

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

208

**CRM-M-21496-2019(O&M)
Date of decision: 07.05.2022**

ANIL KAPOOR

....Petitioner(s)

Versus

STATE OF PUNJAB

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present : Mr. Veneet Sharma, Advocate
for the petitioner.

Mr. Karanbir Singh, AAG Punjab.

VINOD S. BHARDWAJ. J. (ORAL)

The question which arises for consideration in the instant petition is as to whether a marketing agency/licensed dealer can be held responsible under the Insecticides Act, 1968, for the contents of the samples when it is not disputed that the seal of the sample was intact at the time of sampling ?

2. The present petition has been filed under Section 482 of the Code of Criminal Procedure seeking quashing of criminal complaint No.COMA 16 of 2018 dated 15.02.2018 (Annexure P-1) titled as 'State of Punjab through Insecticide Inspector Versus M/s Sant Attar Singh Kheti Sewa Centre and Others' for offences under Section 29 of the Insecticides Act, 1968 as well as the subsequent proceedings including the order of summoning dated 17.11.2018 (Annexure P-3) by the Chief Judicial Magistrate, Sangrur.

FACTS:

3. Complaint No. COMA 16 of 2018 dated 15.02.2018 titled as 'State of Punjab through Insecticide Inspector Versus M/s Sant Attar Singh Kheti Sewa

Centre and Others' was filed by the State against various persons, who were claimed to be the dealer, supplier, distributor and manufacturer under the provisions of the Insecticides Act, 1968. The petitioner in the instant petition happen to be accused No.9 in the said complaint.

4. It is alleged that on 31.07.2012 at about 12:30 PM, the complainant—Insecticide Inspector inspected the premises of M/s Sant Attar Singh Kheti Sewa Centre, Badbar Road, Longowal, District Sangrur in the presence of Sh. Rajinder Singh, Agriculture Sub Inspector Officer, Sangrur and disclosed his identity to the proprietor who was selling, exhibiting for sale and stocking pesticides including Cartap Hydrochloride 4% G having brand Veertap with Batch No.VTPPP2004, and the date of manufacturing as 04.04.2012 with an expiry date of 03.04.2014. The total stock of the 5kg pack was 24 units. The said pesticide was purchased by the dealer through distributor M/s. Kissan Agro Service Centre, Longowal, District Sangrur vide bill No.143 dated 26.07.2012. It is contended that the pesticide in question was manufactured by M/s Punjab Pesticide Industrial Co-operative Society Ltd Khanpur, Kharar, District SAS Nagar and that the complainant tried to join public witnesses before drawing the sample, however, no one agreed to join in the sampling procedure. For the purposes of sampling, complainant took one piece of 5kg packing of Cartap Hydrochloride 4% G and drew the loose sample from the 5kg packing in 3 portions each in accordance with the provisions as enshrined in the Insecticides Act, 1968 and the Rules framed thereunder. The relevant extract of the said paragraph No. 6 of the complaint is extracted as under:-

“That on 31.7.2012 at about 12.30 P.M. complainant inspected the premises of M/s Sant Attar Singh Kheti Sewa Center, Badbar Road, Longowal, Distt. Sangrur in the presence of Sh.

