In The High Court for the States of Punjab and Haryana
At Chandigarh

CRM-M-30759-2019 (O&M)
Date of Decision:- 17.8.2022

M/S Heranba Industries Limited and another .... Petitioners

Versus

State of Punjab ... Respondent

CORAM: Hon'ble Mr. Justice Gurvinder Singh Gill

Present:- Mr. Keshav Pratap Singh, Advocate, for the petitioners.

* * * * *

GURVINDER SINGH GILL, J. (Oral)

CRM-18674-2022

In view of the reasons mentioned in the application, the same is allowed, as prayed for and copy of Licence along with list of responsible persons and affidavits are taken on record as Annexures P-5 and P-6, subject to all exceptions.

Main case

1. The petitioners seek quashing of complaint No. COMA-78, dated 14.7.2017 titled as State Vs. M/s S.V. Kheti Store and other (Annexure P-1) and also order dated 14.7.2017, passed by learned Chief Judicial Magistrate, Ferozepur (Annexure P-4), vide the accused have been summoned to face

trial for offences under Sections 3(k)(i), 17, 18 and 33 punishable under Section 29 of the Insecticides Act, 1968 with Rule 27(5) of the Insecticides Rules, 1971.

2. The allegations, as levelled in complaint, in nutshell, are that on 09.09.2015, a sample of Carbendazim 46.27% SC, manufactured by M/s Heranba Industries Ltd. was drawn from the premises of M/s S.V. Kheti Store, Ferozepur, which upon analysis was found to be mis-branded. As per the report of Regional Pesticide Testing Laboratory, Chandigarh, the active ingredients were found to be 35.84% SC as against 46.27% SC, stated on the label. Upon re-analysis by Central Insecticide Laboratory, Faridabad, the active ingredients were found to be 42.56% SC. Thus, even as per the re-analysis, the active ingredients were found less than the stated 46.27%. Consequently, the complaint was instituted by the State through Insecticide Inspector, Ferozepur, wherein as many as 6 accused have been arrayed including petitioner no.1- M/s Heranba Industries Ltd. through Sh. Raghuram K. Shetty, Executive Director and responsible person and petitioner no. 2 - Sh. Raghuram K. Shetty, Executive Director and responsible person.

3. Learned counsel for the petitioners submits that petitioner no.1 cannot be prosecuted merely on the basis of analyst's report, the authenticity of which is debatable and that in any case, there is nothing to show as to how its Executive Director can be held responsible for the alleged offence. It has been submitted that petitioner No.2 was in no way responsible for the affairs of the company and, as such, cannot be held responsible in case any offence of mis-branding or any offence as regards quality of insecticide is found to

have been committed. Learned counsel submitted that even in the list of responsible persons, as furnished by the company, the column meant for defining the roles of such responsible persons has been kept blank qua petitioner no.2, whereas roles have been specifically defined in respect of other two responsible persons. It has further been submitted that even in the complaint, there is no specific averment as regards the role and responsibility of petitioner no.2 and that in the absence of the same, the petitioners cannot be held responsible in any manner for the offence alleged to have been committed by them.

4. I have heard the learned counsel for the petitioners and have also gone through the petition and the documents annexed with the same.

5. The Insecticides Act, 1968 (hereinafter referred to, in short, as 'the Act'), was promulgated with an object of regulating manufacture, sale, storage etc. of insecticides so as to prevent risk to humans and animals. The following sections need to be borne in mind in order to appreciate the scheme of the Act:

(i) Section 13 – Grant of licence.

(ii) Section 17- Prohibition of import & manufacture of certain insecticides.

(iii) Section 18 – Prohibition of sale etc. of certain insecticides

(iv) Section 29 – Offences and punishments.

(v) Section 33 – Offences by Companies.

6. Section 13 of the Act which provides for issuance of a licence for the purpose of manufacture, sale, storage etc. of insecticides reads as under:

13. Grant of license.-

(1) Any person desiring to manufacture or to sell, stock or exhibit for sale or distribute any insecticide, or to undertake commercial pest control operations with the use of any Insecticide], may make an application to the licensing officer for the grant of a license:

Provided that …. …. ….. …..

