

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1) CRM-M- No. 3287 of 2017 (O&M)
Date of decision : 24.2.2020

...

Lalit Bansal and another

.....Petitioners

vs.

State through Insecticide Inspector, Ferozepur

.....Respondent

2) CRM-M- No. 22378 of 2016 (O&M)

...

Mohinder Singh and others

.....Petitioners

vs.

State through Insecticide Inspector, Shahkot,
District Jalandhar

.....Respondent

3) CRM-M- No. 40257 of 2016 (O&M)

...

Sunil Sethy and another

.....Petitioners

vs.

State through Sh. Sukhjit Singh, Insecticide Inspector,
Shahkot, Jalandhar

.....Respondent

4) CRM-M- No. 28862 of 2017 (O&M)

...

Chambal Fertilisers and Chemicals Limited and others

.....Petitioners

vs.

State through Insecticide Inspector, Ferozepur,
District Ferozepur

.....Respondent

5) CRM-M- No. 19425 of 2017 (O&M)

...

M/s Chambal Fertilisers and Chemicals Limited and others

.....Petitioners

vs.

State through Nirmal Singh, Insecticides Inspector, Ludhiana,

.....Respondent

6) CRM-M- No. 14798 of 2017 (O&M)

...

Anand Pradeep Kumar

.....Petitioner

vs.

State through Sh. Sukhjit Singh, Insecticide Inspector,
Shahkot, Jalandhar

.....Respondent

7) CRM-M- No. 37966 of 2016 (O&M)

...

M/s Chambal Fertilizers and Chemicals Limited

.....Petitioner

vs.

State through Sh. Sukhjit Singh, Insecticide Inspector, Shahkot,
Jalandhar and others

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Dheeraj Jain, Advocate
for the petitioner(s)(in all cases except CRM-M-22378-2016)

Mr. Rakesh Verma, Advocate
for the petitioners (in CRM-M-22378-2016)

Ms. Amarjit Kaur Khurana, Deputy Advocate General,
Punjab.

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H. S. Madaan, J.

By this common order, I intend to dispose of CRM-M-3287-2017 titled 'Lalit Bansal and another vs. State through Insecticide Inspector, Ferozepur'; CRM-M-22378-2016 titled 'Mohinder Singh and others vs. State through Insecticide Inspector, Shahkot, District Jalandhar'; CRM-M-40257-2016 titled 'Sunil Sethy and another vs. State through Sh. Sukhjit Singh, Insecticide Inspector, Shahkot, Jalandhar'; CRM-M-28862-2017 titled 'Chambal Fertilizers and Chemicals Limited and others vs. State through Insecticide Inspector, Ferozepur, District Ferozepur'; CRM-M-19425-2017 titled as 'M/s Chambal Fertilisers and Chemicals Limited and others vs. State through Nirmal Singh, Insecticides Inspector, Ludhiana'; CRM-M-14798-2017 titled 'Anand Pradeep Kumar vs. State through Sh.Sukhjit Singh, Insecticide Inspector, Shahkot, Jalandhar' and CRM-M-37966-2016 titled 'M/s Chambal Fertilizers and Chemicals Limited vs. State through Sh. Sukhjit Singh, Insecticide Inspector, Shahkot, Jalandhar and others' as all these petitions are interconnected.

CRM-M-3287-2017

This petition under Section 482 Cr.P.C., for quashing of criminal complainant COMA No. 77/2016, dated 1.7.2016, filed before CJM, Ferozepur, titled 'State through Insecticide Inspector, Ferozepur Block Ferozepur, District Ferozepur vs. M/s Aggarwal and Sons, Ferozepur City, Tehsil and District Ferozepur and others', and

summoning order dated 1.7.2016 passed by CJM, Ferozepur, in that case, besides subsequent proceedings, have been filed by petitioners Lalit Bansal and I.D. Mahto.

Briefly stated facts of the case are that State through Insecticide Inspector, Ferozepur Block Ferozepur, District Ferozepur, had brought a complaint under Section 3 (k)(i) 17, 18, 29 and 33 of Insecticide Act, 1968 (hereinafter to be referred as 'the Act') read with Section 27 (5) of the Insecticide Rules, 1971 (hereinafter to be referred as 'the Rules'), against M/s Aggarwal & Sons, Shop No. 34, NGM Ferozepur city, Tehsil and District Ferozepur – Firm; Manuj Garg s/o Vinod Kumar r/o Namak Mandi, Ferozepur City – Proprietor of Firm; M/s. Sarswati Agro Chemicals (India) Pvt. Ltd., Village Nimbua, P.O. Mubarakpur, Tehsil Dera Bassi, District SAS Nagar, Punjab – Manufacturer; Lalit Bansal s/o Suraj Kumar Bansal r/o H. No.1708, Phase 3-B, SAS Nagar – Director and responsible person of Manufacturing Company; I.D. Mahto s/o Sita Ram Mahto r/o H.No. 244/1-A, South Extn. Trikuta Nagar, J&K – Responsible person for conduct of business and quality control of Manufacturing Company; M/s. Chambal Chemicals & Fertilizers Ltd., Gadepan, District Kota, Rajasthan – marketing company; Anil Kapoor s/o B.B.L. Kapoor, 'Corporate One', Ist floor, 5 Commercial Centre, Jasola, New Delhi – Managing Director and responsible person of Marketing Company (CFCL); Krishan Kumar Jangra s/o Z.S. Jangra r/o H.No.51, Sulabh Vihar, Near Asopa Hospital, Gailana Road, Agra (U.P.) - Responsible person for quality control and conduct of

