IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-43782 of 2015 (O&M)

Date of Decision:16.9.2022

Raghuram Shetty …Petitioner

Versus

State of Punjab …Respondent

CRM-M-17858 of 2017(O&M)

Jagjeet Singh Dhaliwal …Petitioner

Versus

State of Punjab …Respondent

CRM-M-22938 of 2015 (O&M)

Mohinder Pal Singh and another …Petitioners

Versus

State of Punjab …Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present:- Mr. Rakesh Verma,Ms. Meenu Verma and
Mr. Manish Verma, Advocatesfor the petitioners
in all the cases.

Mr. Manipal Singh Atwal, DAG, Punjab.

AMAN CHAUDHARY, J.

Common questions of law and facts are involved in all these three petitions filed under Section 482 Cr.P.C., for quashing of Complaint No.30 dated 11.06.2014, Annexure P-1 and summoning order dated 11.06.2014, Annexure P-2, passed by Additional Chief Judicial Magistrate,

GAURI SHANKER
2022.11.15 20:43
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Shahid Bhagat Singh Nagar andas such, they are being decided together. The facts are being taken from CRM-M-43782 of 2015.

The first petition, bearing CRM-M-43782 of 2015, has been preferred by the Director of the manufacturing company-**Raghuram Shetty.** The second petition, bearing CRM-M-17858 of 2017, has been preferred by Godown Incharge-**Jagjeet Singh Dhaliwal**. The third petition, bearing CRM-M-22938 of 2015, has been preferred by **Mohinder Pal Singh-** petitioner No.1 being Proprietor of petitioner No.2, firm-M/s Khalsa Beej Bhandar- licensee retailer.

Factual Aspect

Briefly put, M/s Heramba Industries Ltd, Vapi, Gujarat was a registered company, manufacturing various kinds of insecticides and pesticides, holding a valid license in this regard as issued by appropriate licensing authority under the Insecticides Act, 1968. A reference is made to para 2 of the petition, wherein, it is mentioned that there was a lab, fitted with fully modern equipment of testing in the factory premises of the company situated at Vapi, Gujarat, which tests each and every lot of material manufactured by the above said company before sale in the market hence there was no scope left for issuance of misbranded insecticide/ pesticide for sale in the market by the company. A sample of Chlorpyriphos was taken by the Insecticides Inspector from Khalsa Beej Bhandar, a licensee shop of the above said company with date of manufacturing and expiry, as April 2010 and March, 2012, respectively. The insecticide material was alleged to have been manufactured and supplied by the said company which was authorized by the Department of Agriculture Punjab to sell its products in the State of Punjab. The sample aforesaid was found misbranded on it having been

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2022.11.15 20:43
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examined by the State Insecticide Testing Laboratory, Amritsar, wherein active ingredients were found to be 17.25% instead of 20%. Thereafter, the referral part of the sample was sent to Central Insecticide Laboratory, Faridabad, upon which active ingredients were found to be 22.15% instead of 25%. A show cause notice was issued to the petitioners leading to filing of the complaint dated 11.06.2014 Annexure P-1, and passing of the summoning order of even date, Annexure P-2, by the learned trial Court.

Legal submissions

As the first limb of his argument, the learned counsel for petitioners submitted that in light of Section 33 of the Insecticides Act, 1968 (hereinafter referred to as 'Section 33 of the Act'), the proceedings against the petitioners are liable to be quashed. While referring to the aforesaid provision, he had submitted that since the petitioners while holding their respective positions in the company as Director, Godown Incharge and Licensed Seller were not incharge or responsible for the day to day conduct of the business of the company and moreso**,** a specified quality control officer had been nominated; the complaint as also the summoning order are liable to be quashed, as even vicarious liability cannot be fastened upon them to hold them liable. In this regard he had placed his reliance on a judgment of this Court in the case of **M/s Cheminova India Limited and others vs. State of Punjab and others**, CRM-M-12082-2016, decided on 12.05.2020, wherein though this Court in the aforesaid case had quashed the proceedings against the Godown Incharge but not against the Managing Director of the company. However, Hon'ble The Supreme Court of India in **M/s Cheminova India Limited and another vs. State of Punjab and another** 2021 SCC OnLine SC 573, quashed the proceedings qua the

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2022.11.15 20:43
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Managing Director as well, holding that once a person has been nominated by the company for purpose of quality control, in such an eventuality, no person other than that person and the company can be prosecuted and held liable.