(2)
(3)
(4)
(5)

7. Sections 17 and 18 of the Act, which prohibit manufacture, sale, storage etc. of certain insecticides, or prescribe some regulations are reproduced herein-under:

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 …. ….. ….

(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 license issued for such purpose under this Act.

18. Prohibition of sale, etc., of certain insecticides.-

(1) No person shall, himself or by any person on his behalf, sell, stock or exhibit for sale, distribute, [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 [or use for commercial pest control operations] any insecticide except under, and in accordance with the conditions of, a license issued for such purpose under this Act.

Explanation.- For the purposes of this section …. …. ….

8. Section 29 of the Act lays down punishments in terms of imprisonment and fine in respect of various violations under the Act and various offences. Section 33 of the Act, which deals with vicarious liability when an offence is committed by a company reads as under:

> "**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."

9. The above referred sections give a broad picture of the scheme of the Act inasmuch as while Section 17 and 18 of the Act prohibit import, manufacture and sale of certain insecticides, Section 13 provides for grant of licence for

manufacture, sale etc of insecticides. Section 29 of the Act defines different offences and punishments for the same. The Central Government, in exercise of powers under Section 36 of the Act has also framed Rules called as 'The Insecticide Rules 1971' (hereinafter referred to, in short, as 'The Rules'). Said Rules provide for finer details for implementation of various provisions of the Act. It is Rule 9 of the Rules which is relevant to issuance of licence to manufacture insecticides and the same reads as under:

9. **Licences to manufacture insecticides –**

(1) Application for the grant of a licence to manufacture any insecticide shall be **made in Form II to the licensing officer** and shall be accompanied by a fee of rupees two thousand for every insecticide and a maximum of rupees twenty thousand for all insecticides for which the licence is applied.

(2) If an insecticide is proposed to be manufactured at more than one place, separate applications shall be made and separate licences shall be issued in respect of every such place.

(3) A licence to manufacture insecticides shall be issued in Form III and shall be subject to the following conditions, namely:

(i) The licence shall be kept on the approved premises and shall be produced for inspection at the request of an Insecticide Inspector appointed under the Act or any other officer or authority authorized by the licensing officer.

(ii) Any change in the expert staff named in the licence shall forthwith be reported to the licensing officer.

(iii) If the licensee wants to undertake during the currency of the licence to manufacture for sale of additional insecticides, he shall apply to the licensing officer for the necessary endorsement in the licence on payment of the prescribed fee for every category of insecticides.

(iv) xxxxx

(v) The licensee shall comply with the provisions of the Act and the rules made thereunder for the time being in force including the conditions of licence.

(vi) xxxxx

(vii) xxxxx

(4) A licensing officer may, after giving reasonable opportunity of being heard, to the applicant, refuse to grant any license.

(4-A) No license to manufacture an insecticide shall be granted unless the licensing officer is satisfied that necessary plant and machinery, safety devices and first-aid facilities, etc., exist in the premises where the insecticide is proposed to be manufactured.

(4-B) A person who applies for manufacturing licence shall possess **or shall employ a person possessing the following educational qualification**-

(i) Doctorate in chemistry or agriculture chemistry or agriculture chemicals or Master of Technology or Master of Science in chemical engineering or equivalent for manufacture of technical grade pesticides; or

(ii) Master degree in science with chemistry or agricultural chemistry or agriculture chemicals or equivalent as one of the subject for manufacture of pesticide formulation:
Provided that a person possessing a manufacturing licence on the date of notification of the Insecticides (Third Amendment) Rules, 2017 shall be allowed a period of two years to comply with the educational qualiication.

(5) A fee of rupees one hundred shall be paid for a duplicate copy of a licence issued under this rule, if the original is defaced, damaged or lost.

10. A person desirous of getting a licence to manufacture insecticides is required to move an application in prescribed 'FORM-II'. In case the application is accepted the licence is issued in prescribed format in thr shape of 'FORM-III'. The relevant extracts from said FORM-II and FORM-III are reproduced hereinunder:

FORM II

APPLICATION FOR
GRANT OF LICENSE TO MANUFACTURE INSECTICIDES
[See Sub-rule (1) of Rule 9]

To
The Licensing Authority,
....
....