Rajinder Singh, Agriculture Sub Inspector Officer Sangrur and disclosed his identify his to Gurmail Singh s/o Sh. Mewa Singh R/o Vill. Longowal, District Sangrur, who was present at that time and was selling, exhibiting for sale and stocking pesticides including Cartap Hydrochloride 4% G having brand Veertap with Batch No.VTPPP2004, date of manufacturing 4.4.2012 expiry date 3.4.2014. It was a 5 Kg pack, total stock was units 24 (24x5Kg). The said pesticide was purchased by the dealer through distributor M/s Kissan Agro Service Center, Longowal Distt. Sangrur through its bill no. 143 dated 26.7.2012 (Photocopy enclosed as Annexure C7). Distributor (accused no.3) M/s "Kissan Agro Service Centre, Longowal Distt, Sangrur purchased above said insecticide directly from the company of M/Chambal Fertilizer and Chemicals Ltd. The said pesticide manufactured by M/S Punjab Pesticide Industrial Co-operative Society Ltd. Khanpur, Khara, Distt. SAS Nagar. Complainant served a notice in from XX (Original from XX enclosed as Annexure C8) to Gurmail singh S/o Sh. Mewa Singh R/o Vill. Longowal, District Sangrur intimating him the intention to draw the sample of the above said pesticide. Complainant tried to join public witness before drawing the sample but none agreed to join in the sampling procedure. For the purpose of sampling complainant took 1 piece of 5Kg packing of Cartap Hydrochloride 4% G and draw the loose sample from 5kg packing in three portion each (250gmx3) of volume and draw the sample strictly according to the provisions as contained in insecticides Act 1968. These samples were put into three cloth bags along with three copies of form no.XXI, in which details of sample were given. There after complainant sealed the parcels with his official seal bearing mark no. SGR 32-II on these parcels are marked Cartap Hydrochloride 4% G Code No. ASI-18 dated 31.7.2012.

5. That after drawing the samples, 2 parcels were deposited with the

Chief Agriculture Officer, Sangrur with seal intact and one seal sample was sent to the Insecticide Testing Laboratory, Bathinda for analysis. The test report of the Senior Analyst, Insecticide Testing Laboratory, Bathinda was received vide letter AR No. 157 dated 01.08.2012 with the remarks that the said sample did not confirm to IS specifications and contained only 3.54% G active ingredient as against 4% G as printed on the label of container and thus the sample was declared as misbranded. The relevant para to reflect the aforesaid averment in the complaint is reproduced as under:-

“8. That the test report of the Senior Analyst, Insecticide Testing Laboratory, Bathinda was received vide their letter AR No. 157 Dated 1.8.2012 with remarks that the said sample was not confirming to IS specifications containing only 3.54% G Active Ingredient against 4% G as printed on the label of container & hence sample was declared misbranded (Original lab report enclosed as Annexure C11)

6. Show Cause Notice as per provisions of Section 24(2) of the Insecticides Act, 1968 was accordingly served by the Chief Agriculture Officer, Sangrur to the manufacturing firm M/s Punjab Pesticide Industrial Co-operative Society Ltd and marketing firm M/s Chambal Fertilizer and Chemicals Ltd vide letter No.5786 and 5787-89 dated 08.08.2012.

7. A second sample was sent for retesting on the request of the dealer firm to the Central Insecticide Testing Laboratory, Faridabad vide memo No.96E dated 18.10.2012 and the said sample was also declared misbranded with the remark that the same does not confirm the relevant specification in the active ingredient contents. The ingredient content was 3.62%G instead of 4%G. The relevant extract of Para No.14 is reproduced herein below:-

“14. That after testing the reference sample. The officer in charge of the Central Insecticides Testing Laboratory, Faridabad has sent the result vide their Serial no. 110344 dated 26.10.2012 to Chief Agriculture Officer, Sangrur declaring that the sample does not confirm to the relevant IS specification in the active ingredient found 3.62% G instead of the required 4% G as the label claim (Original copy of Lab report enclosed as Annexure) C22).”

8. That as per the allegations leveled in the complaint, the petitioner was Managing Director of M/s Chambal Fertilizer and Chemicals Ltd and has been impleaded as an accused No.9. It has been specifically averred in para 18 of the said complaint that the company M/s Chambal Fertilizer and Chemicals Ltd was marketed for sale of the pesticides. The relevant extract of the complaint is reproduced hereinbelow:-

“18. That as explained above M/S Chambal Fertilizer and Chemicals Ltd. Corporate-1, First Floor-5, Commercial Center, Jasola, New Delhi 110025 through: Anil Kapoor S/o Sh. B.B.L. Kapoor (MD), Arun Jaggi S/o Paras Ram Jaggi, H.No. 225, Block-H, B.R.S. Nagar, Ludhiana, Krishan Kumar Jangra S/o Sh. Jilaay Singh Jangra R/o H. No. 51, Sulabh Vihar, Near Asopa Hospital, Geliana Road, Agra 282007 (UP) (Deputy Manager Quality Control & Responsible Person for conduct of Business) has marked for sale and sold the above said misbranded pesticide which is an offence punishable u/s 29 of act read with section 3K (1), 17, 18 & 33 of Insecticide Act, 1968.”

