

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

CRM-M-27108 of 2016

Date of Decision: - May 15, 2018

M/S Gill Pesticides and another

...Petitioners

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU.

Present: - Mr. Arun Chandra, Advocate
for the petitioners.

Mr. Tanvir Joshi, AAG, Punjab.

MAHABIR SINGH SINDHU, J.

Present petition has been filed under Section 482 of Code of Criminal Procedure (for short 'Cr.P.C.') for quashing the complaint No.4296 dated 03.07.2014 (P-2) and summoning order dated 03.07.2014 (P-3) whereby the petitioners along with co-accused i.e. manufacturer and its authorized persons etc. have been ordered to be summoned to face trial under Sections 3k(i), 17, 18, 29 and 33 of the Insecticides Act, 1968 (for short 'Act of 1968') read with Rule 27(5) of the Insecticides Rules, 1971 (for short 'Rules of 1971') by learned Chief Judicial Magistrate, Ludhiana along with all consequential proceedings arising therefrom.

2. Learned counsel for the petitioners made two fold submissions

(i) that sample was drawn from the original packing and as such, in view of

the provisions of sub-section 3 of Section 30 of the Act of 1968 the complaint (P-2) as well as summoning order dated 03.07.2014 (P-3) are not legally sustainable and (ii) that sample was drawn on 28.12.2011 and the same reached to the laboratory on 10.01.2012 i.e. after delay of 13 days and as such the same is in violation of sub-section (6) of Section 22 of the Act of 1968.

3. On the other hand, learned State counsel opposed the contentions of learned counsel for the petitioners and submitted that the petitioners have deliberately concealed the withdrawal of earlier quashing petition bearing CRM-M-9357-2015 wherein all the pleas were raised, but did not find favour of this Court and the same was dismissed as withdrawn with liberty to pursue other remedies in accordance with law, vide order dated 05.10.2015. It is further submitted that the petitioners, being dealer were selling the insecticide in question, which was found to be “misbranded” as defined under Section 3(k)(i) of the Act of 1968 and thus, they are fully liable for prosecution in view of the provisions of Section 29 (1)(a) of Act of 1968.

4. Heard learned counsel for both the sides and perused the paper-book.

5. Before proceeding with the matter, it is necessary to mention here that undisputedly on earlier occasion also the petitioners filed a petition under Section 482 Cr.P.C., as mentioned above, for quashing of the present complaint (P-2) as well as summoning order dated 03.07.2014 (P-3) while claiming the same very relief as in the present case; but this Court was not inclined to entertain the same and thus, the said petition was

dismissed as withdrawn “with liberty to pursue their other remedies in accordance with law” on 05.10.2015 and the order reads as under: -

“After arguing the case for some time, learned counsel for the petitioners seeks permission of the Court to withdraw the present petition with liberty to the petitioners to pursue their other remedies, in accordance with law.

Permission is granted.

Dismissed as withdrawn with liberty, as prayed for.”

6. In view of the above, it is apparently clear that there is neither any justification; nor an occasion for the petitioners to file the second petition for seeking the same very relief, which this Court was not inclined and thus, the present petition is misuse of the process of law and the same deserves to be dismissed only on this ground.

7. For deciding the present controversy on merits, the brief facts of the case are that petitioner No.1/Firm is the dealer and petitioner No.2 is the responsible person for running the day to day affairs and business of petitioner No.1/Firm. The insecticide inspector visited the premises of petitioner No.1 on 28.12.2011 and had drawn the sample of insecticide Piroxofop-Propanyl 15% WP having Batch No.A-21007, date of manufacturing 25.10.2011 and expiry date 24.10.2013, manufactured by M/s Devi Dayal (Sales) Limited, Mumbai (accused No.3) in the complaint for checking the quality of the insecticide and which was marked with Code No.JIS-13. Three test samples of insecticide were prepared on the spot and which were sealed properly. One sample was handed over to the petitioners and remaining two sealed samples were deposited by the Insecticide Inspector in the office of Chief Agricultural Officer, Ludhiana (for short

‘CAO’) to be sent for analysis on the same day i.e. 28.12.2011. Thereafter, one sealed sample along with Form XX (P-1) was sent by the CAO, vide letter dated 10.01.2012 to the Insecticides Testing Laboratory, Amritsar for analysis and which was analyzed in the laboratory in due course and as per the report dated 01.02.2012 (P-4) it was found that the insecticide was having the active ingredients of 12.95% instead of Piroxofop-Propanyl 15% WP. Thus, the sample was found to be “misbranded” in view of the definition contained in sub-clause (i) of clause (k) of Section 3 of the Act of 1968.