1.	Name, address and e-mail address of the applicant:	
2.	Whether the application is for	
	(a) Grant of Licence to manufacture insecticide;	
	(b) Grant of licence to sell/stock/ exhibit for sale/ distribution of insecticides:	
	(c) Grant/renewal of licence for commercial pest control operations	

3.	Address of manufacturing premises (in case of licence to manufacture)	
4.	x x x	
5.	**a) Qualification of the applicant/ the technical personnel under employment of the applicant:**	

SI. No.	**Name and designation**	**Qualification**	**Experience**

b.	**Whether fulfill minimum qualification as per Insecticide rules.**	
6.	x x x	
7.	x x x	
8.	In case of application for commercial pest control operations, (Enclose supporting documents)	
	(a) to (e) : x x x	
	(f) name of the responsible technical person:	
	(g) to (i) : x x x	
9.	In case of licence to sell/stock etc. and for commercial pest control operations, name of the insecticide(s) and	
10 to 13	x x x	

………………………………...
Signature of the applicant with seal

Declaration
(Strike out which is not applicable)

(a) I ________________s/d/o____________________do hereby solemnly verify that the information given in the application ....

(b) I declare that we have adequate space and facilities to stock insecticides, so as to maintain their quality on shelf.

(c) I shall not supply insecticide(s) to any distributor or dealer or person who does not have adequate space and facilities to stock them so as to maintain their quality on shelf under every circumstances. (for application for licence to manufacture)

(d) I also declare that I shall not take possession of any stock without satisfying myself with the quality thereof.

(e) I undertake that we shall forthwith inform any change in the responsible technical person.

(f) I undertake that we shall forthwith inform any change in principle certificate to the licensing officer (not applicable for application for licence to manufacture)

(g) I further declare that I am making this application in my capacity as ___________ and that I am competent ....

Place: …………..
Date:……………..

………………………………...
Signature of the applicant with seal

11. As is noticed in FORM-II, there are certain undertakings required to be furnished at the time of applying for a licence to manufacture insecticides. FORM-III imposes similar conditions at the time of issuance of licence. The relevant extracts from FORM-III are reproduced herein-under:

FORM III
(On Letterhead of the Licensing Officer)

LICENCE TO MANUFACTURE INSECTICIDES
[See sub-rule (3) of rule 9]

1. License Number _________________
License to manufacture / sell, stock or exhibit for sale or distribute insecticide(s) / carrying out commercial pest control operations in the premises situated at
....

as specified hereunder: -

SL. No.	Particulars of Insecticide	Number of Certificate of Registration	Date of grant of Licence	Validity of Licence, wherever applicable
1	2	3	4	5

2. The insecticide(s) shall be manufactured / sell, stock or exhibit for sale or distribute insecticide / commercial pest control operations under the direction and supervision of the following expert staff:

a) For manufacture: Name(s) and designation of the expert staff (Insecticide wise, if any); and

b) For sale / stock / pest control operations: Name and designation of the expert staff

3. The licence is subject to such conditions as may be specified in the rules for the time being in force under the Insecticides Act, 1968 as well as the conditions on the certificate of registration and others as stated below.

Signature of the Licensing Officer Seal

CONDITIONS

1. This licence shall be displayed in the prominent place in the premises for which the licence is being issued and shall be produced for inspection as and when required by an Insecticide Inspector, licensing officer or any other officer authorised by the Government in this regard.

2. Any change in the name of the expert staff, named in the licence, shall forthwith be reported to the licensing officer.

3. The licensee shall scrupulously comply with each and every condition of registration of the insecticide(s), failing which the licence is liable to be cancelled.

4. to 15 : x x x

....
Signature of the licensing officer

12. The stringent provisions have been provided in the Act for regulating manufacture and sale of insecticides so as to achieve the object of the Act which needs no underlining. Pesticides including insecticides are not just to be manufactured safely but also handled and used safely to ensure that the purpose for which they are to be used do not pose any threat not just to human life, animals, flora and fauna but do not even affect environment. It is for this purpose that stringent requirements and conditions have been imposed under the Act and Rules for undertaking process of manufacturing.

