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

CRM-M-21176-2019

Date of Decision: March 18, 2020

M/s Preet Kheti Sewa Center & Anr. .... Petitioners

Versus

State of Punjab .... Respondent

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Arun Chandra, Advocate for the Petitioners.

Mr. Avtar Singh Sandhu, Additional Advocate General, Punjab for the Respondent.

SUDIP AHLUWALIA, J.

This is a Petition under Section 482 Cr.PC seeking quashing of the Complaint No.COMA/7404/2018 Dated 28.05.2018 under Sections 3K(1), 17, 18, 29 & 33 of the Insecticides Act, 1968 read with Rule 27(5) of the Insecticides Rules, 1971 and Summoning Order dated 28.05.2018 of the Court of CJM Ludhiana. Petitioner No.1 happens to be the Firm M/s Preet Kheti Sewa Center represented by its Proprietor and responsible person Manpreet Singh, who himself happens to be Petitioner No.2.

2. Background of the matter is that the Complaint (Annexure P-2) was filed by Jasbir Kaur, Notified Insecticide Inspector, Gopal Khurd, Block Dehlon, District Ludhiana, who inspected the premises of Petitioner No.1 on 11.09.2015 and checked insecticides lying in its

Shop premises and found 9.75 Liters (39 x 250 ml.) stock of insecticide Quinalphos 25% EC (Kemlox) bearing Batch No.IVSCKLX003 having manufacturing date 15.04.2015 and Expiry date 14.04.2017 manufactured by M/s Sumitomo Chemical India Pvt. Ltd., Mumbai and out of this Stock, she selected three original sealed containers 250 Ml Leter each of Quinalphos 25% EC (Kemlox) and then she put those selected duly sealed containers of 250 Ml each into three separate neat, clean and dry polythene envelopes one container into one polythene envelope. This fact is evident from the perusal of Form XX that the sample was drawn from its original packing. The copy of Form XX is attached as **Annexure P-1**.

3. After the sample was drawn and after dividing it into three parts, one part of the sample was given to Petitioner No.2 and two parts were retained by the Insecticide Inspector, out of which one part of the sample was sent to the Insecticide Quality Control Laboratory, Faridabad on 15.09.2015 and from there it was sent to Regional Pesticides Testing Laboratory, Chandigarh and it was found misbranded after its analysis on 26.09.2015. On the basis of the report, the present Complaint dated 28.05.2018 was launched in the Court of Chief Judicial Magistrate, Ludhiana. After filing the Complaint, the Petitioner No.1 through its Proprietor Mandeep Singh and other co-accused were summoned by the Court of CJM, Ludhiana vide his impugned Order of the same date **(Annexure P-3)**.

4. It has been contended *inter-alia* on behalf of Petitioners that admittedly according to the Complaint, the Complainant had selected three original sealed containers of 250 Ml each of the Insecticide

Quinalphos 25% EC (Kemlox) bearing Batch No.IVSCKLX003 having manufacturing date 15.04.2015 and Expiry date 14.04.2017 manufactured by M/s Sumitomo Chemical India Pvt. Ltd., Vapi, Distt. Valsad (Gujarat) at the spot on 11.09.2015.

5. Attention of the Court has thereafter be drawn to the Complaint itself in which, Petitioner No.1 has been described as a "Dealer Firm" of which Petitioner No.2 is the Proprietor and responsible person. According to Ld. Counsel for Petitioners, when admittedly his client happens to be only the local Dealer of the Products, which were found to be misbranded, and the samples whereof had been drawn from the sealed container, no criminal liability would lie against them except in the case that they had any source of information about such misbranding, which admittedly has not been alleged in the Complaint.

6. Reliance in this regard has been placed on the decision of the Supreme Court in **'M/S KISAN BEEJ BHANDAR, ABOHAR Versus CHIEF AGRICULTURAL OFFICERS, FEROZEPUR AND ANOTHER' 1990 Supreme Court Cases (Crl.) 623**, in which it was observed *inter-alia-*

> *"4. 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 mens area from consideration and, therefore, knowledge was not at all material. Appellant's counsel has argued that <u>protection of sub-section (3) is available not only to prosecutions but also to every contravention of the Act</u> 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 - and it has not been established - the appellant is entitled to the protection of sub-section (3). In the facts once 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 discharges, 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."* (Emphasis added)

7. The aforesaid decision of the Apex Court was followed by various Benches of this Court in **'Jindal Fertilizers and Chemicals and others Vs. State of Punjab' 2010(4) R.C.R. (Criminal) 146; M/s S.S.Fertilizer and another Vs. State of Punjab' 2017 (2) R.C.R. (Criminal) 59; 'M/s Sukhana Kheti Bari Centre Vs. State of Punjab' CRM-M-5825-2017; 'M/s Zimidara Kheti and another Vs. State of Punjab' 2019(1) R.C.R. (Criminal) 288** and **'Gurinder Singh and another Vs. State of Punjab' 2019(3) R.C.R. (Criminal) 356.**

8. In all the above cases, proceedings arising out of the criminal complaint against the Dealers when samples of the misbranded insecticides were taken against them in the form of sealed containers were quashed.