9. Learned counsel appearing on behalf of the petitioner has vehemently argued that the offences under the Insecticide Act, 1968 are not made out qua the petitioner, who is undisputedly, only the marketing agent and not the manufacturer of the insecticide. He has further drawn attention to the relevant provisions of the

Insecticides Act, 1968 under which the petitioner is being sought to be prosecuted and the same read thus:-

Section 3 (k)(i)

“Misbranded”- an insecticide shall be deemed to be misbranded-

- i. if its label contains any statement, design or graphic representation relating thereto which is false or misleading in any material particular, or if its package is otherwise deceptive in respect of its contents; or*
- ii. if it is an imitation of, or is sold under the name of, another insecticide; or*
- iii. if its label does not contain a warning or caution which may be necessary and sufficient, if complied with to prevent risk to human beings or animals; or*
- iv. if any word, statement or other information required by or under this Act to appear on the label is not displayed thereon in such conspicuous manner as the other words, statements, designs or graphic matter have been displayed on the label and in such terms as to render it likely to be read and understood by any ordinary individual under customary conditions of purchase and use; or*
- v. if it is not packed or labelled as required by or under this Act; or*
- vi. if it is not registered in the manner required by or under this Act; or*
- vii. if the label contains any reference to registration other than the registration number; or*
- viii. if the insecticide has a toxicity which is higher than the level prescribed or is mixed or packed with any substance so as to alter its nature or quality or contains any substance which is not included in the registration;*

Section 17

Prohibition of import and manufacture of certain insecticides:-

(1) No person shall, himself or by any person on his behalf, import or manufacture—

(a) any misbranded insecticide;

(b) any insecticide the sale, distribution or use of which is for the time being prohibited under section 27;

(c)any insecticide except in accordance with the conditions on which it was registered;

(d) any insecticide in contravention of any other provision of this Act or of any rule made thereunder: Provided that any person who has applied for registration of an insecticide 14 [under any of the provisos] to sub-section (1) of section 9 may continue to import or manufacture any such insecticide and such insecticide shall not be deemed to be a misbranded insecticide within the meaning of sub-clause (vi) or sub-clause (vii) or sub-clause (viii) of clause (k) of section 3, until he has been informed by the Registration Committee of its decision to refuse to register the said insecticide.

(2) No person shall, himself or by any person on his behalf, manufacture any insecticide except under, and in accordance with the conditions of, a licence issued for such purpose under this Act.

Section 18

Prohibition of sale, etc., of certain insecticides.—

No person shall, himself or by any person on his behalf, sell, stock or exhibit for sale, distribute, 15 [transport, use, or cause to be used] by any worker—

(a) any insecticide which is not registered under this Act;

(b) any insecticide, the sale, distribution or use of which is for the time being prohibited under section 27;

(c) any insecticide in contravention of any other provision of this Act or of any rule made thereunder.

(2) No person shall, himself or by any person on his behalf, sell

stock or exhibit for sale or distribute 16 [or use for commercial pest control operations] any insecticide except under, and in accordance with the conditions of, a licence issued for such purpose under this Act. Explanation.—For the purposes of this section an insecticide in respect of which any person has applied for a certificate of registration 17 [under any of the provisos] to sub-section (1) of section 9, shall be deemed to be registered till the date on which the refusal to register such insecticide is notified in the Official Gazette.