13. The scheme of Rules can broadly be stated that while Rule 9 of the Rules lays down the procedural requirement for obtaining a licence to manufacture insecticides, "Form - II' is the prescribed form on which an application containing requisite particulars is to be made. While Rule 9(4B) of the Rules prescribes educational qualification of the expert required to be employed, 'Form- II' specifically requires that particulars of technical personnel employed be furnished to licencing Authority at the time of applying for issuance of a manufacturing licence. Pursuant to an application submitted in prescribed format i.e 'FORM II', a licence is issued in prescribed format i.e. 'FORM III', wherein some conditions are prescribed directing the licencee to ensure compliance of same.

14. Undoubtedly, the person actually supervising the manufacturing process when such process is actually being undertaken, who is a technical hand, shoulders a great responsibility as regards the quality of products being manufactured. The Rules require that particulars especially qualification of such technical person be furnished at the time of making an application for issuance of licence for manufacturing drugs. Further, even when the licence

is issued, which would be in shape of FORM III, the particulars of expert staff are specifically incorporated in condition no.2 of Licence (FORM III) and it is mandated that insecticide(s) shall be manufactured under his direction and supervision. Such experts are even nominated insecticide-wise if several insecticides are manufactured by the same manufacturer.

15. As noticed, the nominated technical expert is to supervise the manufacturing process and would be liable in case anything goes wrong in manufacturing process, particularly if such wrong was avoidable. However, nominating an an expert doesn't mean that those at the helm of affairs have nominated a scapegoat to withstand all slaughters if something is amiss. Apart from actual manufacturing process, there are several other activities involved which play an essential role in maintaining quality e.g. procurement of the right raw material, proper maintenance of the infrastructure including machinery etc, proper moisture-proof packaging etc. All these activities are also to be managed and supervised diligently. The Rules mandate that the moment a new technical expert is appointed or the earlier one is changed, such change is to be immediately informed to Licencing Officer. Condition no.2 in Licence (FORM III) specifically states so. The said condition is incorporated so as to comply with provisions of Rule 9(3)(ii) of the Rules which specifically mandates that any change in expert staff named in licence shall forthwith be reported to Licencing Officer. Thus, apart from the technical expert and the Managing Director, there would be some other persons also who could be said to be responsible for managing the affairs of the company. Though, strictly speaking, the role and responsibility of a

person qua the company where he works is a matter which can only be ascertained during trial but the complainant certainly is required to state briefly in the complaint as regards the role of person required to be prosecuted. If such restrictions are not there, all the employees would be at mercy of complainant and, though not even remotely connected with day-to-day affairs of company, they could be harassed.

16. In the present case, petitioner no.1 is the company itself (manufacturer) and as such, in the absence of any substantial technical flaw, or any lack of jurisdiction, would be liable to be prosecuted. Nothing has been shown to this Court which could warrant exercise of jurisdiction under Section 482 Cr.P.C. to quash complaint against petitioner no.1.

17. Now coming to petitioner no.2., Sh. Raghuram K. Shetty, Executive Director, this Court does find that the complainant has not elaborated on his role and responsibilities qua the company. He is referred to as the Executive Director and responsible person. A perusal of para No.10, would indicate that there is a specific averment to the effect that petitioner No.2-Raghuram K. Shetty, Executive Director and responsible person of M/s Heranba Industries Limited had committed offence in league with other accused specifically named therein.

18. Before proceeding further, it needs to be seen as to how an "Executive Director" is defined under the Companies Act, 2013 and Rules framed

thereunder. Section 2(k) of the Companies (Specification of Definitions Details) Rules, 2014 published in the Gazette of India dated 31.03.2014, defines `Executive Director' as follows: -

> "Executive Director" means a whole time Director as defined in Clause (94) of Section 2 of the Act."

19. Section 2(94) of the Companies Act, 2013 defines a 'Whole-time Director' as follows:-

> "Whole-time Director" includes a Director in the whole-time employment of the company."