business of Marketing Company (CFCL) and Arvind Kumar Sharma s/o Ram Kishan Sharma r/o H.No.92, Patel Nagar, Bathinda – Responsible person for conduct of business and godown incharge, on the allegations that on 13.7.2013, at about 2.30 P.M. Complainant Ranbir Singh, Insecticide Inspector, Ferozepur, alongwith other officials checked the stock register of firm M/s Aggarwal and Sons, Shop No. 34, NGM Ferozepur City and found 1050 x 5 kgs (5250 kg) of cartaphydrochloride 4% g., in the stock of the firm (brand name VEERTAP POWER). He checked the licence of the firm and selected 5 kg pack bearing Batch No. VTPSA-3027, manufacturing date 12.4.2013 and expiry date 11.4.2015, which was manufactured by M/s Sarswati Agro Chemicals (India) Pvt. Ltd., Village Nimbua, P.O. Mubarakpur, Tehsil Dera Bassi, District Mohali, Punjab and marketed by M/s Chambal Chemicals & Fertilizers Ltd. Gadepan, District Kota, Rajasthan, vide their invoice No. 126/P dated 30.4.2013. The material of sample was purchased on 30.4.2013 from M/s Aggarwal & Sons, Shop No. 34, NGM Ferozepur City. The sample was drawn perfectly in accordance with the procedure laid down in the Act and Rules. The consent of the dealer was taken before taking the sample. Usual proceedings were carried out. 750 gms material was drawn and put into three separate clean and dry polythene bags and converted into sealed parcels. One part of the sample was given to Manuj Garg, proprietor of the firm at the spot. Two samples were taken away by the raiding team and deposited in the office of Chief Agricultural Officer, Ferozepur, alongwith other

documents. It was sent to Senior Analyst Insecticide Testing Laboratory, Ludhiana and as per test reports received therefrom, the same was declared mis-branded with the remarks that sample does not conform to I.S. Specifications with respect to its percentage active ingredient contents. Copy of that report was delivered to dealer firm M/s Aggarwal & Sons, Shop No. 34, NGM Ferozepur City alongwith show cause notice. Similarly copy of such report alongwith show cause notice was sent to manufacturer firm and to the marketing firm. Replies received were not found to be satisfactory. Personal hearing was given to the dealer, but no convincing explanation was received, as such the complaint was filed in the court of CJM, Ferozepur.

Learned CJM, Ferozepur, considering that the complaint had been filed by the complainant-public servant, in his official capacity, dispensed with the recording of statement of the complainant and other preliminary evidence and after hearing the complainant and perusing the file, summoned the accused for offence under Sections 3 (k) (i) 17, 18, 29 and 33 of the Act read with Section 27 (5) of the Rules.

The accused felt aggrieved and have approached this Court by way of filing the present petitions, notice of which was given to the State through Insecticide Inspector, Ferozepur and complainant has appeared through the State counsel.

I have heard learned counsel for the petitioners – accused, Learned State counsel, besides going through the record.

Learned counsel for the petitioners have put forward the following contentions:-

- 1) that petitioner No.1 – Lalit Bansal is Director of M/s Sarswati Agro Chemicals (India) Pvt. Ltd., whereas petitioner No.2 I.D. Mahto is Manager/Country Head (Quality Control) for the Jammu Unit only of the company.
- 2) That the company has 4 separate production units and vide affidavit dated 29.3.2013, four different persons were appointed under Section 33 of the Act, to ensure quality control in each of those units during the period in question i.e. 2013, as detailed below:-

<i>Place of Unit</i>	<i>Name of person responsible u/s 33 of Insecticides Act, 1968</i>
1. Village Dao Majra, Kharar, Punjab	Mr. Yash Pal Sharma r/o Derabassi, Punjab
2. Village Nimbua, Derabassi, Punjab	Mr. Kamraj Chauhan r/o Kharar, Punjab
3. Sidco Industrial Complex, Jammu, J&K	Ms. I.D. Mehto r/o Jammu, J&K (petitioner No.2)
4. Industrial Estate, Jammu, J&K	Mr. Arun Kumar Patel r/o Jammu, J&K.

- 3) That the insecticide, sample from which was stated to be drawn by the complainant, was never manufactured in the Jammu Unit of the company and was manufactured only in two units situated in Punjab. Petitioner No.2 is responsible for one Unit of Jammu and not for Punjab Units of the company. Mr. Kamraj Chauhan had been sending replies to the show cause notice issued by the complainant. The petitioners have been wrongly arrayed as accused by the

complainant and summoned as such by the trial Court.