Section 29

Offences and punishment.—

(1) Whoever,—

(a) imports, manufactures, sells, stocks or exhibits for sale or distributes any insecticide deemed to be misbranded under sub-clause (i) or sub-clause (iii) or sub-clause (viii) of clause (k) of section 3; or

(b) imports or manufactures any insecticide without a certificate of registration; or

(c) manufactures, sells, stocks or exhibits for sale or distributes an insecticide without a licence; or

(d) sells or distributes an insecticide, in contravention of section 27; or

(e) causes an insecticide, the use of which has been prohibited under section 27, to be used by any worker; or

(f) obstructs an Insecticide Inspector in the exercise of his powers or discharge of his duties under this Act or the rules made thereunder, 25 [shall be punishable—

(i) for the first offence, with imprisonment for a term which may extend to two years, or with fine which shall not be less than ten thousand rupees but which may extend to fifty thousand rupees, or with both;

(ii) for the second and a subsequent offence, with imprisonment for a term which may extend to three

years, or with fine which shall not be less than fifteen thousand rupees but which may extend to seventy-five thousand rupees, or with both.]

(2) Whoever uses an insecticide in contravention of any provision of this act or any rule made thereunder shall be punishable with fine 26 [which shall not be less than five hundred rupees but which may extend to five thousand rupees, or imprisonment for a term which may extend to six months, or with both].

(3) Whoever contravenes any of the other provisions of this Act or any rule made thereunder or any condition of a certificate of registration or licence granted thereunder, shall be punishable

(i) for the first offence, with imprisonment for a term which may extend to 3[one year, or with fine which shall not be less than five thousand rupees but which may extend to twenty-five thousand rupees, or with both],

(ii)for the second and a subsequent offence, with imprisonment for a term which may extend to 4[two years, or with fine which shall not be less than ten thousand rupees but which may extend to fifty thousand rupees, or with both].

4. If any person convicted of an offence under this Act commits a like offence afterwards it shall be lawful for the court before which the second or subsequent conviction takes place to cause the offender's name and place of residence, the offence and the penalty imposed to be published in such newspapers or in such other manner as the court may direct.

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, 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.

10. By making a reference to the aforesaid provisions, it is submitted that as per the affirmative case of the prosecution, the samples in question were drawn from a packed material and the manufacturer of the said material is M/s Punjab Pesticide Industrial Co-operative Society Ltd, whereas, the petitioner is the marketing agency and the office bearers thereof. As a Marketing agent, he cannot be held responsible for the alleged deficiency in the active ingredients of a sample or be held accountable for a case of misbranding. There is no allegation that any interpolation or interjection had been carried out in the packet of insecticide at the hands of such a marketing agent. He has placed reliance upon the judgement of

this Court passed in the matter of **Lochen Kheti Sewa Centre Vs. State of Punjab, 2008(2) RCR (Criminal) 22.**

11. It is further argued by learned counsel that the petitioner is not responsible for or incharge of the conduct of the business of the manufacturing company and is not responsible to maintain the product quality at the behest of the manufacturer, for the activity undertaken by the said manufacturer, and hence, without prejudice to the substantive arguments raised, the institution of the complaint and the subsequent proceedings against the petitioner are liable to be set aside on the said score as well.

ARGUMENTS BY RESPONDENT-STATE:

14. While advancing arguments on behalf of the respondent, learned State counsel has reiterated the allegations levelled in the complaint and as contained in the reply filed by way of affidavit of Agriculture Development Officer-cum-Notified Insecticide Inspector, Sangrur. It is vehemently argued that it is an established case of misbranding and that the active ingredients were much less than the contents as described in the label. He further makes a reference to the averment contained in Paragraph 10 of the reply on merits to contend that the petitioner is liable to be prosecuted because the branded article was sold and distributed with his knowledge, consent and connivance. The said paragraphs reproduced herein below:-

“4.xxxxxx. The petitioner had been represented to be co-accused on behalf of the marketing company M/s Chambal Fertilizers and Chemical Ltd., as well as represented to be co-accused in his peronal official capacity as mentioned at Sr. No.8 and 9 in the title of the Complaint. xxxxxx.

Reply on merits

9. That the contents of para 9 of the petition are wrong hence

denied. It is submitted that it has been explained under Section 18 and 29(1)(a) of the Insecticides Act, 1968 that no person shall himself or by any other person on his behalf sell, stock or exhibit for sale or distribute any misbranded insecticide. Since this marketing company M/s Chambal Fertilizers and Chemicals Ltd. had packed and marketed the insecticide Cartap Hydrochloride 4% G (Veertap) having Batch No.VTPPP2004 with joint labeling with the manufacturing company, hence this marketing company had been selling and distributing this insecticide being an agent for distributing this insecticide on behalf of this manufacturing company, thus this company is not entitled for the benefit of Section 30 (3) of the Insecticides Act, 1968. xxxxxx.

