

CRM-M-41886-2015 (O&M)
CRM-M-5590-2016 (O&M) and
CRM-M-2736-2016 (O&M)

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

1. CRM-M-41886-2015 (O&M)
Date of decision : 23.07.2019

Chemtura Chemicals India Private Limited and others ...Petitioners

Versus

State of Punjab and another ...Respondents

2. CRM-M-2736-2016 (O&M)
Date of decision : 23.07.2019

Chemtura Chemicals India Private Limited and others ...Petitioners

Versus

State of Punjab and another ...Respondents

3. CRM-M-5590-2016 (O&M)
Date of decision : 23.07.2019

Chemtura Chemicals India Private Limited and others ...Petitioners

Versus

State of Punjab and another ...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Sunil Chadha, Sr. Advocate with
Mr. Saurav Kanojia, Advocate for the petitioners.

Mr. Bhupender Beniwal, AAG, Punjab.

Ms. Kaveri, Advocate for the complainant.

ANIL KSHETARPAL, J.

By this order, CRM-M-41886-2015, CRM-M-2736-2016 and
CRM-M-5590-2016, shall stand disposed of.

Learned counsel for the parties admit that the issues which need

consideration are common and, therefore, these three cases can be conveniently disposed of by a common order.

In all these cases, petitions under Section 482 of the Criminal Procedure Code, 1973 read with Article 227 of the Constitution of India have been filed for quashing of Criminal Complaints filed before the court of Judicial Magistrate, Ist Class and all subsequent proceedings arising therefrom including the order summoning the accused-the petitioners (herein).

In all these cases, sample of the insecticides, being manufactured by the petitioner-company, was allegedly found to be misbranded. Active ingredient contents were found to be less than what was declared on the label i.e. Piroxofop-Propanyl 15% W.P.

Initially, samples were sent to a laboratory run by the State of Punjab which reported that active ingredient contents are less than what has been mentioned on the label. On the request of the petitioner-company, another set of samples was sent to Central Insecticides Laboratory, Faridabad which also confirmed the report of the State laboratory i.e. Insecticide Quality Control Laboratory, Bathinda.

Learned Senior counsel appearing for the petitioners has submitted that in the present cases, petitioner Nos.2, 3 and 4 are sought to be prosecuted being vicariously liable. He further submitted that language of Section 33 of the Insecticides Act, 1968 (hereinafter to be referred as “the Act of 1968”) is pari materia with the similar provision in Section 141 of the Negotiable Instruments Act, 1881 (hereinafter to be referred as “the NI Act of 1881”). He while relying upon the judgments passed under the NI Act of 1881, has submitted that since in the complaint, pleadings do not fulfill the

requirements with Section 33 of the Act of 1968 qua petitioner Nos.2, 3 and 4, therefore, proceedings against them are liable to be quashed. He further submitted that samples were collected from the godown and hence, the insecticides stored were not exhibited for sale, hence offences are not made out. He further submitted that orders of summoning are non-speaking and sketchy. While elaborating, he has submitted that there is no application of mind while passing the order of summoning. He further submitted that no independent witness as required under Section 21(2) of the Act of 1968 read with Section 100 Cr.P.C. was associated. He further submitted that in absence of proper consent under Section 31 of the Act of 1968, complaint itself is not maintainable.

On the other hand, learned counsel appearing for the State of Punjab, has submitted that the insecticide was exhibited for sale at the godown. He while referring to copy of the licence (Annexure R-17) on Form-VIII issued under Rule 10(4) of Insecticides Rules, 1971, has submitted that the licence to sell, stock or exhibit for sale or for distribution of insecticides has been issued for the same premises where the company stocks, exhibits for sale and distribute by retail and from where samples were collected. He further drew attention of the Court to the fact that necessary pleadings have been made in para 22 of the complaint which are sufficient compliance of Section 33 of the Act of 1968. He further submitted that in terms of Section 200 of Cr.P.C., if the complaint has been filed in official capacity, the requirement of examination of complainant and witnesses can be dispensed with by the Magistrate. He further submitted that although the order of summoning is in brief, however, it clearly shows application of mind. He further submitted that perusal of the stock

register, shows that the insecticide was stored in godown for sale. He further submitted that prior consent/sanction under Section 31(1) of the Act of 1968 has been duly obtained. In this regard, he referred to Annexure R-13/T.

