

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

Date of decision : 22.07.2022

1.

CRM-M-34785-2018

PI Industries Ltd. and others

... Petitioners

Versus

State of Punjab

... Respondent

2.

CRM-M-7122-2018

Anurag Surana

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Gaurav Chopra, Senior Advocate with
Mr.Nitin Thatai, Advocate and
Mr.Rishab Bajaj, Advocate
for the petitioners.

Mr.Sarabjit Singh Cheema, AAG, Punjab.

VIKAS BAHL, J.(ORAL)

This order will dispose of two petitions filed under Section 482
Cr.P.C. for quashing of complaint no.5132 dated 05.05.2017 under Sections
3(k)(i), 17, 18, 29 and 33 of the Insecticides Rules, 1968 (in short “the Act”)
and Rule 27(5) of the Insecticides Rules, 1971 (in short “the Rules”)
instituted by the respondent and the summoning order dated 05.05.2017
passed by the Chief Judicial Magistrate, Ludhiana and all the consequential

proceedings arising therefrom, qua the petitioners.

The first petition, i.e. CRM-M-34785-2018 has been filed by 1) PI Industries Ltd. through its Senior Manager-Legal Sh. Gaurav Arora, 2) Suresh Kumar Sharma and 3) Rahim Aglodia and the second petition, i.e. CRM-M-7122-2018 has been filed by Anurag Surana.

Learned Senior counsel appearing for the petitioners has submitted that M/s PI Industries Limited is a company incorporated and registered under the provisions of the Companies Act, 1956 and is engaged in the marketing of different kinds of Insecticides and Pesticides products, fine chemicals etc. It is further submitted that the company has obtained a license to sell, stock or exhibit for sale or distribution and stock as required under Section 13 of the Insecticides Act, 1968 from the Licensing Authority of most of the States and the Licensing Authority of Punjab had issued one such license dated 07.06.2011 bearing no.LCPP/ADO-11/809 and Suresh Kumar Sharma (petitioner no.2 in the Ist petition) is the Regional Manager of the company whereas Rahib Aglodia (petitioner no.3 in the Ist petition) is the Assistant Manager (Quality Control) of the company. It is further submitted that Anurag Surana (petitioner in the second petition) is the Ex.Whole Time Director of the company. Learned Senior counsel has referred to the impugned complaint dated 05.05.2017 and has highlighted the fact that a perusal of the said complaint would show that M/s Saraswati Agro Chemicals India Pvt. Ltd. has been shown as the manufacturing company, whereas the petitioner company has been shown as the marketing company and the other petitioners have been shown as Director / employees of the petitioner company. It is further submitted that a perusal of paragraph 6 of the complaint would show that the Notified Insecticides Inspector,

Ludhiana had gone to the premises of the petitioner company and had randomly selected one sealed container of 500 grams of Propineb 70% W.P. having batch no.SANSA-40546 which even as per the allegations in the complaint, had been manufactured by M/s Saraswati Agro Chemicals India Pvt. Ltd and had been marketed by the petitioner company. It is further highlighted that a perusal of paragraph 20 of the complaint would show that on account of the fact that the insecticides test sample was found to be misbranded, the licensing authority had at the first instance, cancelled the insecticides license of the petitioner company and thereafter, on an appeal filed by the petitioner company before the Joint Director of Agriculture (Plant Protection), Punjab, Chandigarh, the said order was set aside and the license was restored with a direction that the batch of the said misbranded insecticides would not be sold by the petitioner company. It is stated that the petitioner has been implicated in the present case, although the same is only the marketing company, solely on the ground that the misbranded insecticides which had been manufactured by the M/s Saraswati Agro Chemicals India Pvt. Ltd., were found from the premises of the petitioner company. It is further stated that there is no allegation in the complaint to the effect that the test sample had not been stored in accordance with the provisions contained under Insecticides Act and the Rules stipulated thereunder or that they had tampered with the original sealed containers or that the petitioners are in any way involved in the manufacturing process of the insecticides. It is also argued that it is not made out from the impugned complaint that Section 17 of the Act would be attracted against the petitioners, inasmuch as the petitioners were neither the importers of the insecticides, nor the manufacturers thereof. It is also argued that it was also

