IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 09.04.2019

1. CRM-M-18361-2017 (O&M)

Gurinder Singh and another

….Petitioners

Versus

State of Punjab

….Respondent

2. CRM-M-35067-2018 (O&M)

S.B.V.R. Prasad and others

….Petitioners

Versus

State of Punjab

….Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Rakesh Verma, Advocate
for the petitioners (in both petitions).

Mr. M.S. Nagra, AAG, Punjab.

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<u>ARVIND SINGH SANGWAN, J.</u>

Prayer in both the petitions is for quashing of complaint No.25 dated 12.02.2016 under Section 29 of Insecticide Act, 1968 (for short 'the Act') titled as State Vs. M/s Sidhu Pesticide and Seed Store and others and the summoning order dated 12.02.2016 as well as all the consequential proceedings arising out of the complaint.

The common facts in both the petitions are that the respondent-complainant had filed the aforesaid complaint against the petitioners in CRM-M-18361-2017 (hereinafter referred to as 'accused No.1 & 2') and petitioners in CRM-M-35067-2018 (hereinafter referred to as 'accused No.3 to 5'), with the allegations that the complainant is an Agriculture Development Officer and has been declared as Insecticide Inspector by the Punjab Govt. and therefore, is empowered to file the complaint under Rule 27 (5) of the Insecticide Rules, 1971 (for short 'the Rules'), being public servant under Section 21 IPC. It is stated in the complaint that necessary consent to launch prosecution against the accused persons under Section 31 (1) of the Act was obtained from the office of Joint Director of Agriculture (Plant Protection), Punjab, who is competent authority vide notification dated 15.01.1993, to grant such sanction. It is further stated that accused No.2 M/s Sidhu Pesticide and Seed Store and accused No.1 Gurinder Singh, being its proprietor, are required to observe the provisions contained in the Act and the Rules as they are dealing with insecticides and are holding the licence to sell, stock or exhibit, vide licence dated 31.12.2015, issued by Licensing Authority-cum-Chief Agriculture Office, Rupnagar, Punjab. On 12.12.2012, the complainant inspected the premises of accused No.1 & 2, in exercise of powers under Section 21(2) of the Act and has drawn a sample of Pirxifop Propargal 15% WP, bearing Batch No.MF-10906, manufacturing dated 05.10.2011 and expiry dated 04.10.2013, required under Section 22(5) of the Act. The dealer was authorized by the manufacturer vide its Principal Certificate No.220 dated 28.03.2011 and supplied the above insecticide vide invoice No.240321920 dated 31.10.2011. The sample was drawn in presence of accused No.1 and intimation was given to him in Form XX, however, despite best efforts, no independent witness could be joined and one Chhota Singh, Agriculture Sub Inspector was present, when the samples were drawn. The samples were divided into three portions and the same were sealed separately. One sample was kept in the office of Chief Agriculture Officer, Rupnagar for reference and second was sent to Insecticide Testing Laboratory, Ludhiana for its quality analysis on 18.12.2012. The test report of the analysis was received on 04.01.2013 with the remarks that the sample does not confirm to IS Specification with respect to the present active ingredient contents and hence was declared misbranded. The contents were found to be Clodinafop Propargyl 13.12% WP and therefore, it was declared misbranded. The complainant served the test report upon the accused on 09.01.2013 and thereafter, accused No.1 requested for re-analysis of the sample from Central Insecticide Laboratory, Faridabad. The sample was sent for re-analysis on 25.07.2013 and the test report was received on 27.08.2013 with the remarks that the sample does not confirm to relevant IS Specification and is hence misbranded. It is further stated in the complaint that the manufacturer is under legal obligation to supply insecticides as per IS specification under the Act and the Rules and accused No.1 & 2 are guilty of selling, stocking and exhibiting the misbranded insecticides and therefore, they have committed the offence under the relevant provisions of Act and Rules. It is further stated that accused No.3 & 4 are the responsible persons of the company, who were also individually liable for manufacturing and sale of misbranded insecticides and they have committed the offence under Section 29 of the Act.

The trial Court, thereafter, vide impugned order dated 12.02.2016, summoned all the five accused to face trial for the offence punishable under Section 29 of the Act. The petitioners have filed the present petition challenging the aforesaid order.