This Court has analyzed the arguments of learned counsel for the parties and with their able assistance gone through the paper book, the provisions of the Acts, Rules and the judgments relied upon.

As regards first contention, it may be noted that no doubt, the provisions of Section 33 of the Act of 1968 and Section 141 of the NI Act of 1881, are on similar lines, however, there is a fundamental difference between two Acts and Rules framed thereunder. Under the Act of 1968, Rules have been framed i.e. Insecticides Rules, 1971. If one carefully reads the Rules of 1971 framed, it is apparent that Rule 10 deals with licence for sale etc. of insecticides. As provided in the Rules, such licence is issued on Form-VIII which is part of the Rules. In the present case also, the licence has been issued on Form-VIII (Annexure R-17) which is slightly different than what is provided in the Rules framed by the Central Government. It may be noted here that petitioner Nos.2 to 4 are Director, Country Head for Quality Control and Godown Incharge of petitioner No.1 company respectively. All these three petitioners have filed their respective affidavits. Petitioner No.2 has given declaration that she is working as Director whereas petitioner No.3 has given declaration that he is working as Country Head for Quality Control and petitioner No.4 has given affidavit that he is Godown Incharge. Further, alongwith the licence, there is list of responsible persons in which petitioner Nos.2, 3 and 4 have been declared to be responsible persons. Still further, on careful reading of para 22 of the complaint, it has been specifically pleaded that

all the co-accused mentioned at Sr. No.2 in the complaint-petitioner Nos.2 to 4 herein, were responsible for manufacturing and sale of the product at the time sample was collected. Still further, it has been pleaded that petitioner No.2- Hema Rani was looking after the business of the company whereas Dinesh Kumar was working as Country Head and Responsible Officer for Quality Control & Conduct of Business and petitioner No.4 was working as Godown Incharge of the premises in question. It has further been pleaded that the company had stocked insecticide for sale and distribution and, therefore, offences under the provisions of the Act of 1968 are made out against the petitioner Nos.2 to 4 also.

Learned counsel for the petitioners while relying upon the judgment passed by Hon'ble the Supreme Court in the case of **State of NCT of Delhi Vs. Rajiv Khurana, AIR 2010 Supreme Court 2986**, has submitted that under the Act of 1968 itself, the previous judgments passed by Hon'ble the Supreme Court while interpreting Section 141 of the NI Act of 1881 has been followed. He further referred to a judgment passed by a Coordinate Bench in the case of **Kanwaljit Singh Joson Vs. State of Punjab, 2018(2) RCR (Criminal) 30**, to buttress his submissions.

With the greatest respect to the judgment passed by Hon'ble the Supreme Court in the case of State of NCT of Delhi (Supra) and Kanwaljit Singh Joson (Supra), it is apparent that attention of the Court was not drawn to statutory Rules. Rule 10 and Form-VIII of the Insecticides Rules, 1971 are extracted as under:-

“10. Licences for sale, etc., of insecticides.—

(1) Applications for the grant of a license to sell, stock or

exhibit for sale or distribute insecticides shall be made in Form VII to the licensing officer and shall be accompanied by the fees specified in sub-rule (2).

[(1-A) A person who applies for the grant of licence to sell, stock or exhibit for sale or distribute insecticides shall possess or shall employ a person possessing a graduate degree in Agricultural Sciences or Biochemistry or Biotechnology or Life Sciences or in Science with Chemistry or Botany or Zoology as the minimum qualification:

Provided that all retailers or dealers possessing a valid licence as on the date of notification of this sub-rule shall be allowed a period of two years to comply with the educational qualifications.]

[(2) The fee payable under sub-rule (1) for grant of a license shall be rupees five hundred for every insecticide for which the licence is applied subject to a maximum of rupees seven thousand five hundred. There shall be a separate fee for each place, if any insecticide is sold, stocked or exhibited for sale at more than one place:

Provided that the maximum fee payable in respect of insecticides commonly used for household purposes and registered as such shall be rupees two hundred fifty for every place:

Provided further that, if the place of sale is established in the rural areas, the fee shall be one-fifth of the fee specified in this rule.]