- 4) That there is no reference or mention or role attributed to the petitioners in the entire complaint.
- 5) That the sanction for prosecution of the petitioners was wrongly granted and as a result of non-application of mind.
- 6) That the trial Court committed an error in dispensing with the preliminary evidence of the complainant and summoned the accused in a mechanical manner without due application of mind.

CRM-M-22378-2016

This petition under Section 482 Cr.P.C., for quashing of criminal complainant No. 74, dated 15.9.2011, filed before JMJC, Nakodar, District Jalandhar, titled 'State of Punjab through Insecticide Inspector, Shahkot, Tehsil Nakodar, District Jalandhar vs. M/s Arjan Singh Gurbachan Singh through its partners, Rajinder Singh, Mohinder Singh sons of Gurbachan Singh, Sandeep Arora s/o Rajinder Singh and Manish Arora s/o Sukhdev Singh and others', and consequential proceedings, have been filed by petitioners Mohinder Singh, M/s Arjan Singh Gurbachan Singh, Rajinder Singh, Sandeep Arora and Manish Arora.

According to them, petitioner No.2 is licensee under Insecticides Act, 1968 to sell various kinds of insecticides and pesticides of registered and approved manufacturing companies by Govt. of India as well as by Govt. of Punjab and petitioners sell only sealed and packed insecticides/pesticides as packed by registered

manufacturing companies. On 5.8.2008, Sukhjit Singh, Insecticide Inspector, Shahkot, District Jalandhar, had drawn a sample of one insecticide i.e. Cartap Hydrochloride 4% G bearing Batch No. 0807114, manufacturing dated July 2008 and expiry dated June 2010, after breaking the original sealed and packed container of 5Kg, as was lying in the shop premises of petitioners, as manufactured by M/s Agrimas Chemicals Ltd., Maharashtra and supplied through M/s Chambal Fertilizer and Chemicals Ltd. The said manufacturing company i.e. M/s Agrimas Chemicals Ltd., Maharashtra is the registered and authorized manufacturing company by Govt. of Punjab to sell its products in the State of Punjab. After getting the sample analyzed, the complaint had been filed in the Court of JMJC, Nakodar. The complaint is based upon wrong facts and the trial Court has fallen in error in summoning the petitioners as accused, without there being any sufficient evidence. The petitioners have put in appearance and have been admitted to bail. The complaint has been instituted after more than three years of Public Analysis Report, which is not maintainable and is nothing but an abuse of the process of law, as such it be quashed.

In the written reply, filed by the complainant, material assertions are controverted, contending that sample was drawn from a packed container, though denying that it was in original packing. According to the complainant, petitioners are liable to prosecution for selling, stocking and exhibiting for misbranded insecticides. Central Insecticide Lab has declared the sample misbranded vide

reported dated 11.2.2009 and the complaint was instituted on 15.9.2011 i.e. within three years of analysis report. Thereafter sanction to prosecute the accused was obtained from competent authority. The complaint is not time barred.

CRM-M-40257-2016

This petition under Section 482 Cr.P.C., for quashing of criminal complainant COMA No. 63/2013, dated 15.9.2011, filed before JMIC, Nakodar, District Jalandhar, titled 'State through Sh. Sukhjot Singh, Insecticide Inspector, Shahkot, vs. M/s Arjun Singh Gurbachan Singh through its partners Rajinder Singh, Mohinder Singh sons of Gurbachan Singh, Sandeep Arora s/o Rajinder Singh and Manish Arora s/o Sukhdev Singh and others', and summoning order dated 7.5.2011 besides all subsequent proceedings, have been filed by petitioners Sunil Sethy and Rajnish Kumar.

Briefly stated facts of the case are that State through Sh. Sukhjot Singh, Insecticide Inspector, Shahkot, had brought a complaint under Section 3 (k)(i) 17, 18, 29 and 33 of Insecticide Act, 1968 read with Rule 27 (5) of the Insecticide Rules, 1971 , against M/s Arjun Singh Gurbachan Singh, Lohian Khas, District Jalandhar through Rajinder Singh, Mohinder Singh sons of Gurbachan Singh, Sandeep Arora s/o Rajinder Singh (Dealer) and Munish Arora s/o Sukhdev Singh; Rajinder Singh s/o Gurbachan Singh, Mohinder Singh s/o Gurbachan (partner), Sandeep Singh Arora s/o Rajinder Singh s/o Sukhdev Singh (partner) and Munish Arora s/o Sukhdev Singh Partner and Responsible person r/o Lohian Khas, District