20. The position regarding liability of a Managing Director, Director, Managerial staff etc. came to discussed in detail by Hon'ble Supreme Court in *2009(3) RCR (Criminal) 571 K.K. Ahuja v. V.K. Vohra*. The said judgement, though delivered while interpreting provisions of Section 14 of Negotiable Instruments Act, 1881, but ratio of the same can well be imported while discussing scope and ambit of Section 33 of the Act. The provisions of Section 33 of the Insecticides Act 1968, insofar as the same deal with liability of a 'responsible' person are absolutely similar to provisions of Section 141 of the Negotiable instruments Act regarding vicarious liability. The same can be gauged from similar language used in the corresponding sections of the two Acts which are juxtaposed hereinunder:

THE INSECTICIDES ACT 1968	THE NEGOTIABLE INSTRUMENTS ACT 1881
33. Offences by companies.— (1)Whenever an offence under this Act has been committed by a company, **<u>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</u>** 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 ….. ….. x x x *(emphasis supplied)*	**141. Offences by companies**. - (1) If the person committing an offence under Section 138 is a company, **<u>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</u>** 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 ….. ….. x x x *(emphasis supplied)*

21. As noticed above, the provisions regarding vicarious liability as existing in both the Acts, are *pari materia*. Under both the Acts, if the person who commits an offence is a company, the company as well as any other person in charge of or responsible for the conduct of affairs of the company would be vicariously liable for commission of offence. As such, aid can be had from judgements delivered while interpreting Section 141 of the Negotiable Instruments Act, 1881. In <u>*K.K. Ahuja's*</u> case (supra) the court summarised the position under Section 141 of the Negotiable Instruments Act, 1881 as under :-

(i) If the accused is the Managing Director or a Joint Managing Director, it is not necessary to make an averment in the complaint that he is in charge of, and is responsible to the company, for the conduct of the business of the company. It is sufficient if an averment is made that the accused was the Managing Director or Joint Managing Director at the relevant time. This is because the prefix "Managing" to the word "Director" makes it clear that they were in charge of and are responsible to the company, for the conduct of the business of the company.

(ii) In the case of a Director or an officer of the company who signed the cheque on behalf of the company, there is no need to make a specific averment that he was in charge of and was responsible to the company, for the conduct of the business of the company or make any specific allegation about consent, connivance or negligence. The very fact that the dishonoured cheque was signed by him on behalf of the company, would give rise to responsibility under sub-section (2) of Section 141.

(iii) **In the case of a Director, secretary or manager [as defined in Section 2(24) of the Companies Act]** or a person referred to in clauses (e) and (f) of Section 5 of the Companies Act, **an averment in the complaint that he was in charge of, and was responsible to the company, for the conduct of the business of the company is necessary to bring the case under Section 141(1) of the Act. No further averment would be necessary in the complaint, though some particulars will be desirable**. They can also be made liable under Section 141(2) by making necessary averments relating to consent and connivance or negligence, in the complaint, to bring the matter under that sub-section.

(iv) Other officers of a company cannot be made liable under sub-section (1) of Section 141. Other officers of a company can be made liable only under sub-section (2) of Section 141, by averring in the complaint their position and duties in the company and their role in regard to the issue and dishonour of the cheque, disclosing consent, connivance or negligence.

22. In the present case, the fact that petitioner no.2 - Sh. Raghuram K. Shetty, who is stated to be Executive Director and responsible person, is indeed a person responsible for conduct of business of the company can well be gauged from the following facts:

(i) A perusal of statement No.1 i.e. 'List of Responsible Persons' (Annexure P-5) would indicate that the following three persons are stated to be responsible persons:

S.No	Name	Designation	Responsible for
1.	Sh. Raghuram K Shetty S/o Sh. Kanyan Pakeera Shetty	Executive Director	--- --- --- --- ----
2.	Sh. Ch Srinivasa Rao S/o Sh. Venkataratnam	General Manager	Quality Control
3.	Sh. Jagjeet Singh Dhaliwal S/o Sh. Gurdev Singh Dhaliwal	Regional Manager	Godown Incharge Conduct of Business & Authorised Signatory