(3) If any insecticide is proposed to be sold or stocked for sale at more than one place, separate applications shall be made and separate licenses shall be issued in respect of every such place [and for every insecticide].

[(3-A) Pest Control Operators -

(i) Any person who desires to undertake pest control operations, with the use of Aluminium Phosphide, Methyl

bromide, Ethylene dibromide or as notified shall apply for a license in [Form VII] with a fee of rupees one thousand for each place of operation. The license granted for such operations shall be valid for a period of five years provided that the licence shall be renewed after verification or inspection at the expiry of this period on application in [Form VII] for a further period of five years with an application fee of rupees one thousand.

(ii) A license to stock and use insecticides for pest control operators will be issued in [Form VIII].

(iii) Any person who applied for grant of license for undertaking pest control operations should be at least a graduate in Agriculture or in Science with Chemistry as a subject with a certificate of minimum 15 days training from any of the following Institutions-Central Food Technological Research Institute, Mysore; Indian Grain Storage Institute, Hapur and National Plant Protection Training Institute, Hyderabad.

(iv) For undertaking fumigation, the pest control operators shall have to obtain special permission from the Plant Protection Adviser to the Government of India in addition to obtaining licence. The Plant Protection Adviser will grant such permission as per procedure or guidelines approved by the Registration Committee.

(v) The commercial pest control operators, shall adhere to the prescribed guidelines or procedures as laid down by the Plant Protection Adviser to the Government of India in regard to the fumigation operations undertaken by them.]

[(4) A license to sell, stock or exhibit for sale or distribute insecticides shall be issued in Form VIII and shall be subject to the following conditions, namely: -

(i) The license shall be displayed in a prominent place in the part of the premises open to the public.

(ii) The licensee shall comply with the provisions of the Act, and the rules made thereunder for the time being in force.]

[(iii) Where the licensee wants to sell, stock or exhibit for sale or distribute any additional insecticides during the currency of the licence, he may apply to the licensing officer for necessary endorsement on the license on payment of fees specified in sub-rule (2).]

[(iv) If the licensing officer is satisfied that a particular insecticide is harmful to human beings, animals or environment, he may after recording reasons and referring the Insecticide to the Insecticide Analyst, prohibit temporarily its sale for a period of thirty days or till he obtains the report of the Analyst, whichever is earlier.]

[(4-A)(i) Every person shall along with his application for grant of a license to undertake operation or sell, stock or exhibit for sale or distribute insecticides, file a certificate from the principal whom he represents or desires to represent in [Form IX].]

(ii) The certificate to be issued by the principal shall be addressed to the licensing officer of the area concerned and shall contain full particulars of the principal including their registration and manufacturing licence numbers, full name and address of the person proposed to be authorised and also the type of formulations to be used in commercial pest control operations, sold, stocked or exhibited for sale or distribution.

(iii) In order to verify the genuineness or otherwise of the certificate, the principal shall send to the licensing officer of the State where he intends to sell his products

an adequate number of copies of the specimen signature or the specimen signatures of the persons authorised in writing to issue the principal's certificate.

(iv) In case of suspension, revocation or cancellation of the certificate, the principal shall forthwith intimate the licensing officer having jurisdiction.]

[(5) A licensing officer may, after giving a reasonable opportunity of being heard to the applicant, refuse to grant any license.]

[(6) A fee of rupees one hundred shall be payable for a duplicate copy of a license issued under this rule if the original is defaced, damaged or lost.]

[(7) A certificate shall be submitted by all licencees under Rule 9 and Rule 10 in Form X to the licensing authority every year. The licensing officer shall conduct inspection of infrastructure, premises, stocks and records at least once every two years.]

GOVERNMENT OF PUNJAB
FORM-VIII

[See Rule 10(4)]

Licence to Sell, Stock or Exhibit for Sale or distribution of Insecticides.