In order to build the second limb of his argument, while referring to the aforesaid provision of Section 33 of the Act, the learned counsel had submitted that furthermore, the provision provides that only if a specific allegation of consent, connivance or neglect is leveled against the Director, Manager, Secretary or any other officer concerning the commission of offences, could they be proceeded against. He stated that, however, in the present case, there is no averment whatsoever to this effect made against the present petitioners, who are the Director, the Godown Incharge and the licensed retailer and thus, the complaint is completely bereft of merit. To buttress his submission, he had placed reliance on the judgment passed by Hon'ble The Supreme Court of India in the cases of **State of NCT of Delhi vs. Rajiv Khurana**, (2010) 11 SCC 469 and **M/s Cheminova India Ltd. and another** (supra), wherein, it had been held that where there is no specific averment in the complaint to the effect that the said Director was incharge of and responsible for the day to day business conduct of the company, proceedings under the Insecticide Act could not be initiated, accordingly, in those cases the same were quashed. He had further submitted that this Court had also quashed the proceedings against the Director and Godown Incharge on the aforesaid premise, in the cases of **M/s Cheminova India Limited and another** (supra), **KCS Bhatti vs. State of Haryana**, 2015 (1) RCR (Crl) 162(2), **Kanwaljit Singh Joson vs. State of Punjab** 2018(2) R.C.R. (Crl) 30, **P.D. Garg and others vs. State of**

GAURI SHANKER
2022.11.15 20:43
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Punjab, 2014 SCC OnLine P&H 24782, **Surinder Singh Kooner vs. State of Punjab**, 2015 SCC Online P&H 10280 and **Yadwinder Singh vs. State of Punjab and others**, CRM-M-20884-2018, decided on 05.12.2018.

As regards petitioner-Mohinder Pal Singh, in CRM-M-22938-2015 is concerned, the leaned counsel submitted that he being merely a licensed retailer, in the business of selling insecticides, as manufactured by the company-M/s Heramba Industries Ltd, could not be held liable for any misbranding at the hands of the manufacturer. This is further substantiated from the fact that firstly; he had no control over the manufacturing process, secondly; the sample in this case was taken from sealed packets and there was no averment in the complaint that they were not properly stored. Reliance in this regard, was placed on the judgments by in the cases of **Md.Azhar vs. State of Bihar**, MANU/BH/0868/2009 (Patna) and **Abhishek Abhiranjan @ Babu vs. State of Bihar**, 2007 SCC Online Pat 1439, to solidify the aforesaid submission.

Opposing the petition, the learned State counsel had submitted that the present petition is not maintainable and liable to be dismissed, in view of the availability of an alternate remedy of revision. Reliance in this regard, was placed upon the judgment passed by Hon'ble The Apex Court in case of **Girish Kumar Suneja vs. CBI**, (2017) 14 SCC 809 and by this Court in the cases of **Jasvir Singh vs. Karan Singh,** CRM-M-28235 of 2021 decided on 16.08.2021 and **Kuldeep Singh @ Chandernath Baba Ji vs. State of Haryana and another,** CRM-M-53225 of 2021 decided on 10.01.2022.

GAURI SHANKER
2022.11.15 20:43
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Touching upon the merits of the case, the learned State counsel had submitted that the petitioner in **CRM-M-43782 of 2015**, being the Director of the company was the responsible person and had rightly been arrayed as an accused and accordingly summoned, as such, was liable to be prosecuted.

He had further submitted that in so far as the petitioner in **CRM-M-17858 of 2017** was concerned, he was also liable to be prosecuted for the reason that at the time of seeking the license by the company, an affidavit was filed before the concerned authority by Raghuram Shetty- the Director himself, stating therein, that the petitioner in this case-Jagjeet Singh Dhaliwal, Godown Incharge was also responsible for conduct of business and while Srinivasa Rao was responsible for quality control, as such was liable. He had further vehemently argued that both, the Director and the Godown Incharge are the persons responsible for the day-to-day affairs of the company and as such have rightly been arrayed as accused in the complaint and summoned. Learned State counsel relied on a judgment of this Court in the case of **M/s Unikil Pesticides Pvt. Ltd. vs. State of Punjab and others**, 2015 SCC OnLine P&H 5565, wherein initially, the Managing Director was not arrayed as a respondent, however, on an application filed under Section 319 Cr.P.C. he was summoned, and the said order was upheld by this Court.