Learned counsel for accused No.1 & 2 has argued that at the time, when the sample was drawn on 12.12.2012, it was from the original packing of 160 grams Pirxifop Propargal 15% WP and the same was manufactured and supplied by M/s Makhteshim Agan Indian Pvt. Ltd., Hyderabad, which is registered and licensed manufacturing company, as is clear from the seizure memo in Form XX. It is further argued that no offence is made out against accused No.1 & 2, as the sample was drawn from a sealed container and has relied upon a judgment of this Court in **M/s S.S. Fertilizer and another Vs. State of Punjab, 2017 (2) RCR (Crl.) 59** to submit that where a sample is drawn from original packing, the dealer is not liable in terms of protection granted under Section 30(3) of the Act. It is submitted that there is no averment in the complaint that the sample was not taken from the sealed container. Learned counsel has also relied upon **Naresh Kumar and others Vs. State of Punjab through Insecticide Inspector, Kapurthala, 2011 (2) RCR (Crl.) 202**, wherein similar view has been taken by this Court, holding that where the sample is drawn from the original packing, the licensee cannot be held liable, as it is only the responsibility of manufacturer. Learned counsel has further relied upon **Jindal Fertilizers and Chemicals and others Vs. State of Punjab, 2010 (4) RCR (Crl.) 146,** wherein again similar view has been taken by this Court. In this judgment, while relying upon judgment of the Hon'ble Supreme Court in **M/s Kisan Beej Bhandar, Abohar Vs. Chief Agricultural Officers, Ferozepur and another, 1990 SCC (Crl.) 623,** this Court has held as under: -

> *"The High Court took the view that by enacting sub-Section (1) of Section 30 of the Act, Parliament had taken out the element of means rea from consideration and, therefore, knowledge was at all material, appellant's counsel has argued that protection of sub-Section (3) is available not only to prosecutions but also to every contravention of the Act and cancellation of licence for contravention of the Act is also a matter covered by sub-Section (3). we are inclined to accept the submission and take the view that whether it is prosecution or contravention leading to cancellation, sub-section (3) applies. In that view of the matter, on the facts found that it was a full tin in a sealed condition, the liability arising out of misbranding was not of the appellant. Unless he had any other source of information about misbranding was and it has not been established-the appellant is entitled to the protection of*

sub-section (3). in the facts one the appellant's contention that it was a sealed tin intact has been found the burden that lay on him under the provisions of sub-Section (3) had been satisfactorily discharged, even in the matter of considering the question of cancellation of licence and, therefore, his licence should not have been cancelled. We allow the appeal, reverse the order of the High Court and the authorities and restore the licence. The appeal is disposed of accordingly. No costs."

The complaint in the said case was quashed against the dealer and distributor.

Learned counsel for accused No.3 to 5 has argued that the petitioners in CRM-M-35067-2018 are office-bearers of manufacturing company and in the complaint, manufacturing company is not arrayed as an accused, though it is mandatory requirement as per Section 33 of the Act. It is further argued that the office-bearer, in individual capacity, is not liable to be proceed against, for and on behalf of a private limited company, unless the company is arrayed as an accused in the complaint. Learned counsel has relied upon **Suresh Kumar Kochhar and another Vs. State of Punjab, 2014 (2) RCR (Crl.) 206**, wherein a similar view has been taken by this Court. The operative part of this judgment reads as under: -

"Learned counsel for the petitioners relies upon three judgments of coordinate Benches of this court, as also a judgment of the Supreme Court in the case of ***Aneeta Hada vs M/s Godfather Travels and Tours Pvt. Ltd., 2012(2) Recent***

Apex Judgments, 562*, to contend that where the company or partnership firm itself has not been impleaded as a respondent in the complaint filed, proceedings against the directors/partners/other officers and officials of the company or partnership, cannot be sustained. As such, in the present case, where, though a partner of M/s Shivalik Agro Chemicals, Mohali, and its Chief Chemist, have been impleaded as respondents in the complaint filed before the trial court, the firm itself not having been impleaded, proceedings cannot be sustained.*

Mr. Amit Chaudhary, learned DAG, Punjab, submits that the explanation to Section 33 of the Insecticides Act, 1968, states that for the purpose of the said Section, the company would mean any body corporate and would include a firm `or other association of individuals'. He further submits that the petitioners would be covered by the last phrase, i.e. `or other association of individuals'.

This, obviously, cannot be the interpretation given to the said phrase, in view of the fact that this phrase is intended to cover any other association, which is not a company or a firm. In the present case, it is a firm, i.e. M/s Shivalik Agro Chemicals, Mohali, which had manufactured the insecticides, which has, admittedly, not been impleaded as party in the complaint (Annexure P-1). Section 33 of the Insecticides Act, *1968, is reproduced further down in this judgment and it obviously applies to both, Companies and Firms, as can be seen from clause (a) of the Explanation given in the provision itself.*

It has been held in Aneeta Hada's case (supra), which dealt with the provisions of Section 141 of the Negotiable Instruments Act, 1881, as also with Section 10 of the Essential Commodities Act, 1955, that arraying of only a person/s incharge of the company, without arraying the company itself, is not permissible.