1. Licence No.LCPP/ADO-10/777

Dated, Chandigarh, the 01.01.2012

2. M/s CHEMTURA CHEMICAL INDIA PVT. LTD., “The Corenthum “Plot No.41, Tower A, Office No.152, Fifth Floor, Sector 62, Noida, Gautum Budh Nagar,- 201301 (UP), is hereby licensed to sell, stock or exhibit for sale or distribute by retail, insecticide enlisted at Statement No.II & III on the premises situated at:

<i>Premises</i>	<i>Office</i>
<i>M/s Chemtura Chemical India Pvt. Ltd., B-XXX-3443, Near Durga Mata Mandir, Gali No.3, Hira Nagar, Ludhiana-141003</i>	<i>M/s Chemtura Chemical India Pvt. Ltd., XXII, 2818/F, Ambala Bypass Road, P.O. Transport Nagar, Ludhiana-141003</i>

Subject to the conditions specified below and to the provisions of the Insecticides Act, 1968, and the rules made thereunder.

- a) List of responsible person : Statement No.I*
- b) Name of insecticides : Statement No.II*
- 3. Licence shall be in force from : 12.11.2010*
- 4. Licence is valid from : 01.01.2012 to 31.12.2013*

Sd/-
Licensing Authority
Deputy Director (LC & PP)
cum Licensing Authority
Punjab, Chandigarh

Conditions

- 1. The licence shall be displaced in a prominent place in a part of the premises open to the public.*
- 2. The licence shall comply with the provisions of the Insecticides Act, 1968 and the rules there under for the time being in force.*
- 3. No insecticides shall be sold or distributed except in packages which are or may be approved by the Indian Standards Institution from time to time.*
- 3-A. If the licensee wants to sell, stock or exhibit for sale or distribute any additional insecticides during the currency of the licence he may apply to the Licensing Officer for issuance of separate licence for each insecticide on payment of the prescribed fee.*
- 4. (An application for the renewal of a licence shall be made as laid down in rule 11).*

STATEMENT-I

M/s CHEMTURA CHEMICAL INDIA PVT. LTD. LUDHIANA

License No.LCPP/ADO-10/777

Issue Date 12/11/2010

Valid upto 31/12/2013

LIST OF RESPONSIBLE PERSONS

Expert Staff (Names):-

<i>S.No</i>	<i>Name</i>	<i>Designation</i>	<i>Responsible person</i>
1	<i>M/s Hema Rani F-93, Street No.4 East Vinod Nagar, Delhi-110091</i>	<i>Director</i>	<i>---</i>
2	<i>Sh. Naveen Joshi s/o Sh. Bishan Dutt Joshi</i>	<i>Logistic Manager</i>	<i>Godown Incharge</i>
3	<i>Sh. Dinesh Verma, s/o late Sh. J.G. Verma</i>	<i>Country Head/Chemist</i>	<i>Quality Control Conduct of Business Authorized Signatory</i>

*Sd/-, 17.2.2012
Deputy Director (LC & PP)
cum Licensing Authority
Punjab, Chandigarh”*

This Court has carefully gone through the judgment passed by Hon'ble the Supreme Court in the case of State of NCT of Delhi (Supra). In the aforesaid judgment, Hon'ble the Supreme Court, no doubt followed the judgments passed by the Supreme Court under Section 141 of the NI Act of 1881, however, it is apparent that the judgment passed in the case of State of NCT of Delhi (Supra), is in the facts of the case. Still further, attention of the Court was not drawn to Rule 10 of the Insecticides Rules, 1971. As per the form of licence attached with the Rule which is different than what is provided in the Rules framed by the Central Government, the list of responsible officers/Directors has to be submitted. Still further, in the present case, the sufficient pleadings have come on record.

Attention of the Court was not drawn to the fact that there are any Rules framed under the NI Act of 1881 which provide for a similar provision of the incorporated companies required to give declaration with regard to

responsible officers. Hence, the contention of learned counsel drawing analogy from the judgments delivered by Hon'ble the Supreme Court under the NI Act of 1881, would not help the petitioners.