It was his submission that taken from any which way, be it on ground of maintainability or merits, these petitions are liable to be dismissed.

Apropos, the aforesaid, the learned counsel for the petitioners had submitted that the judgment in the case of **M/s Unikil Pesticides** (supra)was not applicable in view of the latest judgment by Hon'ble The

GAURI SHANKER
2022.11.15 20:43
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Supreme Court of India in the case of **M/s Cheminova India Limited (supra)**.

He had further referred to the Affidavit, Annexure R-4, that firstly, there was no requirement by the Act for furnishing any affidavit and secondly, this Court in its order passed in CM No. 4937-CWP of 2018, in CWP-4502-2018, in the case of **UPL Limited and another vs. State of Punjab and others,** had deprecated the practice of the department calling for affidavits from the company. Furthermore, there being no specific averment in the complaint, as required having been held by Hon'ble the Apex Court in the above referred judgments, the complaint and summoning order are liable to quashed.

In this regard, the learned counsel had further referred to judgments of this Court in the cases of **SBVR Prasad vs. State of Punjab**, CRM-M-43740 of 2018 decided on 06.08.2022 and **Bhagwan Dass vs. State of Punjab**, CRM-M-23557 of 2019 decided on 06.08.2022, wherein it had been held that the complaint and summoning order were quashed qua the Director and Manager-cum-Godown Incharge, on the ground that there was no specific averment in the entire complaint to show as to how the said two persons were incharge of the business or the company or were responsible for business of the company in any manner and had any role to play with respect to quality of the products, which were manufactured by accused No.3-company. Learned counsel further submitted, that it is the act or neglect on the part of those accused, as per Section 33 of the Act, which has to be averred in the complaint which in so far as the persons arrayed in the complaint are concerned, particularly in case of Director, Godown Incharge and retailer is missing.

GAURI SHANKER
2022.11.15 20:43
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In so far as the contention of the learned State counsel with regard to the remedy of revision being available to the petitioners is concerned, learned counsel for the petitioners relied upon the judgments of that Hon'ble The Supreme Court of India in the cases of **Dhaliwal Tobacoo vs. State of Maharashtra** reported as (2009) 2 SCC 370, **Prabhu Chawla vs. State of Rajasthan and another**, (2016) 16 SCC 30, to contend that availability of alternate remedy is no ground to dismiss a petition filed under Section 482 Cr.P.C., especially once the continuation of proceedings in itself is an abuse of process of law.

Submissions advanced by the respective learned counsel for the parties had been heard at a considerable length.

Maintainability

At the outset, with regard to the objection regarding maintainability of the petition, it would be apposite to recapitulate the law. A reference may be made to a judgment of Hon'ble The Supreme Court of India in the case of **Dhariwal Tobacco Products Ltd.**(supra), the paras relevant to the present case read thus:-

> "2. Whether an application under Section 482 of the Code of Criminal Procedure, 1973, (for short `the Code') can be dismissed only on the premise that an alternative remedy of filing a revision application under Section 397 of the Code is available, is the question involved herein.
> 10. Inherent power of the High Court is not conferred by statute but has merely been saved thereunder. It is, thus, difficult to conceive that the jurisdiction of the High Court would be held to be barred only because the revisional jurisdiction could also be availed of. (See Krishnan and another v. Krishnaveni and another, (1997) 4 SCC 241. In fact in Adalat Prasad v. Rooplal Jindal and others, [(2004) (7) SCC 338)] to which reference has been made by the learned Single Judge of the Bombay High Court in V.K. Jain and others (supra) this Court has clearly opined that when a process is issued, the provisions of Section 482 of the Code can be resorted to.