9. Ld. State Counsel however, has submitted that for the purpose of seeking benefit under Section 30(3) of the Insecticides Act, it was incumbent upon the Petitioners to prove certain questions of fact to the effect that, (i) the Insecticides were acquired by it from an importer or a duly licensed manufacturer, distributor or dealer thereof; that (ii) they did not know and could not, with reasonable diligence, have ascertained that the insecticides in any way contravened any provisions of the Act; and that, (iii) the insecticides, while in their possession, were properly stored and remained in the same state as and when acquired. Reliance in this regard has been made on the decision of this Court in **'Ashwani Kumar Bhakoo Vs. State of Punjab' 1994(1) R.C.R. (Criminal) 349**.

10. After having carefully perused the entire material on record, this court finds that reference to the aforesaid decision relied upon by the State is unwarranted. This is so in view of specific averments made in Paras 17 & 18 of the original Complaint itself, which are set out as follow -

> *"**17.** That it is submitted that after receiving the re-analysis report of this insecticide sample from the Central Insecticides Laboratory Faridabad on 13.01.2016, then the Chief Agricultural Officer, Ludhiana (Sh.Sukhpal Singh Sekhon) had served show cause*

notice to this dealer firm M/s Preet Kheti Sewa Centre, Malaudh (Ludhiana) vide Office Letter No.238-239/PP dated 21.01.2016 to explain their position due to the violation of Sections 3k (1), 17, 18, 29 & 33 of the Insecticides Act, 1968 and had submitted the re-analysis report of this sample along with notice. That a copy of this show cause notice served to the dealer is annexed as ***Annexure R-18*** *(original office copy). That the Chief Agricultural Officer Ludhiana had also served the show cause notice to this manufacturing company M/s Sumitomo Chemical India Pvt. Ltd. Mumbai through the responsible persons of this company due to the violation of Sections 3k(1), 17, 18, 29 & 33 of the Insecticides Act, 1968 vide Office Letter No.241-248/PP dated 21.01.2016 to explain the matter due to the failure of this sample and had sent the re-testing report of this sample along notices. That a copy of this show cause notice is annexed as* ***Annexure R-19*** *(original office copy).*

18. *That it is submitted that this dealer firm M/s Preet Kheti Sewa Centre, Malaudh (Ludhiana) had submitted the reply on 05.02.2016. That this dealer firm had submitted in this reply that this insecticide Quinalphos 25% EC bearing Batch No.IVSCKLX003 had been purchased from the manufacturing*

> *company M/s Sumitomo Chemical India Pvt. Ltd. from this company's own Sales Centre, 2818/0, Ambala Bypass Road, Transport Nagar, Ludhiana vide Invoice No.CPDB/Sale/LU/705 dated 11.06.2015. That a copy of this invoice is already annexed as Annexure R-10. That a copy of reply submitted by this dealer firm M/s Preet Kheti Sewa Centre, Malaudh (Ludhiana) is annexed as* ***Annexure R-20*** *(original office copy). That the manufacturing company M/s Sumitomo Chemical India Pvt. Ltd., Vapi, Distt. Valsad (Gujarat) had also submitted their replies on 02.02.2016 and 05.02.2016 in response to the show cause notice dated 21.01.2016. That copies of these replies dated 02.02.2016 and 05.02.2016 are annexed as* ***Annexure R-21, Annexure R-22*** *and* ***Annexure R-23*** *(original office copies)."* (Emphasis added)

11. It is therefore, seen from the own averments of the Respondent/complainant in Para 18 of the original Complaint that a reply was submitted by the Petitioners to the effect that the Insecticides in question had been purchased from the manufacturing Company M/s Sumitomo Chemical India Pvt. Ltd., which was separately arraigned as accused No.3 by the Complainant. Admittedly, the samples were obtained from the sealed containers and there is no averment anywhere in the Complaint that the same were not properly stored or kept in the same state as when acquired after

such purchase. Even otherwise, there is no averment nor any suggestion to the effect that the Invoice under which those Insecticides purchased by the Petitioners under the specific Invoice No.CPDB/Sale/LU/705 dated 11.06.2015 was ever got scrutinized or not found to be genuine. In such circumstances, there remains no doubt that no criminal liability can be fastened upon the Petitioners. This is so because, as already seen, the samples of the misbranded articles were collected from their Premises while in "sealed containers", which were not found to be stored improperly and, in any event, there is nothing on record to indicate that being the Dealers, the Petitioners had any other source of information that the concerned product was misbranded. The case therefore, squarely falls under the ratio of Supreme Court's decision in **M/s Kisan Beej Bhandar, Abohar's case (supra)** and the other Judgments passed by various Benches of this Court in the aforesaid decisions. Consequently, the Court finds the Complaint to be untenable qua the present Petitioners. The same and all subsequent proceedings including the indicated impugned Summoning Order stand quashed qua the Petitioners.

12. Disposed off.

(SUDIP AHLUWALIA)
JUDGE

March 18, 2020
AS

1. Whether speaking/reasoned ? Yes/No

2. Whether reportable ? Yes/No