not alleged in the complaint that the petitioners were involved in the sale of the insecticides which were either not registered under the Act or prohibited under Section 27 of the Act and thus, Section 18 would also not be attracted. Learned Senior counsel has further referred to the order dated 11.12.2014 (Annexure P-7) vide which the Deputy Director (LCP), Punjab-cum-Licensing Officer, Chandigarh had cancelled the license issued in favour of the petitioner company while exercising the powers under Section 14(1)(b) of the Insecticide Act, 1968 and also to the order dated 04.02.2015 passed in the appeal filed by the petitioner company, wherein the defence under Section 30(3) of the Act was raised and the petitioners were held entitled to the said benefit.

Learned senior counsel for the petitioners has relied upon the judgment of a coordinate Bench of this Court passed in **CRM-M-38650-2017** titled as “**B. S. Gill and another vs. State of Punjab**” and connected matter, decided on 14.02.2022 as well as judgment of another coordinate Bench of this Court passed in **CRM-M-20338-2017** titled as “**M/s Rallis India Limited and others vs. State of Punjab through Insecticide Inspector**” decided on 20.04.2022 to contend that in case of the marketing agency or the licensed dealer, they cannot be held liable for the contents of the sample when the same is taken from a sealed container moreso, when there is no allegation with respect to the tampering of the original seal of the container. Learned Senior counsel has further very fairly brought to the notice of this Court that the Division Bench of this Court in **Rajinder Kumar vs. State of Punjab**, reported as **2003(2) RCR (Criminal) 244** had held that once the Appellate Authority has allowed the appeal filed by the petitioner and has also accepted the defence under Section 30(3) of the Act

while restoring the license in favour of the petitioner then, at any rate, a petition in the nature of the present petition, under Section 482 Cr.P.C. would be maintainable and the complaint and subsequent proceedings arising therefrom deserve to be quashed. Further reliance has been placed upon the judgment of a coordinate Bench of this Court in *M/s S.S. Aggarwal & Co. vs. State of Punjab*, reported as *2003(3) RCR (Criminal) 650* to highlight the fact that in a case where the license has been restored by the Appellate Authority subject to the condition, as has been imposed in the case of the present petitioners, there also, the complaint and the summoning order would be liable to be quashed as the defence under Section 30(3) of the Act has been accepted by the Appellate Authority.

Learned State counsel, on the other hand, has opposed the present petitions filed under Section 482 Cr.P.C. and has submitted that a reading of the provision of Section 30(3) of the Act would show that the same is a defence plea and cannot be raised in a petition filed under Section 482 Cr.P.C. and thus, it would be open to the petitioners to raise such a plea during the course of the trial.

This Court has heard learned counsel for the parties and has perused the paper book.

Before this Court consider the merits of the present case, it would be relevant to refer to the judgment of the Division Bench of this Court in *Rajinder Kumar's* case (supra) and coordinate Bench of in *M/s S.S. Aggarwal's* case (supra).

The relevant portion of the judgment of Division Bench of this Court passed in *Rajinder Kumar's* case (supra) is reproduced hereinebelow:-

“2. In the main petition, the matter has been referred by learned Single Judge (R.L. Anand, J.) to the Larger Bench, in view of the conflicting decisions given by this Court while interpreting the provisions of Section 30(3) of the Insecticides Act, 1968 (hereinafter referred to as 'the Act'), to resolve the controversy and to decide the following questions of law, which invariably come before this Court :

"Whether a dealer can agitate and challenge his prosecution in the High Court in a petition under Section 482 Criminal Procedure Code, 1973 by pleading that he acquired the insecticide from an importer or a duly licensed manufacturer, distributor or dealer thereof;

That he did not know and could not, with reasonable diligence, have ascertained that the insecticide in any way contravened any provision of the Insecticides Act, 1968;

That the insecticide, while in his possession was properly stored and remained in the same state as and when he acquired;

OR

Such dealer can challenge his prosecution only in the trial court by proving these facts."