GAURI SHANKER
2022.11.15 20:43
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13. We may furthermore notice that in Central Bureau of Investigation v. Ravi Shankar Srivastava, [(2006) 7 SCC 188] this Court while opining that the High Court in exercise of its jurisdiction under Section 482 of the Code does not function either as a court of appeal or revision, held :-

"7. Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. The courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognises and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in the course of administration of justice on the principle "quando lex aliquidalicuiconcedit, concederevidetur et id sine quo res ipsaeesse non potest" (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of the process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers the court would be justified to quash any proceeding if it finds that initiation/ continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the

GAURI SHANKER
2022.11.15 20:43
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> complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto."

In **Prabhu Chawla (supra),** Hon'ble The Supreme Court of India has held as under:-

> " 6. In our considered view any attempt to explain the law further as regards the issue relating to inherent power of High Court under Section 482 Cr.P.C is unwarranted. We would simply reiterate that Section 482 begins with a non-obstinate clause to state: "Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice." A fortiori, there can be no total ban on the exercise of such wholesome jurisdiction where, in the words of Krishna Iyer, J. "abuse of the process of the Court or other extraordinary situation excites the court's jurisdiction. The limitation is self-restraint, nothing more." We venture to add a further reason in support. Since Section 397 Cr.P.C. is attracted against all orders other than interlocutory, a contrary view would limit the availability of inherent powers under Section 482 Cr.P.C. only to petty interlocutory orders! A situation wholly unwarranted and undesirable."

The afore referred judgments elucidate the proposition of law that the mere availability of an alternate remedy is not a bar to maintainability of the petition under Section 482 Cr.P.C., the power therein is exercisable in case proceedings are found to be an abuse of process of law and/or the circumstances so require, to secure the ends of justice.

Analysis

Gauging from the submissions as advanced by learned counsel for the parties, the issue that emerges in these petitions for the consideration of this Court, whether Director, Godown Incharge and licensed retailer can be held liable under Section 33 of the Act, in a case of misbranding of a

GAURI SHANKER
2022.11.15 20:43
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product manufactured by a company, when a specific person had been nominated for quality control.

It would thus, at first be, expedient to refer to the provisions of Section 33 of the Act, which reads thus:-

> "**Section 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, and 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 anybody corporate and includes a firm or other association of individuals; and
>
> (b) "director", in relation to a firm, means a partner in the firm."

It may be accentuated at the outset, that from a perusal of the aforesaid section, it becomes apparent that in the case of a company which has committed an offence under this Act, only the persons, who were, at the time when the offence was committed, incharge of, or responsible to the company, for the day to day conduct of the business, as well as the company, would be liable to be proceeded against. Sub Section 2 thereof, further

GAURI SHANKER
2022.11.15 20:43
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envisages, that for attracting the liability for offences committed by the company, towards the Director, Manager, Secretary or other officer of the company, their specific consent or connivance, or neglect has to be established.

The Hon'ble Supreme Court in **State of NCT of Delhi v. Rajiv Khurana,** 2010 (3) RCR (Criminal) 912 has considered the scope of Section 33 of the Act and having referred to previous decisions in **Municipal Corporation of Delhi v. Ram Kishan Rohtagi**, 1983 (1) RCR (Criminal) 73, **State of Haryana v. Brij Lal Mittal**, 1998 (2) RCR (Criminal) 608, **K.P.G. Nair v. Jindal Menthol India Ltd**., (2001) 10 SCC 218, **Katta Sujatha (Smt) v. Fertilizers & Chemicals Travancore Ltd.**, 2002 (4) RCR (Criminal) 502, **Sabltha Ramamurthy v. R.B.S. Channabasavaradhya**, 2006 (4) RCR (Criminal) 296 and **K.K. Ahuja v. V.K. Vora**, 2009 (3) RCR (Criminal) 571 held as follows:-

> "The ratio of all these cases is that the complainant is required to state in the complaint how a Director who is sought to be made an accused, was in charge of the business of the company or responsible for the conduct of company's business. Every Director need not be and is not in charge of the business of the company. If that is the position with regard to a Director, it is needless to emphasize that in the case of non-Director officers, there is all the more necessary to state what were his duties and responsibilities in the conduct of business of the company and how and in what manner he is responsible or liable."