8. It is necessary to mention here that a reference sample was also sent for re-testing on the request of the petitioners from the Central Insecticides Laboratory, Faridabad on 22.03.2012 and the result of the same was received by way of report 03.04.2012 (R-1) to the effect that active ingredient content was found to be 11.70% instead of 15% of Piroxofop-Propanyl 15% WP and thus, again the sample was found to be “misbranded” in terms of Section 3(k)(i) of the Act of 1968. Thereafter, the necessary sanction dated 16.05.2014 (R-2/T) was accorded by the competent authority and the present complaint was filed on 03.07.2014 against all the accused including the petitioners in the Court of learned Chief Judicial Magistrate, Ludhiana and details of all the accused are as under: -

1. M/s Gill Pesticides , 28-New Grain Market, Sahnewal, District Ludhiana through Sh. Anil Kumar s/o Sh. Ved Parkash, Responsible person of the dealer firm.
2. Anil Kumar s/o Sh. Ved Parkash r/o Sahnewal, Manager of M/s Gill Pesticides, 2 R-New Grain Market, Sahnewal,

District Ludhiana.

3. M/s Devi Dayal (Sales) Limited, Regd. Office: Devi Dayal Estate, Post Box No.6219, Reavy Road, Mumbai – 400010 through its responsible persons.

4. Narinder Kumar s/o Sh. Gurjit Singh, V.P.O. Kutba District Barnala (Director & Responsible person of the Company.

5. Gurbax Singh s/o S. Mehar Singh r/o 318, Kankar Ka Muwada, Kalol, District Panch Mahal (Gujarat) (Manager quality control of M/s Devi Dayal (Sales) Limited.).

6. Yogindra Singh Rawat s/o Sh. Santan Singh Rawat r/o village Chair, District Pauri Garhwal, Uttarakhand (Business Manager and Godown Incharge of M/s Devi Dayal (Sales) Limited Mumbai), Godown Premises, Shop No.90, New Grain Market, Backside Arora Palace, Gill Road, Ludhiana.

9. Learned trial Court after examining the contents of the complaint along with the documents attached therewith found that prima facie all the accused are liable for prosecution while passing the summoning order dated 03.07.2014 (P-3). It is necessary to mention here that except the present petitioners none of the other co-accused have come to this Court for questioning the legality and validity of the complaint as well as the impugned summoning order.

10. Before proceeding with the matter, it is necessary to reproduce the provisions of Section 3(k)(i), 29 and 30 of the Act of 1968, being material and which read as under: -

“3 Definitions – In this Act, Unless the context otherwise requires:-

(a) xxxxx xxxxx xxxxx xxxxx xxxxx xxxxx xxxxx (j)

(k) “**misbranded**” — an insecticide shall be deemed to be

misbranded—

(i) if its label contains any statement, design or graphic representation relating thereto which is false or misleading in any material particular, or if its package is otherwise deceptive in respect of its contents; or

(ii) xxxxx xxxxx xxxxx xxxxx xxxxx xxxxx (viii)

(l) xxxxx xxxxx xxxxx xxxxx xxxxx xxxxx (r).

29. **Offences and punishment.**— (1) Whoever,—

(a) imports, manufactures, sells, stocks or exhibits for sale or distributes any insecticide deemed to be misbranded under sub-clause (i) or sub-clause (iii) or sub-clause (viii) of clause (k) of section 3; or

(b) imports or manufactures any insecticide without a certificate of registration; or (b) imports or manufactures any insecticide without a certificate of registration; or

(c) manufactures, sells, stocks or exhibits for sale or distributes an insecticide without a licence; or

(d) sells or distributes an insecticide, in contravention of section 27; or

(e) causes an insecticide, the use of which has been prohibited under section 27, to be used by any worker; or

(f) obstructs an Insecticide Inspector in the exercise of his powers or discharge of his duties under this Act or the rules made thereunder, shall be punishable —

(i) for the first offence, with imprisonment for a term which may extend to two years, or with fine which shall not be less than ten thousand rupees but which may extend to fifty thousand rupees, or with both;

(ii) for the second and a subsequent offence, with imprisonment for a term which may extend to three years, or with fine which shall not be less than fifteen thousand rupees but which may extend to seventy-five thousand rupees, or with both.