Jalandhar; M/s. Chambal Fertilizers & Chemicals Ltd., (Marketing firm) through Sh. V.K. Fothedar s/o S.L. Fothedar – Responsible for conduct of business; Rajnish Kumar s/o Darshan Kumar, Godown Incharge at Bathinda of M/s. Chambal Fertilizers & Chemicals Ltd.,; Mr. Sunil Sethi, Managing Director and responsible person of M/s. Chambal Fertilizers & Chemicals Ltd.; M/s Agrimas Chemical Limited (Manufacturing Firm) H-2, MIDC Industrial Area Taloga District Raigarh Maharashtra, through Shri Kant Mahajan s/o Prabahkar Mahajan – responsible person officer for quality control, A-73, Industrial Area, Skindrabad, District Bulandshar, U.P. 203205, Sh. Anand Fraidrack s/o Jaman Fraidrack H. No. 335, Kailas Tower 1, Mount Kalaji, New Delhi - Director of M/s Agrimas Chemical Limited, on the allegations that on 5.8.2008, Sukhjit Singh, Insecticide Inspector, Shahkot, District Jalandhar, had drawn a sample of one insecticide i.e. Cartap Hydrochloride 4% G bearing Batch No. 0807114, manufacturing dated July 2008 and expiry dated June 2010, after breaking the original sealed and packed container of 5Kg, as was lying in the shop premises of petitioners, as manufactured by M/s Agrimas Chemicals Ltd., Maharashtra and supplied through M/s Chambal Fertilizer and Chemicals Ltd. Usual proceedings were carried out. Complainant selected one packing of 5 kgs of said insecticide and three samples each weighing 250 gms were drawn and put into three separate clean and dry polythene bags and converted into sealed parcels. One part of the sample was given to Munish Arora, representative of the firm at the spot. Two samples

were taken away by the raiding team and deposited in the office of Chief Agricultural Officer, Jalandhar, alongwith other documents. It was sent to Senior Analyst Insecticide Testing Laboratory, PAU Campus, Ludhiana and as per test reports received therefrom, the same was declared misbranded with the remarks that sample does not conform to I.S.I. Specifications with respect to its percentage active ingredient contents. Accordingly criminal complaint was filed against the accused.

According to the petitioners, petitioner No.1 is Ex-Managing Director of M/s Chambal Fertilizers and Chemicals Limited; he was associated with the said company from 1.4.2004 till 16.2.2007 as the Managing Director and thereafter he disassociated from the said company. As is evident from copy of Form 32 dated 16.2.2007 submitted by the company to the Registrar of companies regarding disassociation of petitioner No.1 from the company. Respondent No.1 is not the person responsible for conduct of business of the company in this case. The insecticide in question is stated to have been manufactured by manufacturer firm in July 2008 and marketed/sold by the company thereafter. Similarly, no role has been attributed to petitioner No.2 – Rajnish Kumar in the complaint. The person responsible for conduct of the company and quality control was Mr. P.K. Saxena. Therefore, the complaint be quashed.

In the written reply, filed by the complainant, material assertions are controverted, contending that the petitioners are responsible persons of the company which marketed the insecticide

in question that was found to be misbranded twice by the Govt. labs and petitioners cannot escape from their liability being Managing Director, Godown Incharge and responsible person, respectively of the affairs of the company. Petitioner No.1 was the Managing Director of the company, but at the relevant time whether he was holding a position in the company is a question of fact, which can be decided by the trial Court at relevant time. However, he cannot get the complaint and summoning order quashed from this court in such a manner. It is further stated that show cause notice was issued to the petitioners by Chief Agriculture Officer -cum Licensing Authority Jalandhar, vide notice dated 20.2.2009. Petitioner Sunil Sethi did not take any plea that he was not associated with the company and further more necessary sanction to prosecute Rajnish Kumar and Sunil Sethi had been given by the competent authority vide order dated 15.10.2009, after due application of mind and the same is legal, valid and operative.

CRM-28862-2017

This petition under Section 482 Cr.P.C., for quashing of criminal complainant COMA No. 77/2016, dated 1.7.2016, filed before CJM, Ferozepur, titled 'State through Insecticide Inspector, Ferozepur Block Ferozepur, District Ferozepur vs. M/s Aggarwal and Sons, Ferozepur City, Tehsil and District Ferozepur and others', and summoning order dated 1.7.2016 passed by CJM, Ferozepur, in that case, besides subsequent proceedings, have been filed by petitioners Chambal Fertilizers and Chemicals Limited, Anil Kapoor, Krishan

Kumar Jangra and Arvind Kumar Sharma.

As per version of the petitioners, petitioner No.1 is a limited company, which deals in marketing of insecticides manufactured by various firms/companies having proper license in that regard. Such company received show cause notice dated 30.8.2013 regarding an alleged violation of Insecticide Act, 1968, stating therein that allegedly an inspection was carried out on 13.7.2013 in the premises of M/s Aggarwal and Sons and a sample of 'Cartap Hydrochloride 4% G' manufactured by M/s Sarswati Agro Chemicals (India) Pvt Limited was taken, which was allegedly misbranded, being found to contain 3.08% active ingredient instead of 4%. It was stated in the notice that Insecticide was marketed by the petitioner company and manufactured by M/s Sarswati Agro Chemicals (India) Pvt. Limited. It was further stated that only role attributed to the petitioner company in the notice was that the company marketed the insecticide i.e. bought from the manufacturer and sold to the dealer. Further, notice was issued only to the company and not to petitioners No. 2 to 4.

