

**CRM-M-35666-2016 and
CRM-M-40703-2016**

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

Date of Decision:04.12.2019

1. CRM-M-35666-2016

Yogesh Dutt and another

... Petitioners

Versus

State of Punjab

... Respondent

AND

2. CRM-M-40703-2016

Suresh Kumar Sharma and others

... Petitioners

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Gaurav Chopra, Advocate,
for the petitioners in both the petitions.

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

HARNARESH SINGH GILL, J.

This order shall dispose of the above mentioned two petitions as both have arisen out of one complaint and points for determination in both these petitions are the same.

Both these petitions have been filed under Section 482 of the Code of Criminal Procedure, 1973 (for brevity, 'Cr.P.C.') for quashing of the

complaint No.45 dated 08.09.2015 (Annexure P-3 in CRM-M-35666-2016

**CRM-M-35666-2016 and
CRM-M-40703-2016**

and Annexure P-1 in CRM-M-40703-2016) filed by the Insecticide Inspector, Mansa, for the offences under Sections 3 (k) (i), 17, 18, 29, 30 and 33 of the Insecticides Act, 1968 (for brevity, 'the Act, 1968') and the Insecticides Rules, 1971 and the summoning order dated 08.09.2015 (Annexure P-4 in CRM-M-35666-2016 and Annexure P-2 in CRM-M-40703-2016) passed by the learned Sub Divisional Judicial Magistrate, Budhlada, Mansa, and all the consequential proceedings arising therefrom qua the petitioners.

The present petitions have been filed with the averments that the learned Magistrate without considering the allegations levelled against the petitioners in the impugned complaint as well as without concluding that a prima facie case had been made out against the petitioners in the absence of any specific allegations or being violative of statutory provisions of Section 33 of the Act 1968, have entertained the impugned complaint and summoned the petitioners.

I have heard learned counsel for the petitioners as well as learned State counsel and with their able assistance, have gone through the record.

Learned counsel for the petitioners has argued that there is non-compliance of Section 33 of the Act 1968 as it is nowhere mentioned in the complaint that when the offence was committed, the petitioners were the in-charge or responsible to the companies for the conduct of the business. It has also been argued that even as per Section 31 of the Act 1968, no prosecution of an offence under this Act shall be instituted except by or

**CRM-M-35666-2016 and
CRM-M-40703-2016**

with the written consent of the State Government or the person authorized in this behalf by the State Government. Learned counsel has drawn the attention of this Court towards the written consent/approval dated 14.01.2015 (Annexure P-5 in CRM-M-35666-2016) given by Dr. Balwinder Singh Sohal, Joint Director Agriculture, Plant Protection, Punjab, under Section 31 (1) of the Act. It has also been pointed out that sanction granted in this case is for launching the prosecution against M/s PI Industries Ltd. Gujarat through the petitioners but not against them individually. Thus, the petitioners have been incorrectly and erroneously arraigned as accused in their individual capacity without any sanction accorded by the sanctioning authority under Section 31 (1) of the Act. In support of his contentions, the learned counsel has relied upon *Sanjay Aggarwal Vs. State of Punjab through Insecticide Inspector, Baddowal, District Ludhiana* 2012 (4) R.C.R. (Criminal) 988, wherein, it has been authoritatively held that the launching of the prosecution should be individually and not through the company. If the sanction is through the company, then it deems to be a sanction for initiating the proceedings against the company, which may likely to be represented through its authorized representative.

Per contra, the learned State counsel could not dispute the fact that while issuing written consent/approval under Section 31 (1) of the Act, the approval to prosecute the petitioners has been granted through their company and not in their individual capacity.

Before proceeding further, it would be apposite to reproduce Sections 31 and 33 of the Act 1968, which read as under:

**CRM-M-35666-2016 and
CRM-M-40703-2016**

“31. Cognizance and trial of Offences. - (1) No prosecution for an offence under this Act shall be instituted except by, or with the written consent of, the State Government or a person authorized in this behalf by the State Government.

(2) No Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence under this Act.

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, or 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 under this Act if he proves 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

**CRM-M-35666-2016 and
CRM-M-40703-2016**

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."

In the present case also, the written consent/approval (Annexure P-5 in CRM-M-35666-2016) has not been given in the individual capacity against the petitioners. Thus, the sanction is defective qua the petitioners in both the petitions. There is nothing on record to show that the sanctioning authority has granted consent/sanction under Section 31 (1) of the Act to prosecute the petitioners in their individual capacity. As already discussed, the sanction allowed by the Joint Director Agriculture, Plant Protection, Punjab, was only for prosecution of M/s PI Industries Ltd. Gujarat through its representatives and others and not for the prosecution of the petitioners in their individual capacity.

Keeping in view the above, the prosecution of the petitioners in both the petitions on the basis of sanction accorded vide Annexure P-5 is bad. Therefore, the prosecution against the petitioners in both the petitions,

**CRM-M-35666-2016 and
CRM-M-40703-2016**

is liable to be quashed. Both the petitions are, consequently, allowed and the complaint and all the subsequent proceedings arising therefrom, including the summoning order dated 08.09.2015, are quashed qua the petitioners in both the petitions.

04.12.2019
parveen kumar

(HARNARESH SINGH GILL)
JUDGE

Note: Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No