

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

**Criminal Misc. No.M-8114 of 2016 (O&M)
Date of Decision: August 16, 2018**

N Sukumar

.....PETITIONER(s).

VERSUS

State of Punjab

....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Argued by: Mr. Adhiraj Thind, Advocate
for the petitioner (s).

Mr. Ramandeep S. Sandhu, Sr. D.A.G., Punjab.

SURINDER GUPTA, J.

The petitioner has sought quashing of complaint No.812-2 (131/15) dated 15.5.1998/(20.5.1998) filed by Sarwan Singh Insecticide Inspector, Khuian Sarwar at Abohar for offences under Section 3 (k)(i), 17, 18, 33 punishable under Section 39 of Insecticides Act, 1968 read with Rule 27(5) of Insecticide Rules, 1971 and the summoning order dated 20.05.1998 passed by Sub Divisional Judicial Magistrate, Abohar along with all consequential proceedings.

A complaint was filed against M/s Des Raj Satish Kumar Dealer, M/s Shivani Enterprises through its authorized person Shri O.P. Mukhi Distributor, and M/s Hyderabad Chemicals Supplies Limited through K. Sriviwas Rao Senior Chemist and N Sukumar, Director, M/s Hyderabad Chemicals Supplies Ltd (petitioner).

The case of the complainant, in brief, is that Insecticide Inspector Khuian Sarwar had visited shop of M/s Des Raj Satish Kumar on 19.12.1996 and taken the samples of original packing container of 2, 4-D Ethyle Easter 38% EC batch No.108 manufacturing date October 1996 with expiry date Sept., 1998 each containing 500 mls product of M/s Hyderabad Chemicals Supplies Ltd. One of the sample got tested from Central Insecticides Laboratory (Govt. of India), Ministry of Agriculture and it was found to be not confirming to the relevant ISI specifications in active ingredient percentage. It was found containing 17.75% EC instead of 38% EC active ingredients. The product was found misbranded and the complaint was filed against the aforesaid persons.

Learned counsel for the petitioner has sought quashing of the complaint along with all consequential proceedings on a technical ground that sanction for prosecution as required under Section 31 (1) of the Insecticides Act was not allowed to prosecute the petitioner in his personal capacity as Director of M/s Hyderabad Chemicals Supplies Ltd. The sanction was allowed by the appropriate authority to sue M/s Hyderabad Chemicals Supplies Limited through K. Shri Niwas Rao, Senior Chemist and N.S. Kumar, Director (petitioner). This sanction is to prosecute the firm/company and not any employee/Director of the company in his personal capacity.

Learned State Counsel on perusal of the order passed by Joint Director, Agriculture (appropriate authority), copy of which has been placed on record as Annexure-P4, could not controvert the contention of learned counsel for the petitioner that no sanction for prosecution of the petitioner

in person had been allowed.

Now the question, which arise for consideration is as to whether in the absence of sanction for prosecution of the Director or any employee of the company/firm in person, complaint against the Director/employee in person is not maintainable?

To answer this question, reference can be made to the observation of Coordinate Bench of this Court in case of ***Manjit Singh Guliani Vs. State of Panjab, 2002(2) R.C.R. (Criminal) 50***, wherein, it was observed as follows:-

“6. From the perusal of the above, it would be clear that the sanctioning authority, while granting consent/sanction, was satisfied that the various firms/companies, referred to above, had committed various offences and accordingly, the sanctioning authority had granted consent/sanction for the prosecution of those firms/companies through their responsible persons named therein. Even the complaint, which was filed by the State of Punjab through Insecticide Inspector, was also filed against the aforesaid firms/companies through their responsible persons named therein. Those persons, through whom the various firms/companies were prosecuted in the criminal complaint as responsible persons of those firms/companies, had not been prosecuted by the State of Punjab in their individual capacity but only they were to represent firms/companies, who were prosecuted by the State of Punjab through the Insecticide Inspector and for the prosecution of those firms/companies the sanctioning authority had granted necessary permission/sanction. As referred to above, in the consent/sanction order, it is specifically mentioned by the sanctioning authority that

he was satisfied that those firms/companies had committed the various offences and that consent was being granted for the prosecution of those companies through their responsible persons. There is absolutely nothing on record to show that the sanctioning authority had also granted consent/sanction under Section 31(1) of the Act for the prosecution of those persons (alleged to be responsible persons) in their individual capacity. Once, it is found that the sanction was granted only for the prosecution of firms/companies and they were to be prosecuted through their responsible persons and even the prosecution was also launched by filing the criminal complaint against the firms/companies through their responsible persons, referred therein, it would be clear that those persons could not be prosecuted in their personal capacity.”

Similar observations were also made in case of *Shashank Bhargva Vs. State of Punjab and another 2005(3) R.C.R. (Criminal) 53*, wherein, it was observed in para 12 of the above-judgment as follows:-

“12. In this case, the relevant facts mentioned above have not been disputed by the counsel for the respondents. The sanction was granted to prosecute the company through its responsible persons i.e. the petitioners. The complaint has also been filed by impleading the manufacturing company as an accused through the petitioners. No individual sanction to prosecute the petitioners have been granted by the competent authority after coming to the conclusion that they were the persons responsible to the company for the conduct of its business. In the complaint, the petitioners have not been impleaded as accused in their individual capacity. Only the company has been impleaded as an

accused through them. There is no averment that the petitioners in their individual capacity were the persons responsible for the conduct of the business of the manufacturing company. In view of these admitted facts, in my opinion, the case of the petitioners is squarely covered by the aforesaid decisions rendered by this Court in which on similar facts the complaints were quashed.”

In the complaint, complainant has specifically mentioned in para 9 that necessary sanction of authorized persons has been obtained under Section 31(1) of the Insecticides Act for filing prosecution against all the accused. The petitioner has been arrayed as accused No.4 in the complaint in his personal capacity being the Director of M/s Hyderabad Chemicals Supplies Ltd. and not as authorized representative of the company.

As already discussed, the sanction allowed by Joint Director, Agriculture was only for prosecution of company through its representatives and not for the prosecution of the petitioner in his individual capacity.

In view of the above, I find merit in the submission learned counsel for the petitioner. This petition has merits and the same is allowed. The complaint filed against the petitioner in his individual capacity along with all subsequent proceedings, is ordered to be quashed, without prejudice to the right of the complainant to sanction prosecution of the person independently, if so warranted by law.

August 16, 2018
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No