Replies were sent to show cause notice. However, the respondent – complainant filed a criminal complaint against 9 persons/companies including petitioner No.1 – company and petitioners No. 2 to 4. A summoning order was passed in that case. The petitioners seek quashing of the complaint for the reason that it is neither manufacturer nor importer of the insecticide and is protected under Section 30(3) of the Act. The insecticide was

acquired by the petitioner company from the manufacturer in a sealed condition and supplied to the dealer in the same sealed condition. There is no allegation of any tempering, opening or replacing of the insecticide's original packing by the petitioner company. In that way, filing of complaint against the petitioners is an abuse and against the process of law. Several other pleas on merits have been taken.

In the reply filed on behalf of the complainant, it is contended that sample drawn by the complainant was manufactured by M/s Sarswati Agro Chemicals (India) Pvt. Limited, village Nimbua, Tehsil Dera Bassi, District Mohali and marketed by M/s Chambal Fertilizers and Chemicals Limited, Gadepan (Rajasthan) from the shop premises of dealer M/s Aggarwal & Sons, 34, New Grain Market, Ferozepur City, which on analysis was found to be misbranded. After following proper procedure, complaint had been filed and accused had been properly summoned. The pleas raised by them are question of facts, which can only be decided during trial, after prosecution leads its evidence; that petitioner No.1 was marketing company, which was selling and distributing insecticides on behalf of manufacturing company by joint labelling the containers of the insecticides, including the insecticide in question therefore, it is not entitled for protection under Section 30(3) of the Act. Furthermore, conditions enumerated under Sub-Section 3 of the Section 30 of the Act, are questions of facts which have to be proved like other facts before the trial court by leading evidence with the supporting documents during trial. The petitioner company was

having full knowledge of the contents of this insecticide which was found to be misbranded. In the end prayer has been made for dismissal of the petition.

CRM-19425-2017

This petition under Section 482 Cr.P.C., for quashing of criminal complainant COMA No. 7718/2015, dated 5.6.2015, filed before CJM Ist Class, Ludhiana, titled 'State through Nirmal Singh Insecticide Inspector, Ludhiana vs. M/s Dinesh Traders, 37 Grain Market Sahnewal (Ludhiana) through DineshKumar s/o Ganpat Rai (Dealer Firm and Responsible Partner of this Firm) and others', and summoning order dated 13.7.2015 passed by CJM, Ludhiana, in that case, besides subsequent proceedings, has been filed by petitioners M/s Chambal Fertilizers and Chemicals Limited, "Corporate Office", Ist Floor, 5 Commercial Centre, Jasola, New Delhi, through its authorised representative/Deputy General Manager, Bhushan Kumar Punjabi; Anil Kapoor; Krishan Kumar Jangra and Arvind Kumar.

As per version of the petitioners, petitioner No.1 is a limited company, which deals in marketing of insecticides manufactured by various firms/companies having proper license in that regard, for sale/stocking and distribution of insecticides in the State of Punjab. Such company received show cause notice dated 3.9.2012 from Chief Agricultural Officer, Ludhiana, regarding alleged violation of Insecticide Act, 1968 and Rules, stating therein that a sample of 'Cartap Hydrochloride 4% G' batch No. VTPPP-2055 manufactured by M/s Punjab Pesticides Industrial Co-operative Society Limited

(manufacturer) was taken from the premises of M/s Dinesh Traders (dealer), which was allegedly found to contain 3.59% active ingredient instead of 4%. It was stated in the notice that Insecticide was marketed by the petitioner company, it was also liable for the violations of the Act. Petitioner No.3 filed reply on behalf of the petitioner company, stating therein that petitioner company only marketed the insecticide which is manufactured by M/s Punjab Pesticides Industrial Co-operative Society Ltd., further stating that the petitioner company entered into contract with said company after making thorough enquiry and due diligence with regard to said insecticide being manufactured by them and quality control measures taken by them. It was further stated that the product is supplied to the dealers in same packing and condition in which it is received from the manufacturer and therefore question of the petitioner company having control over the quality of the product at any point of time does not arise. It was further stated that petitioner no.3 is the person responsible for the conduct of the business of the company under Section 33 of the Act and accordingly Managing Director and Godown Incharge should not be unnecessarily impleaded in the matter. Thereafter petitioner company received another show cause notice dated 5.11.2012 stating therein that in retesting also the insecticide was found to be deficient in the active ingredient. Petitioner No.3 filed reply to the said show cause notice, reiterating the averments of earlier reply that the petitioner company only markets the insecticide which is manufactured by some other

company.

However, sanction under Section 31 (1) of the Act was granted and ultimately respondent filed the criminal complaint against the manufacturer of the insecticide, the dealer and the petitioners, before the CJM Ist Class, Ludhiana. The grounds taken for quashing of the complaint are almost the same as in earlier petitions.

Reply filed by the respondent-complainant is almost on the similar lines as in the earlier petitions.

CRM-M-14798-2017

This petition under Section 482 Cr.P.C., for quashing of criminal complainant No. 63/203, dated 15.9.2011, filed before SDJM, Nakodar, District Jalandhar, titled 'State of Punjab through Sukhjot Singh, Insecticide Inspector, Shahkot, Tehsil Nakodar, District Jalandhar vs. M/s Arjun Singh Gurbachan Singh through its partners Rajinder Singh, Mohinder Singh sons of Gurbachan Singh, Sandeep Arora s/o Rajinder Singh and Munish Arora s/o Sukhdev Singh and others', and summoning order dated 7.5.2011 besides all subsequent proceedings, have been filed by petitioner Anand Pradeep Kumar.