After considering various judgments on the issue, their Lordships arrived at a conclusion that the law laid down in the case of ***Sheoratan Agarwal Vs. State of Madhya Pradesh, (1984) 4 SCC 352****, is not correctly laid down and the ratio of the law laid down in the case of* ***State of Madras Vs. C.V. Parekh, 1973 SCC 491****, would hold.*

Para 59 of the Aneeta Hada's case holds as under:

> *"59. In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative. The other categories of offenders can only be brought in the dragnet on the touchstone of vicarious liability as the same has been stipulated in the provision itself. We say*

so on the basis of the ratio laid down in C.V. Parekh (supra) which is a three- Judge Bench decision. Thus, the view expressed in Sheoratan Agarwal (supra) does not correctly lay down the law and, accordingly, is hereby overruled. The decision in Aneeta Hada (supra) is overruled with the qualifier as stated in paragraph 37. The decision in Modi Distilleries (supra) has to be treated to be restricted to its own facts as has been explained by us hereinabove."

Though the Supreme Court was primarily dealing with the provisions of the Negotiable Instruments Act, however, it also dealt with Section 10 of the Essential Commodities Act, 1955. That provision is pari materia with Section 33 of the Insecticides Act, 1968, which is what the present petition is concerned with.

Section 10 of the 1955 Act, was also dealt with in C.V Parekh's case, which has been held to be good law.

Section 33 of the Act of 1968 stipulates as under:-

"33. Offences by companies.(1) Whenever an offence under this Act has been committed by a company, a person who at the time the offence was committed, was in charge of, or was responsibly 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 under this Act if he proved that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of 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 of 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 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."

Section 10 of the 1955 Act is reproduced as follows:-

"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 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."

Obviously, both the provisions are pari materia to each other and hence, in view of the ratio of Aneeta Hada's case, to the effect that the Directors/Partners/Persons in-charge of a company/firm, can only be held vicariously liable, if the company itself has been impleaded and not otherwise.

Therefore, the complaint filed by the respondent-State, invoking the provisions of the Act of 1968, including Section 33 thereof, is held to be not maintainable, the firm, i.e. M/s Shivalik Agro Chemicals, Mohali, which had manufactured the products in question and of which petitioner No.1 is an employee and petitioner No.2 a partner, not having been impleaded as a party therein.

This petition is, consequently, allowed and the complaint (Annexure P-1), in the present form, is quashed."

Learned counsel for the petitioners has further argued that neither accused No.1 & 2 nor accused No.3 to 5 can be prosecuted in view of provisions of Sections 30 and 33 of the Act and its Rules.

Learned State counsel, in reply, has submitted that the sample was drawn on 12.12.2012 from the premises of accused No.1 and later on, on analysis, the same was found to be misbranded, as active insecticide was found 13.12% WP instead of 15% WP and even on the request of accused, it was sent for re-analysis to the Central Insecticide Laboratory and as per the report, it was again found to be misbranded. It is further submitted that since accused No.1 & 2 are dealers and accused No.3 to 5 are office-bearers of the manufacturing company, therefore, they have been rightly summoned by the trial Court and prays for dismissal of both the petitions.

After hearing learned counsel for the parties, I find merit in the present petitions.

A perusal of From XX dated 12.12.2012, relied upon by both the parties, shows that in Column No.5, regarding packing of the sample taken, it is mentioned as “original packing”. In column No.10, name of the manufacturer is given as M/s Makhteshim Agan India Pvt. Ltd. and name of the distributor is also the same, whereas in Column No.12, name of the dealer is that of accused No.2, therefore, in view of the judgments in **M/s S.S Fertilizer**’s case (supra), **Naresh Kumar**’s case (supra) and **Jindal Fertilizers and Chemicals**’s case (supra), considering the provisions and protection granted to dealer under Section 30 (3) of the Act, I find that no prosecution can be launched against accused No.1 & 2 i.e. petitioners in CRM-M-18361-2017.

It is admitted case of the parties that manufacturing company i.e. M/s Makhteshim Agan India Pvt. Ltd. is not arrayed as accused and rather it is stated in the complaint that accused No.3 to 5 are the authorized representatives of the same. In Section 33 of the Act, it is provided, which reads 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 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."

The provisions of Section 30(3) of the Act are *pari materia* with the provisions of Section 141 of the Negotiable Instruments Act. The admitted case of the complainant is that accused No.3 to 5 are the employees of the manufacturing company, which is not impleaded as an accused and therefore, in view of judgment in **Suresh Kumar Kochhar**'s case (supra), wherein this Court has interpreted the provisions of Section 33 of the Act, the complaint filed by the respondent is also not maintainable against accused No.3 to 5, who are petitioners in CRM-M-35067-2018, as they are only the employees of the manufacturing company M/s Makhteshim Agan India Pvt. Ltd.

Accordingly, both these petitions are allowed and the impugned complaint No.25 dated 12.02.2016 filed under Section 29 of the Act, titled as State Vs. M/s Sidhu Pesticide and Seed Store and others and the summoning order dated 12.02.2016 as well as all the consequential proceedings arising out of the complaint, are ordered to be quashed.

[ARVIND SINGH SANGWAN]
09.04.2019 **JUDGE**
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Whether speaking/reasoned Yes/No

Whether reportable Yes/No