10. That the contents of para 10 of the Petition are wrong hence denied. It is submitted that this Petition had been filed by the Managing Director of the company M/s Chambal Fertilizers and Chemicals Ltd. and not by the company. That if this insecticide had been supplied in 5-kg sealed packing, even then this marketing company M/s Chambal Fertilizers and Chemicals Ltd. and the Petitioner might be having full knowledge with regard to the actual active ingredient contents of this insecticide, hence they cannot be benefitted. As this insecticide had been packed and labelled jointly with the manufacturing company, hence the Petitioner and this marketing company have to prove their innocence before the Ld. Trial Court during trial. Since this Company and the Petitioner had failed to check the distribution of this misbranded insecticide thus held liable due to the violation of Sections 3k (1), 17, 18, 29 & 33 of the Insecticides Act, 1968 as explained in para 18 of this Complaint.”

15. It is submitted that the petitioner is entitled to take advance in terms

of Section 30(3) of the Insecticides Act, 1968 and that the said aspect has to be proved at the time of defence before the trial Court. He has also referred to the results of the analysis report to supplement his submissions. No other point was argued or no judgement was cited by the learned State counsel.

16. I have heard learned counsel appearing for the parties and have gone through the documents appended along with the petition as well as judgements cited by the petitioner in support of their contention.

CONSIDERATION AND ANALYSIS: LEGAL POSITION

17. It would be pertinent to make a reference to the relevant judicial pronouncements to appreciate the obligation and responsibility of a marketing agent and also his liability to be criminally prosecuted in the event that the sample in question is drawn out of a sealed container, that was intact at the time of sampling, is found to be misbranded after analysis. This court in the matter of **Lochen Kheti Sewa Centre Vs. State of Punjab, 2008 (2) RCR (Criminal) 22** observed as under:-

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 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.

18. Additionally, in the matter of **Deepak Sharma Vs. State of Punjab 2008 (2), RCR (Criminal) 24**, this court observed as under:-

2. The sample seized, on analysis, was found to be misbranded. The plea raised on behalf of the petitioner is that a seller cannot be prosecuted. In support thereof, reliance is placed upon M/s Kisan Beej Bhandar, Abohar v. Chief Agricultural

Officer, Ferozepur and another, 1990 (supp) Supreme Court Cases 11 and M/s Vimal and Co. Grain Market, Mullanpur v. State of Punjab, 2002(2) RCR (Criminal) 56. The former judicial pronouncement was rendered by the Apex Court, while the latter was rendered by this Court. Both these judicial pronouncements are fully supportive of the advocate point of view.

19. Furthermore, this Court in the matter of **Surinder Kumar Vs. State of Punjab, 2011(1) RCR (Criminal) 211** held as under:-

2. Learned counsel for the petitioner contends that the petitioner is a licensee under Insecticide Act, 1968 to deal with various kinds of insecticides and pesticides of registered and approved manufacturers. It has further been clarified that the petitioner sells only sealed and packed insecticides/pesticides. A sample of insecticide that has been manufactured by a company approved by Government of Punjab was drawn on 25.05.2001. The sample was drawn from originally sealed and packed container. In above regards, learned counsel has referred to para No.3 of the petition which is extracted hereunder:

“3. That as per complainant version on 25.05.2001, he drew a sample of one insecticide i.e. Metalyax 8% + Mancozeb 64% EC bearing Batch No.KG-09, Mfg. November, 2000 and Expiry October, 2002 out of two 500 gms. Originally sealed and packed containers lying properly from the shop premises of the petitioner-firm as manufactured by M/s. Fungicide India Ltd. Jammu. The said manufacturing company i.e. M/s Fungicide Ltd. Jammu is the registered and authorised manufacturing company by Govt. of Punjab to sell its products in the State of Punjab”