According to him, he is also known as Anand Fredrick and Anand Pradeep Kumar Fredrick. He is former Director of M/s Agrimas Chemicals Ltd., and he was Director of the company only till 28.6.2005, on which date he resigned as Director. Since then he has neither held the position of Director or Managing Director in the

company nor had any position of responsibility in the company. In the complaint no specific role has been attributed to him. The batch of insecticide in question was manufactured by the company after more than 3 years of the petitioner disassociating himself from the company. The sample was drawn on 5.8.2008. Therefore, the complaint and summoning order are liable to be quashed.

In reply by the complainant, it has been stated that petitioner is responsible person of the company which manufactured the insecticide in question, which was found to be misbranded twice by the Govt. Laboratories and the petitioner cannot escape his liability being a Director and responsible person of the affairs of the company. whether he was holding a position in the company at the relevant time, is a question of fact, which can be decided by the trial Court on the basis of evidence brought on record. Therefore, the complaint and summoning order cannot be quashed.

CRM-M-37966-2016

This petition under Section 482 Cr.P.C., for quashing of criminal complainant No. 63/203, dated 15.9.2011, filed before SDJM, Nakodar, District Jalandhar, titled 'State of Punjab through Sukhjit Singh, Insecticide Inspector, Shahkot, Tehsil Nakodar, District Jalandhar vs. M/s Arjun Singh Gurbachan Singh through its partners Rajinder Singh, Mohinder Singh sons of Gurbachan Singh, Sandeep Arora s/o Rajinder Singh and Munish Arora s/o Sukhdev Singh and others', and summoning order dated 7.5.2011 besides all subsequent proceedings, have been filed by petitioner – M/s

Chambal Fertilizers and Chemicals Limited, New Delhi.

According to the petitioner – company, respondent No.5 is the Ex-Managing Director of the petitioner-company, who was associated with the company from 1.4.2004 till 16.2.2007 as the Managing Director and thereafter he disassociated himself from the company. No offence is made out against the petitioner company or respondents No. 4 and 5, since petitioner company is neither manufacturer, nor importer of the insecticide and is entitled to protection under Section 30(3) of the Act.

In reply by the complainant it is stated that on 5.8.2008, Sukhjot Singh, Insecticide Inspector, Shahkot, District Jalandhar, had drawn a sample of one insecticide i.e. Cartap Hydrochloride 4% G bearing Batch No. 0807114, manufacturing dated July 2008 and expiry dated June 2010, after breaking the original sealed and packed container of 5Kg, as was lying in the shop premises of M/s Arjun Singh Gurbachan Singh, Lohian Khas, District Jalandhar, as manufactured by M/s Agrimas Chemicals Ltd., Maharashtra and supplied through M/s Chambal Fertilizer and Chemicals Ltd. The said manufacturing company i.e. M/s Agrimas Chemicals Ltd., Maharashtra is the registered and authorized manufacturing company by Govt. of Punjab to sell its products in the State of Punjab. After getting the sample analyzed, the complaint had been filed in the Court of JMFC, Nakodar. It is further stated that the petitioner sold the insecticide in question which was found to be misbranded twice by the Government laboratories, to respondent No.2 and the

petitioner company was liable for prosecution for selling, stocking and exhibiting for misbranded insecticide. It is further stated that to invoke the protection provided under Sub-Section 3 of the Section 30 of the Act, the petitioner is required to appear before the trial court. In the end prayer has been made for dismissal of the petition.

I have heard learned counsel for the parties, besides going through the record.

The arguments advanced by learned counsel for the petitioners are as per submissions in the petitions and their prayer is for acceptance of the petitions.

Whereas the request is being vehemently opposed by learned State counsel, contending that the complaint as well as the summoning order and other proceedings cannot be quashed in such a manner. The proper remedy for the petitioners was to approach the trial Court and raise all these pleas there and if the trial Court was convinced with the submissions made on behalf of the petitioners – accused, then the proceedings would have got terminated in favour of the accused.

In support of such contention, learned counsel for the respondent-complainant has referred to judgment **Arvind Kejriwal v/s. Amit Sibal and another in Cr.L.M.C. 5245/2013 and Cr.M.A. Nos. 18920-21/2013 decided on 16.1.2014**, by Delhi High Court. As per facts of the case, respondent No.1 Amit Sibal had instituted a complaint of defamation against the petitioners Arvind Kejriwal and others under Sections 500 and 501 read with Section 34 and 120-B

IPC, in which vide summoning order dated 24.7.2013, Learned Metropolitan Magistrate had issued summons to the petitioners. The petitioners had challenged the summoning order and had sought quashing thereof as well as of the criminal complaint filed by respondent No.1. Observing that notice under Section 251 Cr.P.C. had not yet been framed and the case was pending before the trial Court, it was held that petitioners should urge the pleas raised in the petition before the learned trial Court at the stage of framing of notice under Section 251 Cr.P.C. in terms of the law laid down in that regard, in the judgments *Krishna Kumar Variar vs. Share Shoppe (2010) 12 SCC 485* and *Bhushan Kumar vs. State (NCT of Delhi), (2012) 5 SCC 424*, by the Apex Court and *Rajeev Taneja vs. NCT of Delhi in Crl.M.C. No. 4733/2013 decided on 11.11.2013*, by Delhi High Court. In paragraphs No. 12 and 13 of the judgment, it is observed as under :-.