In fact, even with regard to the liability of the Managing Director, in case where the company had nominated other persons, who were already accused, Hon'ble The Supreme Court of India in the case of **M/s Cheminova India Ltd.& another** (supra) held as under:-

> "14. In the case on hand, it is not in dispute that on behalf of the 1 Appellant Company, 2 Appellant - Managing

GAURI SHANKER
2022.11.15 20:43
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> Director has furnished an undertaking dated 22.01.2013, indicating that Shri Madhukar R. Gite, Manager of the Company, has been nominated in the resolution passed by the Company on 28.12.2012 to be in charge of and responsible to the said Company, to maintain the quality of the pesticides manufactured by the said Company and he was authorised to exercise all such powers and to take all such steps, as may be necessary or expedient to prevent the commission of any offence under the Act. Filing of such undertaking with the respondent is not disputed. Even, at Para 5.10 in the counter-affidavit filed before this Court, it is pleaded by the respondents that by appointing persons responsible for affairs of the Company, quality control, etc., 2 Appellant-Managing Director cannot escape his liability from offences committed by 1 Appellant - Company. In view of the specific provision in the Act dealing with the offences by companies, which fixes the responsibility on the responsible person of the Company for conduct of its business, by making bald and vague allegations, 2 Appellant - Managing Director cannot be prosecuted on vague allegation that he being the Managing Director of the 1 Appellant - Company, is overall responsible person for the conduct of the business of the Company and of quality control, etc."
>
> 15. In the instant case, the Company has passed a resolution, fixing responsibility on one of the Managers, namely, Mr. Madhukar R. Gite by way of a resolution and the same was furnished to the respondents by the 2nd Appellant in shape of an undertaking on 22.01.2013. When furnishing of such undertaking fixing the responsibility of the quality control of the products is not in dispute, there is no reason or justification for prosecuting the 2nd Appellant - Managing Director, on the vague and specious plea that he was the Managing Director of the Company at the relevant time. A reading of Section 33 of the Act also makes it clear that only responsible person of the Company, as well as the Company alone shall be deemed to be guilty of the offence and shall be liable to be proceeded against.
>
> 20. As all other nominated/responsible persons of the Company are already accused in the complaint, we are of the view that there is no basis to proceed against the 2 Appellant - Managing Director to prosecute him for the alleged offences"

This Court, while dealing with somewhat similar facts, in the case of **KCS Bhatti** (supra) had made the following observations:-

GAURI SHANKER
2022.11.15 20:43
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> "8. On perusal of Section 33 of the Act, it is clear that in case of violation by the Company/firm under Insecticide Act, the provisions of Section 33 of the Act are required to be complied with. As per provisions of Section 33 of the Act, in case any offence has been committed by the company, every person who was incharge or was responsible for the conduct of the business in company shall be deemed to be guilty of the offence and he shall be liable to be proceeded against and punished accordingly. Sub section (2) makes it clear that when it is proved that the offence has been committed with the consent and connivance of the Director, Manager, Secretary or other officer of the company, he shall be liable to be proceeded against and punished accordingly. For commission of said offence, there is to be specific averments in the complaint by the complainant that such person against whom the complaint was filed was the incharge and was responsible for the conduct of the company at a particular time and alleged offence has been committed with his consent and connivance.
>
> 9. From perusal of section 305 CrPC, it is clear that whenever any offence is committed by the company and the company is prosecuted, then it is for the company to decide that by whom the company is to be represented during trial. The company cannot be compelled to be represented by a particular or a specific officer. Nowhere in the complaint, it is mentioned that the petitioner was incharge and was responsible for the day to day conduct of business of the company at the relevant period or the alleged contravention took place in the company with its consent or connivance. This onus lies upon the prosecution to prove and only then a person can be prosecuted. These requirements have not been fulfilled while filing this complaint as neither requirement of section 33 of the Act has been complied with nor specific averments have been made. The controversy in the present case is squarely covered by the judgment of case in P.D. Gara v. State of Punjab, 2014 (2) RCR (Criminal) 945.
>
> 10.In view of the facts as mentioned above and law position explained as discussed in the above said paras, I am of the considered opinion that mandatory provisions of section 33 of the Act have not been complied with as the complaint does not contain any specific averments with regard to role of the present petitioner."