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31. In view of the aforesaid discussion, we hold that the situation enumerated in section 30(3) of the Act is the defence available to the accused dealer and he can avail this defence only after the prosecution leads its evidence to prove its case. Before that stage of prosecution, the criminal complaint or the criminal proceedings initiated against the accused dealer for contravention of the provisions of the Act cannot be quashed in exercise of the powers conferred under Section 482 of the Code on the basis of the averments made in the petition and admitted position in the complaint pertaining to the three situations mentioned in clauses (a), (b) and (c) of sub-section (3) of Section 30 of the Act. The only exception in which the criminal complaint and the prosecution can be quashed, is there where the defence available to the dealer under Section 30(3) of the Act has been accepted by the Appellate Authority under Section 15 of the Act while setting aside the order of suspension or revocation of his license. Thus, the question of law referred to this Bench is answered accordingly.”

A perusal of the above judgment would show that a reference

to the effect as to under what circumstances, the benefit of the provisions of Section 30(3) of the Act can be entertained, was considered, and in paragraph 31, it was observed that the criminal complaint and the prosecution could be quashed where the defence available to the dealer under Section 30(3) of the Act has been accepted by the Appellate Authority under Section 15 of the Act while setting aside the order of suspension or revocation of licence.

The relevant portion of the judgment of a coordinate Bench of this Court passed in *M/s S.S. Aggarwal's* case (supra) is reproduced hereinbelow:-

“3. During the pendency of this petition, learned counsel for the petitioner placed on record, order dated 27.8.2001 of the Appellate Authority viz. Joint Director Agriculture (Plant Protection), Punjab, vide which while restoring the licence of the petitioners for sale of insecticides, protection of Section 30(3) of the Act was also given to them. Relevant part of this order, Annexure P-4, reads as under :-

"Keeping in view all the facts and circumstances of the case, I hereby give protection of subsection (3) of Section 30 of the Act to the appellant and his licence is restored. However, the appellant is not permitted to sell the insecticide 2, 4-D Ethyl Ester 38% manufactured by M/s. Chemical Industries Limited because misbranded insecticide manufactured by this company has been sold by this dealer to the farmers."

*4. According to learned counsel for the petitioners, as protection under Section 30(3) of the Act has been given by the Appellate Authority while restoring the licence of the petitioners, the present complaint filed against them deserves to be quashed. In support of his contention, he has referred to the judgment reported as *Rajinder Kumar v. State of Punjab*, 2003(2) RCR (Criminal) 244, wherein it was held that if the defences available to the dealer have been accepted in the proceedings pertaining to the cancellation of licence by the Appellate Authority under Section 15 of the Act by recording a finding in his favour, then the criminal prosecution for*

the contravention of the same provisions of the Act cannot be allowed to continue and can be quashed by the High Court, in exercise of the powers conferred upon it under Section 482 of the Code. This legal proposition was not controverted by the learned Deputy Advocate General. But, according to his interpretation, the Appellate Authority has not permitted the sale of insecticide 2, 4-D Ethyl Easter 38%, by the petitioners. I am afraid, this interpretation is not correct. As a reading of Annexure P-4 shows, the Appellate Authority has clear accepted the defence of the petitioners and has restored their licence for sale of insecticides, though it has added that the insecticides 2, 4-D Ethyl Easter 38%, manufactured by M/s. Chemical Industries Limited will not be sold by the petitioners, as this insecticide manufactured by these manufactures (of which sample was seized from the petitioner), had been found misbranded. The Appellate Authority has not forbidden the petitioners from sale of the said insecticide manufactured by other manufacturers. The Appellate Authority has accepted the defence of the petitioners and has restored their licence to sell insecticides (including 2, 4-D Ethyl Easter). That being so, the case of the petitioners is squarely covered by the judgment, above referred to, and as such, criminal prosecution for contravention of the same provisions of the Act, for which the defence available to them has been accepted by the Appellate Authority, cannot be allowed to continue. The petition is, therefore, allowed and the criminal complaint pending against the petitioners in the trial court is quashed.

Petition allowed.”

A perusal of the said judgment would show that even in a situation where the license of the petitioner therein was restored with a condition as in the present case, then also the judgment of the Division bench was held to be applicable and the complaint and summoning order were quashed therein.