12.The power under [Section 482](#) Cr.P.C. is in its nature extraordinary and is to be exercised 'ex debito justitiae' to do the real and substantial justice for the administration of which alone Courts exist. The Court, therefore, has to be careful to see that its decision is based on sound general principles of criminal jurisprudence and is not in conflict with the statutory provisions. This provision cannot be invoked to override an express provision of law or when there is another remedy available.

13.The present case does not fall within the aforesaid limitations as there is neither any express provision nor any express bar in the Code of Criminal Procedure for discharge of the accused at the stage of framing of notice under Section 251 Cr.P.C. if no prima facie case is made out against him.

The conclusion drawn was as under :-

20.Applying the aforesaid principles to this case, the petitioners are permitted to urge the pleas raised in this petition before the learned Metropolitan Magistrate at the stage of framing of notice under Section 251 Cr.P.C. whereupon the learned Metropolitan Magistrate shall consider them and pass a speaking order. The learned Magistrate shall frame the notice under Section 251 Cr.P.C. only upon satisfaction that a prima facie case is made out against the petitioners. The learned Magistrate shall be empowered to discharge/drop the proceedings against the petitioners if no case is made out against them. Needless to say, if the learned Magistrate chooses to frame notice under Section 251 Cr.P.C., the petitioners would be at liberty to avail the remedies as available in law.

21. This petition and the applications are disposed of on the above terms. It is clarified that this Court has not

examined the contentions of the parties on merits which shall be considered by the learned Metropolitan Magistrate.

In another judgment, *Urrshila Kerkar vs. Make My Trip (India) Private Ltd., MANU/DE/4138/2013*, it was observed by Delhi High Court as under :-

8. It is no doubt true that Apex Court in Adalat Prasad Vs. Rooplal Jindal and Ors. (2004) 7 SCC 338 has ruled that there cannot be recalling of summoning order, but seen in the backdrop of decisions of Apex Court in Bhushan Kumar and Krishan Kumar (supra), aforesaid decision cannot be misconstrued to mean that once summoning order has been issued, then trial must follow. If it was to be so, then what is the purpose of hearing accused at the stage of framing Notice under [Section 251](#) of Cr.P.C. In the considered opinion of this Court, Apex Court's decision in Adalat Prasad (supra) cannot possibly be misread to mean that proceedings in a summons complaint case cannot be dropped against an accused at the stage of framing of Notice under [Section 251](#) of Cr.P.C. even if a prima facie case is not made out. In the aforesaid view, this petition and the application are disposed of without commenting upon the merits of this case and with

liberty to petitioner to urge the pleas taken herein before the trial court. Needless to say, the pleas raised by petitioner at the hearing on the point of Notice under [Section 251](#) of Cr.P.C. shall be dealt with by the trial court by passing a reasoned order so that petitioner may avail of the remedies available in law, if need be. Since the plea pertaining to [Section 305](#) of Cr.P.C. goes to the root of this matter, therefore, till the hearing on the point of Notice under [Section 251](#) of Cr.P.C. is concluded by the trial court, personal appearance of petitioner before the trial court is dispensed with provided petitioner is duly represented by counsel, who does not seek adjournment.

Similar view was taken by the Delhi High Court in another judgment **Lilliput Kidswwar Ltd. And others vs. Nahar Industrial Enterprises in Crl.M.C. 4722/2013, decided on 8.11.2013.**

A Single judge of this Court in judgment in **Ramesh Kumar Thind vs. Lakhvir Singh in CRM-M-31268-2014 decided on 10.09.2014,** has also reached to the similar conclusion.

Section 33 of the Insecticides Act, 1968 deals with offences by companies. For ready reference, it is being reproduced as under :-

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 subsection 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 subsection (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.

In the copy of the complaint placed on file by the petitioners, with regard to the petitioners, in the heading/title of the complaint with regard to petitioner – Lalit Bansal, it is mentioned that he is Director & Responsible person of Manufacturing Company. With regard to I.D. Mahto it is also mentioned that he is responsible person for conduct of business & quality control of Manufacturing Company. In the body of the complaint also, in paragraph No.12, it is mentioned that manufacturer M/s Sarswati Agro Chemicals (India) Pvt. Ltd., # 1170, Ward No. XI, Ranjit Nagar, Kharar, district SAS Nagar, Mohali, Punjab and Marketing firm M/s Chambal Fertilizers & chemicals Ltd. Gadepan, District Kota, Rajasthan & Directors and responsible persons, officers of company has also committed offence under the Act by manufacturing/formulating and supplying for sale of mis-branded insecticide.