(2) Whoever uses an insecticide in contravention of any provision of this act or any rule made thereunder shall be punishable with fine which shall not be less than five hundred rupees but which may extend to five thousand rupees, or imprisonment for a term which may extend to six months, or with both].

(3) Whoever contravenes any of the other provisions of this Act or any rule made thereunder or any condition of a certificate of

registration or licence granted thereunder, shall be punishable—

(i) for the first offence, with imprisonment for a term which may extend to [one year, or with fine which shall not be less than five thousand rupees but which may extend to twenty-five thousand rupees, or with both],

(ii) for the second and a subsequent offence, with imprisonment for a term which may extend to two years, or with fine which shall not be less than ten thousand rupees but which may extend to fifty thousand rupees, or with both.

(4) If any person convicted of an offence under this Act commits a like offence afterwards it shall be lawful for the court before which the second or subsequent conviction takes place to cause the offender's name and place of residence, the offence and the penalty imposed to be published in such newspapers or in such other manner as the court may direct.

30. Defences which may or may not be allowed in prosecutions under this Act.—

(1) Save as hereinafter provided in this section, it shall be no defence in a prosecution under this Act to prove merely that the accused was ignorant of the nature or quality of the insecticide in respect of which the offence was committed or of the risk involved in the manufacture, sale or use of such insecticide or of the circumstances of its manufacture or import.

(2) For the purposes of Section 17, an insecticide shall not be deemed to be misbranded only by reason of the fact that—

(a) there has been added thereto some innocuous substance or ingredient because the same is required for the manufacture or the preparation of the insecticide as an article of commerce in a state fit for carriage or consumption, and not to increase the bulk, weight or measure of the insecticide or to conceal its inferior quality or other defect; or

(b) in the process of manufacture, preparation or conveyance some extraneous substance has unavoidably become intermixed with it.

(3) A person not being an importer or a manufacturer of an insecticide or his agent for the distribution thereof, shall not be liable for a contravention of any provision of this Act, if he proves—

(a) that he acquired the insecticide from an importer or a duly licensed manufacturer, distributor or dealer thereof;

(b) that he did not know and could not, with reasonable

diligence, have ascertained that the insecticide in any way contravened any provision of this Act; and

(c) that the insecticide, while in his possession, was properly stored and remained in the same state as when he acquired it.”

11. A perusal of sub-clause (i) of clause (k) of Section 3 of the Act of 1968 reveals that if a label of an insecticide contains any statement or representation etc. relating thereto which is false or misleading in any material particular or its package is otherwise disceptive in respect of its contents, then the same shall be deemed to be “misbranded”. A further reading of clause (a) of sub-section (1) of Section 29 envisages that whoever sells, stocks or exhibits for sale etc. any insecticide deemed to be “misbranded” under sub-clause (i) of clause (k) of Section 3 shall be punishable with imprisonment for a term which may extend to two years or with fine which shall not be less than Rupees Ten thousand and which may extend to fifty thousand or both for the first offence.

In the present case, report of Insecticide Analyst dated 01.02.2012 (P-4) as well as report of Central Insecticides Laboratory, Faridabad dated 03.04.2012 (R-1) clearly reveal that the sample of insecticide in question was found to be “misbranded” as the active ingredient of contents were noticed to be 11.70% instead of Piroxofop-Proparyl 15% WP and thus, the petitioners being the dealer are fully liable for prosecution. So far as the plea of the petitioners regarding sub-Section (3) of Section 30 is concerned, the same is not helpful for them for the simple reason that Section 30 talks about the defences which may or may not be allowed in prosecution under this Act. Sub-section (1) of Section 30 lays down that save as provided hereinafter in Section 30 it shall not be a

defence in a prosecution under this Act to prove merely that the accused was ignorant of the nature or quality of the insecticide in respect of which the offence was committed or of the risk involved in the sale etc. of such insecticide. Sub-section (2) of Section 30 talks about Section 17 i.e. import and manufacture of certain insecticide and not relevant for the purpose of the present controversy. So far as sub-section (3) of Section 30 is concerned, the same is a saving clause to sub-section (1) of Section 30, but that can be pressed into service subject to the conditions stipulated therein by a dealer like the petitioners in case the following three things are established: -

a) That the petitioners acquired the insecticide from an importer or a duly licensed manufacturer, distributor or dealer thereof; meaning thereby, the petitioners will have to prove that they acquired the insecticide in question from a duly licensed manufacturer, distributor or dealer thereof, but there is no evidence on record to prove that the manufacturer M/s Devi Dayal (Sales)-accused No.3, was having a valid license for manufacturing of the insecticide in question.