The law laid down in the above said judgment of the Division Bench in **Rajinder Kumar's** case (supra) and of the Single Bench in **M/s S. S. Aggarwal's** case (supra) is fully applicable to the facts of the present

the marketing company and not the manufacturing company. The said fact has been stated at several places in the complaint including the first page of the complaint as well as in paragraphs 6 and 20 of the complaint. The relevant portions of paragraphs 6 and 20 of the complaint are reproduced hereinbelow:-

“6. That it is submitted that I, Nirmal Singh, Notified insecticides Inspector, Ludhiana, Block Ludhiana, had selected at random one sealed container of 500 grams of Propineb 70% W.P. Having Batch No.SANSA-40546 manufactured by M/s Saraswati Agro Chemicals India Pvt.Ltd., Bari Brahmana, Distt. Jammu (J&K) and marketed by M/s P.I. Industries Limited, Udaipur (Rajasthan) out of the stock of 10 kgs (20 X 500 grams) having manufacturing date 17.05.2014 & expiry date 16.05.2016.

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20. That it is submitted that after examining the relevant records & facts of this case, then the Deputy Director Agriculture (LC&PP) Punjab, Chandigarh-cum- Licensing Authority (Sh.Satwant Singh Brar) being not satisfied with the reply of marketing company had cancelled the Insecticides Licence of this marketing company's sale centre bearing No.LCPP-ADO- 1 1/809 which was valid up to 31.12.2014 vide office Ends.No.LCPP- ADO-14/2430-34 dated 11.12.2014 by exercising his powers under Clause 14(1)(6) of the provisions of the Insecticides Act, 1968 due to the violation committed by this company as per Sections 3k(1), 17, 18, 29 & 33 of the Insecticides Act, 1968. That a copy of this licence cancellation order of this company is annexed as R-18 (original office copy). That this marketing company had then filed an 'appeal' before the Joint Director of Agriculture (Plant Protection), Punjab, Chandigarh 'Appellate Authority' against this licence cancellation order. That the Joint Director of Agriculture (Plant Protection), Punjab, Chandigarh had partially restored the licence of this marketing company after hearing the 'appeal' with the direction not to sell the said batch of this misbranded insecticide vide order dated 04.02.2015. That a copy of this order partially restoring the licence of this company is annexed as R-19 (original office copy).”

averred in the complaint that the manufacturer with respect to the insecticides Propineb was M/s Saraswati Agro Chemicals India Pvt. Ltd (co-accused) and the petitioner company was only the marketing company and it has further been stated therein that the Notified Insecticides Inspector had randomly selected one **sealed container** of 500 grams of Propineb 70% W.P. having batch no.SANSA-40546. There is no allegation in the complaint to the effect that there was any tampering done with the sealed container or that the petitioners had not stored the same in accordance with the Act and the Rules thereunder. It is also clear from the complaint that the petitioners had purchased the said batch from the manufacturer, i.e. M/s. Saraswati Agro Chemicals India Pvt. Ltd. A perusal of the order dated 11.12.2014 (Annexure P-7) would show that the Deputy Director-cum-Licensing Authority had cancelled the insecticides license of the petitioner and in the appeal filed by the petitioner company, the said order was set aside vide order dated 04.02.2015 by the appellate authority and in the said order a specific note was made of the arguments raised by the learned counsel for the petitioner company to the effect that the insecticides had been stored in the same condition as had been manufactured and there was no tempering done and the defence plea as available to the petitioner company under Section 30(3) of the Act was raised and after considering the said arguments and accepting the same, the license of the petitioner company was restored, subject to the condition that the misbranded batch manufactured by the manufacturer, would not be sold. From a perusal of the above order, it is apparent that the defence plea raised by the said company under Section 30(3) of the Act was accepted and thus, the judgment of the Division Bench in *Rajinder Kumar's* case (supra) and the judgment of the

coordinate Bench of this court in *M/s S.S. Aggarwal's* case (supra) would fully apply to the facts of the present case.

Keeping in view the above said facts and circumstances, both the petitions are allowed and the complaint no.5132 dated 05.05.2017 under Sections 3(k)(i), 17, 18, 29 and 33 of the Insecticides Rules, 1971 instituted by the respondent and the summoning order dated 05.05.2017 passed by the Chief Judicial Magistrate, Ludhiana and all the consequential proceedings arising therefrom, are quashed qua the petitioners.

(VIKAS BAHL)
JUDGE

July 22, 2022
Davinder Kumar

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No