It is only in civil cases that the settled law is that a fact should be first pleaded and then proved and any evidence lead beyond the pleadings is meaningless. Whereas such principle is not applicable to a criminal complaint.

As per definition under Section 2 (d), " complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report . Therefore, over all contents of complaint are to be seen

and exact and precise language as is expected in pleadings in a civil case, may not be there, while drafting a criminal complaint.

Furthermore, the onus of proving that an offence was committed without the knowledge of the person who was incharge or was responsible for the company for conduct and business of that company and that he had exercised all due diligence to prevent the commission of such offence, is on that person, which can be proved by leading evidence orally, documentary or by both by such person. Similarly, in terms of Sub Section 2 of Section 33 of the Act, 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, for doing that evidence is required to be there.

Learned counsel for the petitioners has referred to various judgments :-

1. State (NCT of Delhi) vs. Rajiv Khurana (2010)11 SCC 469;

2. Managing Director, Castrol India Limited vs. State of Karnataka and another (2018) 17 Supreme Court Cases 275; and

3. Ashoke Mal Bafna vs. Upper India Steel Manufacturing and Engineering Company Limited (2018) 14 Supreme

Court Cases 202

in support of his contention that there is no specific averment in the complaint as to how and in what manner the Managing Director/Director/Manager is responsible for the work and conduct of the company, the complaint qua them is liable to be quashed.

With regard to other submission that protection under Section 30 (3) of the Insecticides Act, 1968 is available to the petitioners, therefore, complaint qua them is liable to be quashed, he has referred to judgments :-

1. M/s Zimidara Kheti and another vs. State of Punjab 2019

(1) RCR (Criminal) 288;

2. Darshan Singh and another vs. State of Punjab in CRM-M-25377 of 2017 by a Single Bench of this Court decided on 6.10.2018;

3. M/s Garg Agro chemicals and another vs. State of Punjab 2011 (2) RCR (Criminal) 395; and

4. M/s. Sandhu Kheti Store Sewa Centre and others vs. State of Punjab 2013 (4) RCR (Criminal) 893,

all by a Co-ordinate Bench of this Court.

The Board of Directors is there to run the affairs of the company. One of the Directors may be entrusted with the duties of managing such affairs. Similarly some of the officials may be appointed to manage the affairs of company. Whether a particular Director was there or not at the relevant time, can be shown by way of evidence only. Section 168 of the Companies Act, 2013, deals with

resignation of the director, which for ready reference is reproduced as under :-

“168. Resignation of director.- (1) A director may resign from his office by giving a notice in writing to the company and the Board shall on receipt of such notice take note of the same and the company shall intimate the Registrar in such manner, within such time and in such form as may be prescribed and shall also place the fact of such resignation in the report of directors laid in the immediately following general meeting by the company:

Provided that a director shall also forward a copy of his resignation along with detailed reasons for the resignation to the Registrar within thirty days of resignation in such manner as may be prescribed.

(2) The resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later:

Provided that the director who has resigned shall be liable even after his resignation for the offences which occurred during his tenure.

(3) Where all the directors of a company resign from their offices, or vacate their offices under section 167, the promoter or, in his absence, the Central

Government shall appoint the required number of directors who shall hold office till the directors are appointed by the company in general meeting.”

For proving that a particular person was not working as Director, it has to be established that as to that such person gave a notice in writing to the company and that Registrar of the company was intimated in that regard in the prescribed form; as to whether such resignation was put in report of the directors laid in the general meeting by the company.

As per proviso to Section 168, sub Section 2, the director who has resigned shall be liable even after his resignation for the offences which occurred during his tenure.

In view of above discussion, I find that these submissions cannot be appreciated in isolation and perusal of the entire record is necessary.

Furthermore, such contentions can be better appreciated after the parties lead evidence and further more complete mechanism being there for redressal of grievances of the petitioners, in the form of approaching the trial Court.

The Hon'ble Apex Court in judgment *Mohit @ Sonu and another vs. State of U.P. and another 2013 (3) RCR (Criminal) 673*, had observed that when there is a specific remedy provided by law, inherent powers under Section 482 Cr.P.C. cannot and should not be resorted to. In this case, the petitioners have got specific remedy of raising all these pleas before the trial Court at the time of

consideration of service of notice under Section 251 Cr.P.C. Therefore, the instant petitions under Section 482 Cr.P.C., are not maintainable.

Keeping in view the facts and circumstances of the case, quashing of complaint, summoning order and ancillary proceedings, exercising powers under Section 482 Cr.P.C., which are of supervisory nature, may not be proper and appropriate.

As such all the instant petitions are disposed of relegating the petitioners to the remedy of raising all these pleas before the trial Court at the time of considering on the point of service of notice under Section 251 Cr.P.C. or at any subsequent appropriate stage as per law and the trial Court shall deal with such contentions, in accordance with law, by passing a speaking order.

It is clarified that any observation made in this order with regard to merits of the case(s) is for the purpose of deciding the petitions only and shall not have any binding effect on the trial Court.

24.2.2020
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(H.S. Madaan)
Judge

Whether speaking / reasoned Yes / No

Whether reportable Yes / No