In **Lochen Kheti Sewa Centre vs. State of Punjab** (2008) 2 RCR (Cri) 22, this court quashed the complaint and summoning order against the seller-accused, as no responsibility could be fastened on him for

GAURI SHANKER
2022.11.15 20:43
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misbranding of product manufactured by a company, where sample was taken from sealed packets which had been properly stored. The relevant paragraph of the judgment reads thus:-

> "3. Learned counsel appearing for the respondent/State has very fairly stated that the petitioner is not the manufacturer. The sample was drawn from sealed packets and there is no material to indicate that it was not properly stored. Under the circumstances the petitioner cannot be held liable for misbranding of the insecticide. Only the manufacturer, who is being proceeded against would be responsible."

The fact that the petitioner-Raghuram Shetty in CRM-M-43782 of 2015, is a Director of the company and not the "Managing Director", coupled with the fact that a specific person had been nominated as the person responsible for quality control as also the absence of averment regarding his consent, connivance or neglect, and therefore, neither the submission of the learned State counsel nor the judgment in the case of **M/s Unikil Pesticides Pvt. Ltd**. (supra) applies to the facts of the present case as also keeping in view the judgment in the case of **M/s Cheminova India Ltd**. (supra)wherein the proceedings even qua the Managing Director, were quashed. Furthermore, this court in the case of **Lochen Kheti Sewa Centre** (supra) has held that the licensed seller cannot be held responsible as long as sample was extracted from properly stored sealed packages, which applies to the case in hand.

In so far as the Godown Incharge is concerned, his duty would essentially be to ensure that articles/goods received from the manufacturing firm are kept in safe condition in the Godown, to maintain a proper inventory of all such articles and goods so received and to further pass on to the same to Distributors and Dealers as per the directions of the

GAURI SHANKER
2022.11.15 20:43
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manufacturing firm. Unless there is a specific averment in the complaint that he was responsible for quality control, it would not render him liable for prosecution for having committed any offence under Insecticides Act 1968.

Adverting to the facts of these cases, it is indubitably clear that one Srinivasa Rao had already been nominated as the responsible person for quality control of the products, who had furnished an affidavit dated 23.12.2010, Annexure-P3, para 3 whereof reads thus:-

> 3. That I am responsible for the Control of Quality of the said firm under Section 33 of the Insecticides Act, 1968 and shall be responsible for all the acts and omission of M/s Heranba Industries Limited, pertaining to the Quality Control and Manufacturing of Pesticides in the State of Haryana."

The aforesaid person has also been arrayed as accused No.4 in the complaint but is not a petitioner in these petitions.

Even if the affidavit dated 20.12.2012 of Raghuram Shetty-Director, wherein it was mentioned that aforesaid Srinivasa Rao had been made responsible for quality control and the Godown Incharge was responsible for the conduct of business, is taken into consideration, it would not lend support to the case of the complainant inasmuch as this Court in the case of **M/s Cheminova India Ltd** (supra) had quashed the proceedings against the Godown Incharge, while Hon'ble The Supreme Court of India, in SLP filed in the aforesaid case quashed the proceedings against the Managing Director as well and observed that while furnishing of an undertaking fixing the responsibility of the quality control of the products there is no reason or justification for prosecuting the Managing Director on the vague and specious plea that he was the Managing Director of the company at that time as a reading of the section 33 of the Act makes it clear

GAURI SHANKER
2022.11.15 20:43
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that only responsible person of the company as well as the company alone shall be deemed to be guilty of the offence and be liable to be proceeded against. Hon'ble The Supreme Court of India in the case of **Monaheb Ketanbhai Shah and another vs. State of Gujarat** and others reported as 2004 (3) RCR (Crl.) 800, held that the primary responsibility was on the complainant to make the necessary averments in the complaint to hold accused vicariously liable, only then would an occasion rise for the accused to rebut the same, as is relatable to facts of the present case.