3. Learned counsel states that it is admitted case of the

respondents that sample was drawn from sealed and packed container. In this regard, learned counsel has referred to Para No.3 of the reply on merits which reads as under:-

3. That the contents of para No.3 of the petition are matter of record.

5. It is not in dispute that the petitioner has a licence to sell insecticides and pesticides manufactured by companies approved by Government of India and Government of Punjab. It is further not in dispute that the sample that has been drawn has been manufactured by approved manufacturer. There is no material available on the file to indicate that the insecticide was stored in violation of rules. It is also the admitted position that sample was drawn from originally sealed and packed containers.

6. In view of the above, the only conclusion that can be drawn is that the petitioner who is merely selling the insecticide had no occasion to tamper with the contents of the container/insecticide.

7. In view of the above, I am of the considered opinion that continuance of proceedings against the petitioner would be abuse of process of law and abuse of process of Court. The petitioner being only involved in sale of insecticide, cannot be held responsible for the contents of the container from which the sample has been drawn.

20. This Court has further in the matter of **Naresh Kumar Vs. State of Punjab, 2011(2) RCR (Criminal) 202** held as under:-

7.It is evident from above that sample was taken from original packing.

8.Affidavit dated 06.12.2010 of S Navtej Singh, Insecticide Inspector, District Kapurthala has been filed. Para 1 of the said affidavit reads under:-

“1. Original packing as per Form XX refers to the stock in possession of accused, which at the time of sampling is in a

sealed condition which is purported to be same as packed, labelled and sealed by the manufacturer. Although, it is stated in the subsequent paragraph that it is yet to be determined whether the insecticide in question (Monocrotophos 36% SL of one liter each) was in original sealed packing or as to whether the sealed packing was tampered with or not, the allegation in the complaint and Form No. XX speaks for themselves. There is no doubt left that the sample was drawn from the originally sealed and packed containers weighing one liter and packed by the registered and authorized manufacturing company. There is no allegation that in the said complaint that the said seal was tampered with or the originally packing was tampered with. There is no allegation that the said sample was not stored in the same state.

(.....)

11. In view of the foregoing discussion, the present petition is allowed. Complaint No. 79 dated 02.03.2007 under sections 3(k) (i), 17, 18, 29 and 33 of the Insecticide Act, 1968 read with rules 27 (5) of the Insecticides Rules 1971 titled as State v M/s Punjab Khad Store and others pending in the Court of learned Chief Judicial Magistrate, Kapurthala and summoning order and all consequential proceedings arising therefrom qua the petitioner are hereby quashed.

21. Moreover, it is pertinent to make a reference to the judgment of the Hon'ble Supreme Court in the matter of ***M/s Cheminova India Limited & Anr Vs. State of Punjab & Ors*** decided on 04.08.2021 passed in Criminal Appeal No.750 of 2021, wherein, the Hon'ble Supreme Court held that proceedings under the Insecticides Act cannot be instituted against all and sundry persons of the company and that as per mandate of Section 33 of the Act, it is clear that responsible persons of the company alone can be deemed to be prosecuted and

liable to be proceeded against. The relevant extracts are stated as under:-

'9. xxxxxxxxxxxxxxxx. In view of the specific provision in the Act dealing with the offences by companies, which fixes the responsibility SLP(Crl.) No. 4144 of 2020 and the responsible person of the Company for conduct of its business, by making bald and vague allegations, 2nd Appellant – Managing Director cannot be prosecuted on vague allegation that he being the Managing Director of the 1st Appellant – Company, is overall responsible person for the conduct of the business of the Company and of quality control, etc. In the instant case, the Company has passed a resolution, fixing responsibility of 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 spacious 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. Though, the Managing Director is overall incharge of the affairs of the company, whether such officer is to be prosecuted or not, depends on the facts and circumstances of each case and the relevant provisions of law. Having regard to specific provision under Section 33 of the Act, and the undertaking filed in the present case, respondent cannot prosecute the 2nd Appellant herein. Thus, we find force in the contention of Mr. Sidharth Luthra, learned Senior Counsel, that allowing the prosecution against 2nd Appellant – Managing Director is nothing but, abuse of the process of law. At the same time, we do not find any ground at

this stage to quash the proceedings against the 1st Appellant – Company.'

