

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

**CRM-M-33507 of 2016
Date of Decision:-01.12.2022**

Chander Mohan Goyal and another

....Petitioners

Vs.

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by:- Mr. R.K. Girdhar, Advocate
for the petitioners.

Ms. Kanika Sachdeva, AAG, Punjab.

KARAMJIT SINGH, J.

Prayer in the present petition is for quashing of Complaint No.08/2014 dated 11.11.2014 under Sections 3(k)(i), 17, 18, 29 and 33 of the Insecticides Act, 1968 (in short 'the Act') read with Rule 27(5) of the Insecticides Rules, 1971 punishable under Section 29(1)(A) of the Insecticides Act, 1968 (Annexure P-1) and the summoning order dated 23.04.2015 passed by the Sub Divisional Judicial Magistrate, Balachaur (Annexure P-2) as well as all the consequential proceedings arising thereof.

Brief facts of the case are that on 11.11.2014, respondent filed the complaint against the petitioners and others alleging therein that on 16.12.2009, Insecticide Inspector (Competent Authority) inspected the shop of dealer M/s Dharni Seed and Fertilizers Store,

Bharapur and took sample of insecticide clodinafop-propargyl 15% WP, having manufacturing date January, 2009, expiry date December, 2010, manufactured by M/s Crop Chemicals India Ltd, Samba (J&K). Three packets each of 160 grams of insecticide were taken as sample, out of which two samples were deposited in the office of Chief Agriculture Office, SBS Nagar and one sample was sent for analysis Senior Analyst Insecticide Testing Laboratory Bathinda on 24.12.2009. As per the report of analyst report dated 21.01.2010 the said sample was found not conforming to ISI specifications with regard to its present active ingredient content requirements and the sample was found to be misbranded. On the basis of said report of analyst show cause notices were issued to the concerned persons and then the competent authority filed the impugned complaint against Tanjeet Singh, proprietor M/s Dharni Feed and Fertilizers Store, Bharapur, petitioner no.1 Chander Mohan Goyal, Director and Responsible Officer of M/s Crop Chemical India Limited, Samba, (J&K), Chander Mohan, Godown Incharge of M/s Crop Chemical Limited, Focal Point, Kotpura, petitioner no.2 Parmod Kumar, Area Sales Manager and Responsible Officer of M/s Crop Chemical India Limited, Focal Point, Kotakpura, Ashwani Kumar, Quality Control Manager, M/s Crop Chemical Limited India, Samba (J&K).

On presentation of impugned criminal complaint, Surinder Kumar, Insecticide Inspector cum ADO Saroya appeared in the witness box and he also tendered documents Ex. C1 to Ex.C24

and thereafter, the trial Court summoned Tanjeet Singh (Dealer), Chander Mohan Goyal (Director of manufacturing company), Chander Mohan (Godown Incharge), Parmod Kumar (responsible officer of manufacturing company) and Ashwani Kumar (Quality Control Manager of Manufacturing Company) to face trial vide order dated 23.04.2015.

Being aggrieved, both the petitioners have filed the present petition challenging the impugned complaint, the summoning order dated 23.04.2015 and all the consequent proceedings arising therefrom.

The counsel for the petitioners has argued that the complaint in question is not maintainable against the petitioners. The counsel for the petitioners has further argued that in the present case insecticide in question was manufactured by M/s Crop Chemicals India Ltd, Samba (J&K). That in the instant case the said company is not made party and as such, its Director i.e. petitioner No.1 and Area Sales Manager i.e. petitioner No.2 cannot be held vicariously liable for the acts/omissions committed by manufacturing company i.e. M/s Crop Chemicals India Ltd., Samba (J&K). The counsel for the petitioners has relied upon the judgments of this Court in *S.H. Chisty Vs. State of Haryana, 1997(2) RCR (Criminal) 565* and *Suresh Kumar Kochhar and another Vs. State of Punjab 2014(2) RCR (Criminal) 206*, wherein it was held that prosecution could not be

lodged against any officer of the company without prosecuting the company itself.

The present petition is resisted by the State counsel, who has submitted that explanation to Section 33 of the Act provides 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 contended that the petitioners would be covered by the phrase 'or other association of individuals'.

I have considered the submissions made by the counsel for the parties.

It is admitted case of both the parties that the insecticide in question was manufactured by M/s Crop Chemicals India Ltd, Samba (J&K) and that petitioner No.1 is the Director, while petitioner No.2-is Area Sales Manager of said manufacturing company. It is also admitted by both the parties that manufacturing company i.e. M/s Crop Chemicals India Ltd, Samba (J&K) is not arrayed as accused in the impugned complaint.

Section 33 of the Act reads as follows:-

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 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."

The coordinate Bench of this Court in CRM-M-18361-2017, Gurinder Singh and another Vs. State of Punjab, decided on 9.4.2019, observed that the provisions of Section 33 of the Act are

pari materia with the provisions of Section 141 of the Negotiable Instruments Act.

The Hon'ble Supreme Court in *Aneeta Hada Vs Godfather Travels and Tours Pvt. Ltd* (2012) 5 SCC 661, observed that the words "as well as the company" appearing in Section 141 of Negotiable Instruments Act make it absolutely clear that when the company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence. The Hon'ble Supreme Court further held that for maintaining the prosecution under Section 141 of the Negotiable Instruments Act, arraigning of company as an accused is imperative. The Hon'ble Supreme Court further observed that the provisions of Section 141 of Negotiable Instruments Act, impose vicarious liability by deeming fiction which presupposes and requires the commission of offence by the company or firm. Therefore, unless the company or firm has committed the offence as a principal accused, the persons mentioned in sub-Section (1) or (2) of Negotiable Instruments Act would not be liable and convicted as vicariously liable.

The Hon'ble Apex Court in *Ajit Balse Vs. Captain Ranga Karkere* 2015(2) RCR(Crl.) 369 held that though judgment in Aneeta Hada's case (supra) is prospective but that will be applicable to all the pending cases including the trial, appeal or revision or special leave petition/ appeal pending before the said Court.

The coordinate Bench of this Court in *Suresh Kumar Kochhar's case (supra)* while following the law laid down in *Aneeta Hada's case (supra)*, quashed the complaint filed under the Act while observing that the complaint is not maintainable against petitioner No.1 (an employee) and petitioner No.2 (a partner) of the firm on the ground that the firm not having been impleaded as a party to the complaint. The similar view was taken in Gurdinder Singh's case (*supra*) by the coordinate Bench of this Court, while quashing a complaint case filed under Section 29 of the Act.

In light of the above, the settled position in law is that in a complaint case filed under the Act, the Director, employee or responsible officer of the company/firm cannot be prosecuted without impleadment of the said company/firm. Thus, the complaint, Annexure P-1, filed by respondent is not maintainable against both the petitioners, in the present form on account non-arraignment of manufacturing company of which petitioner No.1 is Director and petitioner No.2 is Area Sales Manager, as an accused in the same.

Consequently, the present petition is allowed and the criminal complaint, Annexure P-1 and all consequential proceedings arising thereof, against both the petitioners stand quashed.

01.12.2022

P. Chawla

**(KARAMJIT SINGH)
JUDGE**

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No