Conclusion:

Hon'ble The Supreme Court in the cases of **Dhariwal Tobacco, Prabhu Chawla** (supra), **State of Karnataka vs. L.Muniswamy and others,** AIR 1977 SC 1489 and **Jugesh Sehgal vs. Shamsher Singh Gogi,** reported as (2009) 14 SCC 683, articulated the scope and ambit of the power of High Court under Section 482 Cr.P.C. The para as relevant to the present case of the judgment in **L.Muniswamy and others** (supra) reads thus:-

> "7. …..Section 482 of the New Code, which corresponds to s. 561-A of the Code of 1898, provides that:
> "Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the; ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding 29 of 31 ought not to be permitted to degenerate into weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of

GAURI SHANKER
2022.11.15 20:43
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> justice. The ends of justice are higher than the, ends of mere law though justice has got to be administered according to laws made by the, legislature. The compelling necessity for making these observations is that without a proper realization of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects it would be impossible to appreciate the width and contours of that salient jurisdiction."

Paras 16 to 19, as relevant to the present case of the judgment in **Jugesh Sehgal** (supra) read thus:-

> "16. The next question for consideration is whether or not in the light of the afore-mentioned factual position, as projected in the complaint itself, it was a fit case where the High Court should have exercised its jurisdiction under Section 482 of the Code?
> 17. The scope and ambit of powers of the High Court under Section 482 of the Code has been enunciated and reiterated by this Court in a series of decisions and several circumstances under which the High Court can exercise jurisdiction in quashing proceedings have been enumerated. Therefore, it is unnecessary to burden the judgment by making reference to all the decisions on the point. It would suffice to state that though the powers possessed by the High Courts under the said provision are very wide, but these should be exercised in appropriate cases, ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist.
> 18. The inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. The powers have to be exercised sparingly, with circumspection and in the rarest of rare cases, where the court is convinced, on the basis of material on record, that allowing the proceedings to continue would be an abuse of the process of the court or that the ends of justice require that the proceedings ought to be quashed.
> 19. Although in Bhajan Lal's case (supra), the court by way of illustration, formulated as many as seven categories of cases, wherein the extra-ordinary power under the afore-stated provisions could be exercised by the High Court to prevent abuse of process of the court yet it was clarified that it was not possible to lay down precise and inflexible guidelines or any rigid formula or to give an exhaustive list of the circumstances in which such power could be exercised."

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2022.11.15 20:43
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The legal proposition as enunciated by Hon'ble The Supreme Court of India and this Court while elucidating the provision of Section 33 of the Act, gives a complete conspectus that it would be imperative to not only specifically aver in the complaint that the accused was /were responsible for the conduct of the business, more necessarily to state what was the duty and the responsibilities in the conduct of business of the company and how and in what manner they were responsible or liable and that it was not proper to implead all and sundry as accused in the complaint. It was further held that unless clear averments are specifically incorporated in the complaint, the accused cannot be compelled to face the rigmarole of a criminal trial.

The present case being one where the company having nominated a specific person responsible for quality control, mere averring that the petitioners are responsible, without there being elaboration as to how and in what manner they were responsible for the misbranding of the product, coupled with the fact that specific allegations of their consent, connivance or neglect, resulting in the misbranding, being conspicuously missing, would not suffice, to satisfy the mandatory ingredients of Section 33 of the Act, to hold them even vicariously liable, in order to fasten them with the liability of misbranding and thereby the consequence of being penalized.

This Court draws the strength to its conclusion from the judgments in the cases of **Monaheb Ketanbhai Shah, Rajiv Khurana, M/s Cheminova India Ltd**, **Dhariwal Tobacco, Prabhu Chawla**, **L.Muniswamy and** and **Jugesh Sehgal (supra)** and finds itself persuaded to hold that given the aforesaid, the continuation of the proceedings against

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2022.11.15 20:43
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the petitioners would amount to an abuse of process of law and to secure the ends of justice the same are liable to be quashed.

Bearing in mind the aforesaid facts and circumstances of these cases and the law as enunciated, as referred to in the forgoing paragraphs, the present petitions stand allowed. Consequently, and as a sequel thereto, the complaint and summoning order dated 11.06.2014, Annexures P-1 and P-2, alongwith all subsequent proceedings qua the petitioners are quashed.

(AMAN CHAUDHARY)
JUDGE

16.09.2022
gsv

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

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2022.11.15 20:43
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