DISCUSSION:

22. It is evident from a perusal of the petition as well as documents appended along with the same that the undisputed case of the respondent-State is that the petitioner was a marketing agent of the insecticides. It has been repeatedly so affirmed by the respondent in various paragraphs of the complaint instituted through Insecticide Inspector and already extracted above. It is also not a subject matter of dispute that the sample was drawn from a sealed packet and it is nowhere alleged that the sample had not been stored in accordance with the provisions contained under the Insecticides Act and Rules framed thereunder. There is no allegation that the petitioner was responsible for the quality of the product and for ensuring the labelled ingredients of the same. The petitioner is not nominated as the authorised/responsible officers in terms of Section 33 of the Insecticides Act. The statutory mandate intends to penalize a person who has committed an offence. It does not intend to prosecute the people who are merely dealing with the said product and for which they have no control regarding its quality and content. The petitioner cannot be held vicariously liable and be penalized for misbranding of a product where he is not involved in the manufacturing process at all merely for having traded in the same. Section 3(k)(i) defines 'misbranding'. The same relates the label of products and its contents. It is not the case that any of the activities referred to under section 3 (k) attracting 'misbranding' was undertaken by the petitioner. Furthermore, Section 17 of the Act is also not attracted against the petitioner inasmuch as the petitioner is neither the importer of the misbranded insecticides, nor manufacturer thereof. Moreover, the ingredients of Section 18 of

the Act are also not satisfied and there is no allegation that the petitioner had indulged in the sale of the insecticides, which was either not registered under the Act or was prohibited under Section 27. Similarly, Section 29 also would not be applicable against the petitioner inasmuch as the same contemplates punishment for offences as stated above. Once the necessary ingredients of the said Sections are not satisfied against the petitioner, they cannot be penalized for the same.

23. Insofar as the argument of the respondent-State that the petitioner may take all pleas before the trial Court and establish his innocence in terms of Section 30(3) of the Insecticides Act, is concerned, the said argument does not deserve much credence. The applicability of the said Section and the defence available thereunder has to be seen in the light of the offence for which the accused is being prosecuted. The present case relates to an allegation of mis-branding and unless the petitioner as a Managing Director of the distribution marketing company had any role in the same, the operation of Section 30(3) would not get attracted. The said defence and presumption under Section 30 of the Insecticide Act would come in operation where the accused would otherwise be liable to be prosecuted for the contravention of the provisions and the Act for which he is charged except when such presumption is rebutted. There is no reference in the complaint as per which of the clauses of the Insecticide Act, 1968 have been violated by the petitioner. The best case of the complainant itself is on an assumption that the marketing/distribution company might be having full knowledge with regard to the actual active ingredient. It would not be appropriate or even desirable that a person should be forced to undergo the entire criminal proceedings where the prosecuting agency itself has not leveled any definite allegation against the person sought to be prosecuted and is claiming justification in launching of the prosecution on an

assertion that the accused might be having full knowledge with regard to the actual active ingredient.

CONCLUSION:

24. Having noticed the undisputed facts, the position of law as well as the statutory provisions under which the petitioner is sought to be prosecuted, I find myself in agreement with the precedent judgements of this Court referred to in the preceding paragraphs of this judgment. Considering the same along with undisputed facts, the instant petition is allowed and the criminal complaint No.COMA 16 of 2018 dated 15.02.2018 (Annexure P-1) titled as 'State of Punjab through Insecticide Inspector Versus M/s Sant Attar Singh Kheti Sewa Centre and Others' for offences under Section 29 of the Insecticides Act, 1968 as well as the subsequent proceedings including the order of summoning dated 17.11.2018 (Annexure P-3) are accordingly quashed qua the petitioner.

Petition is allowed.

(VINOD S. BHARDWAJ)
JUDGE

May 07, 2022

S.Sharma(syr)

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>