under:-

10. Offences by companies

(1) If the person contravening an order made under section 3 is a company, every person who, at the time the contravention 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 contravention 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 contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

(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 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.”

[8]. Learned counsel for the petitioner(s) further submitted that the complaint filed by the complainant suffers from inherent lacuna. Bare perusal of the provisions in terms of Section 33 of the Insecticide Act would show that if the offence is committed by the Company, then the person, who is Incharge and responsible for day to day activity for the conduct of the business of the Company would be liable. In addition to the aforesaid, the Company shall be deemed to have committed the offence. Merely being a responsible person is not enough, rather he should be responsible to the Company for the conduct of the business at the relevant time. The Director can only be prosecuted, if it is proved that the offence is committed with the consent or in connivance with the Director/Manager, Secretary or any other Officer.

[9]. Learned counsel relied upon **Rajesh Tiwari vs. State of Punjab, 2017(4) R.C.R. (Criminal) 691; S.H. Chisty vs. State of Haryana, 1997(2) R.C.R. (Criminal) 565; K.R. Dass,**

M.D., Vantech Industries Ltd., vs. State of Punjab, 1998(2)

R.C.R. (Criminal) 611; Suresh Kumar Kochhar and Anita

Hada's cases (supra) in order to support his contentions.

[10]. 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.

[11]. In **S.M.S. Pharmaceuticals Ltd. vs. 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 spelt 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 with and vicarious liability on behalf of Company is not attracted.

[12]. In the light of aforesaid precedents, particularly in view of the Company having not been arrayed as an accused, in my considered opinion the complaint cannot proceed.

[13]. In view of above, the present petitions are accepted. Consequently, impugned complaint No.18 dated 18.03.2013 under Sections 3(k)(i), 17, 18, 29 & 33 of the Insecticide Act, 1968 read with Insecticides Rules, 1971 titled '*State vs. Parkash Chand & Sons and others*' and summoning order dated 18.03.2013 passed by the Chief Judicial Magistrate, Barnala along with all consequential proceedings arising therefrom are hereby quashed.

February 26, 2018

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No