

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

CRM-M-38650-2017 (O&M)

Reserved on 03.02.2022

Pronounced on: 14.02.2022

(Heard through VC)

B.S. Gill and another

.... Petitioners

Versus

State of Punjab

.... Respondent

II. CRM-M-38165-2017 (O&M)

M/s Tata Chemical Limited and another

.... Petitioners

Versus

State of Punjab

.... Respondent

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Mansur Ali, Advocate,
for the petitioners.

Mr. Rehat Bir Singh Mann, DAG, Punjab.

JAISHREE THAKUR.J

1. By this common order, this Court proposes to dispose of two criminal miscellaneous petitions filed, namely, ***CRM-M-38165 of 2017*** titled as ***M/s Tata Chemical Limited and another Versus State of Punjab*** and ***CRM-M-38650 of 2017*** titled as ***B.S. Gill and another Versus State of Punjab***, as both the petitions arise out of the same FIR.

2. Through the instant petitions filed under Section 482 Cr.P.C., the petitioners herein have challenged the impugned complaint No.COMP. CHA/CHI No.66/2017, dated 16.05.2017 (Annexure P-7) tilted as *Punjab State through Insecticide Inspector, Office of Chief Agriculture Officer, Hoshiarpur Versus M/s Bhalla Khad Store and others*, under Section 29(i) of the Insecticide Act, 1968, and the summoning order dated 16.05.2017 (Annexure P-8).

3. In brief, the facts are that petitioner No.1 in *CRM-M-38165 of 2017* titled as *Tata Chemicals Limited and another Versus State of Punjab*, petitioner No.1 is a Company with godowns which stock the insecticide/pesticides of the manufacturer, that is, M/s United Phosphorus Limited, arrayed as respondent No.5 in the complaint, whereas petitioner No.2 is the Chief Operating Officer of the said Company. In *CRM-M-38165 of 2017* titled as *B.S. Gill and another Versus State of Punjab*, petitioner No.2 is a responsible person for godown belonging to M/s Tata Chemicals Limited (hereinafter referred to as 'the Company'), whereas Mukesh Gupta, petitioner No.2, is responsible for the conduct of the business of the Company.

4. That an Inspector from the office of Agriculture Office, Hoshiarpur, conducted a search at the premises of M/s Bhalla Khad Store, Hoshiarpur and found that the proprietor in his stock had 25 packets each containing 160 gm. of Piroxafof Proparyl 15% WP TKS-CLODI for public sale, bearing batch No.IKJTC15114 with a manufacturing date of 30.09.2013 and expiry date of 29.09.2015. The samples as seized were sent to the State Forensic Laboratory and the same were found as misbranded. An opportunity

was given to the proprietor of M/s Bhalla Khad Store to send the second sample to the Central Forensic Laboratory and that the sample was found misbranded. Consequent to the analysis report dated 16.01.2015, a complaint was filed on 16.05.2017 and the petitioners herein were summoned under the said complaint.

5. Mr. Mansur Ali, learned counsel appearing on behalf of the petitioners herein assails the complaint and the summoning order primarily on the ground that the petitioners herein are not manufacturers of insecticide that was deemed to be misbranded. In fact they were storing and marketing the same. It is submitted that the array of parties itself reflects the manufacturer to be M/s United Phosphorus Limited, arrayed as respondent No.5 in the complaint. The petitioners herein have been arrayed as the Company owning the godown which stocked & sold the insecticide, the godown incharge and responsible persons of the Company. It is submitted that being a stockist of the said insecticides, no criminal liability could be fastened upon them except in cases where they had any source of information about misbranding, which has not been alleged in the complaint. It is further argued that it is the own case of the complainant that samples were taken from sealed packets and, therefore, there is no allegation that the samples were taken from any packets which were kept open or partially opened. Counsel has relied upon a judgment rendered in ***M/s Bajwa Seed Store and others Versus State of Punjab-2009(1) R.C.R. (Criminal) 378*** wherein it has been categorically held, that if a sample is taken from its original condition, then a dealer has a right to seek protection under Section 30(3) of the Insecticides Act, 1968. To the same effect, reference has also been made to

M/s Sidhu Brothers Store Versus State of Punjab, 2004(2) RCR (Criminal) 366 (P&H) and M/s. Sandeep Pesticides & Fertilizers Versus State of Punjab, 2005(2) RCR (Criminal) 940. Further reliance has been placed upon the judgment rendered in ***M/s Kisan Beej Bandar, Abohar Versus Chief Agricultural Officers, Ferozepur and another, 1990 (Supp) Supreme Court Cases 111*** wherein it has been held as under:-

“.....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 discharged, even in the matter of considering the question of cancellation of licence and, therefore, his licence should not have been cancelled.”

Reference has also been made to ***M/s Monga Pesticides and Fertilizers and others Versus State of Punjab, 2006(1) RCR (Criminal) 466 (P&H), Gurmej Singh and another Versus State of Punjab, 2008(2) RCR (Criminal) 24 (P&H), Deepak Sharma and others Versus State of Punjab, 2008 (2) RCR (Criminal) 24 (P&H).***

6. On the other hand, Mr. Rehat Bir Singh Mann, learned State counsel submits that the samples as found stored with M/s Bhalla Khad Store did not conform to the ISI specification in respect of its percentage of active ingredients Piroxafof Propanyl 11.89% as against Piroxafof Propanyl 15%.

It is argued that a complaint has been filed and the petitioners herein are at

liberty to take all pleas before the trial Court. It is further argued that in a matter of *M/s Dhaliwal Agro Centre, Sahnewal Versus State of Punjab-2002(1) R.C.R. (Criminal) 716*, the contention of the petitioner who sought to quash the complaint on the ground that the samples were drawn from a sealed packet and the petitioner who was a dealer and would not know the contents, was rejected . It was held that the question could be decided only after leading evidence.

7. The facts of the case are not in dispute. A complaint was filed on the ground that the samples taken from the premises of M/s Bhalla Khad Store and sent for testing to the Insecticides Quality Control Laboratory were found to be misbranded. The petitioners are not the manufacturer of the insecticide found to be misbranded. It is an admitted fact that the Company M/s Tata Chemicals Limited owned godowns which stocked the insecticide and the rest were its employees or godown in charge. The insecticides were manufactured by respondent No.5 M/s United Phosphorus Limited. It is also an admitted fact that the samples were drawn from sealed packets and, therefore, it cannot be said that the petitioners had any knowledge about the contents of the packages. It is well-settled that if the samples taken from the original packing of the manufacturer and stored for sale in the same condition, the dealer/distributor is entitled to get protection under Section 30(3) of the Insecticides Act.

8. Counsel for the respondent/State is not able to dispute the fact that the sample had been drawn from the original packing and that the petitioners herein are not the manufacturers.

9. Consequently, relying upon the judgements, as cited above, the proceedings under the complaint (Annexure P-7) and the summoning order are liable to be quashed qua the petitioners.

10. Both the petitions stand allowed.

(JAISHREE THAKUR)
JUDGE

14.02.2022

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Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No