Next contention of learned counsel for the petitioners is to the effect that the sample was collected from the godown when the material was not ready for sale or it was not exhibited for sale. He while drawing attention of the Court to language of Sections 3(k)(i), 17, 18 and 29 of the Act of 1968, has submitted that the sample as drawn from the godown was not exhibited for sale and, therefore, no offence is made out. Learned counsel, has in support thereof, relied upon judgment passed by Hon'ble the Supreme Court in the case of **Mohd. Shabir Vs. State of Maharashtra, (1979) 1 SCC 568**, delivered by Hon'ble the Supreme Court while interpreting the provisions of the Drugs and Cosmetics Act, 1940 (hereinafter to be referred as "the Act of 1940"). Argument of learned counsel is that the provisions of both the Acts are pari materia. In this regard, it may be noted that there is a fundamental distinction between both the provisions of the Acts. Under Section 18(c) of the Act of 1940, the language is not pari materia with provisions of Section 29 of the Act of 1968. Section 18(c) of the Act of 1940 and Section 29 of the Act of 1968 are extracted as under:-

"Section 18(c) of the Act of 1940:-

18. Prohibition of manufacture and sale of certain drugs and cosmetics -

(a) xxx xxx

(b) xxx xxx

(c) [manufacture for sale or for distribution, or sell, or stock or exhibit or offer for sale,] or distribute any drug [or cosmetic], except under, and in accordance with the conditions

of, a licence issued for such purpose under this Chapter:

Provided that nothing in this section shall apply to the manufacture, subject to prescribed conditions, of small quantities of any drug for the purpose of examination, test or analysis:

Provided further that the [Central Government] may, after consultation with the Board, by notification in the Official Gazette, permit, subject to any conditions, specified in the notification, the [manufacture for sale, or for distribution, sale, stocking or exhibiting or offering for sale] or distribution of any drug or class of drugs not being of standard quality.

Section 29 of the Act of 1968:-

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*
- (c). Manufactures, sells, stocks or exhibits for sale or distributes an insecticide without a license; 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 there under,*
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 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 license 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.”

Even otherwise, even it is assumed for the sake of arguments that

the language of the aforesaid two provisions is similar, still in view of the fact

that petitioner-company had obtained licence clearly specifying that the premises from where the sample was taken is for stock or exhibition for sale or distribution by retail, then petitioners cannot claim that the godown was only for the purpose of storing the manufactured items not ready for sale. There is no pleadings to the effect that for sale of the products, there was another premises. The present petition is seeking quashing under Section 482 Cr.P.C.. Evidence is still to be led. In such circumstances at this stage, the argument of learned counsel which is yet to be proved by leading evidence cannot be examined. The judgment passed by Hon'ble the Supreme Court in the case of Mohd. Shabir (Supra) interpreting the provisions of the Act of 1940, is therefore, not applicable.

Now let us deal with next argument of learned counsel for the petitioner with regard to order summoning the petitioners. No doubt, order of summoning is brief, however, on careful reading thereof, it clearly establishes that order is based upon application of mind. The Court has observed that contents of complaint and documents attached therewith have been examined and on the basis thereof, there are sufficient grounds for proceeding against the accused for having committed an offence punishable under Section 29 of the Act of 1968. In such circumstances, the order cannot be set aside on the ground that it is non-speaking or sketchy. From reading of the order, prima facie application of mind is established.

Next argument of learned counsel with regard to requirement of independent witness is just to be noted and rejected because merely on the ground that an independent witness has not been associated in the search and seizure cannot be treated as ground to quash the criminal proceedings. It would

always depend upon the evidence which would be led by the parties and then the Court would take a call as to whether in absence of any independent witness, the prosecution has been successful or not in establishing its case.

Last argument of learned counsel with regard to absence of consent/prior sanction as required under Section 31 of the Act of 1968, is also without substance as the State has produced copy of written consent/sanction granted by Joint Director of Agriculture (Plant Protection), Punjab, Mohali (Annexure R-13/T) in favour of Sh. Gurnam Singh, Insecticides Inspector. The written consent/sanction is in detail and after perusal of the entire record, sanction has been granted for launching prosecution not only against petitioner No.1-company but also against petitioner Nos.2 to 4.

In view of the aforesaid discussion, the petitions do not have merit and, therefore, dismissed. Needless to observe that Courts below while deciding the case on merits shall not be influenced by the observation made while deciding the present petitions.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

23.07.2019
Pawan

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No