b) That the petitioners did not and could not know with reasonable diligence that the insecticide in question in any way contravened any provision of the Act of 1968. Undisputedly, the insecticide in question has been found to be “misbranded” and whether the petitioners did not know and could not know with reasonable diligence that the insecticide was “misbranded” is a question of facts and law to be proved after leading the evidence during trial and the same cannot be gone into at this stage in the present petition.

c) That the insecticide in question, which was in possession of the petitioners, was properly stored and remained in the same state when they acquired it. Although this is the case of the petitioners that the sample was drawn

from the original packing, but they will have to prove that the insecticide in question was stored and remained in the same state as they acquired it. Moreover, clause (c) of sub-section 3 of Section 30 of the Act of 1968 is to be read in conjunction with the above said two clauses viz. clause (a) and clause (b) of sub-Section 3 of Section 30 and cannot be read in isolation. Thus, there is no material which has been brought to the notice of this Court that the petitioners have satisfied the conditions (a), (b) and (c) of sub-section 3 of Section 30 referred above.

Therefore, irresistible conclusion is that petitioners have failed to prove that they acquired the insecticide in question from an importer or duly licensed manufacture, distributor or dealer thereof and that they did not know and could not know with a reasonable diligence that the insecticide was “misbranded” and insecticide in their possession was properly stored and remanned in the same state when they acquired it. Consequently, this Court is of the firm opinion that all three pre-conditions stipulated under sub-section 3 of Section 30 by way of a saving clause to sub-section (1) of Section 30 are subject matter of trial to be proved by leading evidence by the petitioners before learned trial Court and it will not be appropriate for this Court while exercising power under Section 482 Cr.P.C. to hold a mini trial on the pretext of extraordinary powers, when the learned trial Court already has already seized the matter and prima facie found while passing the summoning order that the petitioners along with other co-accused i.e. manufacturer etc. are liable for prosecution under Sections 3k(i), 17, 18, 29 and 33 of the Act of 1968 read with Rule 27(5) of the Insecticides Rules, 1971. It is also reiterate here that the other co-accused including the manufacturer have neither assailed the complaint; nor the summoning order as well as reports submitted by Insecticide Analyst and

Central Insecticide Laboratory .

12. The another argument on behalf of the petitioners that there is a delay in sending the sample and thus, the entire proceedings are vitiated in terms of sub-section (6) of Section 22 of the Act of 1968 is also not acceptable for the simple reason that, as discussed above, three test sample of insecticides were drawn on 28.12.2011 and were sealed properly. One sample was handed over to the petitioners and remained two sealed samples were deposited by the Insecticide Inspector in the office of CAO, Ludhiana to be sent for analysis on the same day i.e. 28.12.2011. One sealed sample along with Forms XX (P-1) was sent by the CAO vide letter dated 10.01.2012 to the Insecticide Testing Laboratory, Amritsar for its analysis through special messenger Gulzar Singh, Beldar of the office. Further more, a reference sample was also sent on the request of the petitioners in the sealed cover for analysis by Central Insecticide Laboratory, Faridabad and again the active ingredient was found to be 11.70% in the report dated 03.04.2012 (R-1), submitted by the Central Insecticides Laboratory, Faridabad and as per clause 6 of both the reports, the sample was properly sealed and the same was intact. It is further mentioned in this clause that sample was in a condition fit for analysis; thus, no prejudice has been caused to the petitioners on that count. Therefore, the plea of the petitioners that there is a violation of Section 22(6) is also not sustainable for quashing of the complaint as well as summoning order at the threshold.

13. In view of the above, this Court does not find any substance in the present petition while exercising the powers under Section 482 Cr.P.C.

for quashing of the complaint as well as the summoning order and thus, the same is dismissed on account of concealment of earlier petition bearing CRM-M-9357-2015 as well as on merits.

14. The above observations may not be construed as an expression of opinion on merits of the case.

15. Learned trial Court is directed to expedite the trial at the earliest.

May 15, 2018
naresh.k

(MAHABIR SINGH SINDHU)
JUDGE

Whether Reportable	:	Yes
Whether Speaking/Reasoned	:	Yes