(ii) The aforesaid statement – 'List of Responsible Persons', had apparently been furnished to Licencing Authority either at the time of applying for licence to manufacture insecticides or subsequently, if any change may have been brought about in such list, as is mandated under rule 9 of the Rules of 1971 and as prescribed in FORM II and FORM III. The name of petitioner No.2 having been specifically included in the list of responsible persons, he cannot escape from his liability even if the column indicating 'Responsible for' is kept blank. Not defining a specific role in the column of responsibility could even suggest that role of petitioner is not confined to one particular field but extends to all the affairs of the company, being higher in hierarchy.

(iii) The fact that petitioner no. 2 - Sh. Raghuram K. Shetty, Executive Director is placed high up in the hierarchy would be evident from the fact that he is the one who has even undertaken before the Licencing Authority, by way of furnishing an Affidavit dated 15.12.2014 (Annexure P-6), that he would be appointing responsible persons and in their absence, he would take responsibility. The said affidavit is reproduced hereinunder:

> "1. That I am Executive Director of M/s Heramba Industries Ltd. The said firm is manufacturing/ marketing pesticides.
>
> 2. That I hereby undertake that in case **Mr. Jagjeet Singh Daliwal, Godown Incharge**, Mr. Srinivasa Rao s/o Sh. Venkataraman, responsible for quality control and **Mr. Jagjeet Singh Dhaliwal responsible for conduct of business under section 33 of Insecticides Act 1968**, leaves/ retires/ left the firm or terminated from firm, I shall nominate and authorise alternate persons. In case, authorised or nominated person do not appear, I shall take the responsibility.
>
> Date : 15 Dec 2014 Deponent"

(iv) Though in the said affidavit, Mr. Jagjeet Singh Daliwal is stated to be "responsible for conduct of business under Section 33 of the Insecticides Act 1968", but the petitioner who apparently is amongst those at the helm of affairs, having authority to appoint key persons can not escape from his liability by nominating a Godown Incharge, as being a person responsible for conduct of business under Section 33 of the Act. Rather, in terms of Section 33 of the Act, his role and responsibility in appointing, authorising and nominating employees for sensitive assignments duly makes him a person responsible for business and affairs of company;

(v) and last but not the least is that the manufacturing company i.e. M/s Heranba Industries Ltd. has itself chosen to be represented by Sh. Raghuram K. Shetty, i.e. by petitioner no.2 being Executive Director and responsible person, which shows the important role of the petitioner in managing the affairs of the company;

23. The above referred Affidavit (Annexure P-6) coupled with 'List of Responsible persons', as furnished by the petitioners leaves no manner of doubt as regards role and responsibility of petitioner no.2 towards the affairs

of the company which would be sufficient to put him to trial though of-course he may be able to rebut the assertions of his being responsible for the affairs of the company.

24. Hon'ble Supreme Court in *A.R. Radha Krishna vs. Dasai Deepthi (2019)15 SCC 550*, held as under:-

> "7. Having heard learned counsel for the parties and carefully scrutinizing the record, we are of the considered opinion that the High Court was not justified in allowing the quashing petitions by invoking its power under S.482, Cr.P.C. In a case pertaining to an offence under S. 138 and S. 141 of the Act, the law requires that the complaint must contain a specific averment that the Director was in charge of, and responsible for, the conduct of the company's business at the time when the offence was committed. The High Court, in deciding a quashing petition under S. 482, Cr.P.C., must consider whether the averment made in the complaint is sufficient or if some unimpeachable evidence has been brought on record which leads to the conclusion that the Director could never have been in charge of and responsible for the conduct of the business of the company at the relevant time. While the role of a Director in a company is ultimately a question of fact, and no fixed formula can be fixed for the same, the High Court must exercise its power under S. 482, Cr.P.C. when it is convinced, from the material on record, that allowing the proceedings to continue would be an abuse of process of the Court."
>
> (emphasis supplied)

25. Thus, it is evident that the approach of the Courts has to be pragmatic and the facts which are clearly evident should not be overlooked. Section 33(2) of the Insecticides Act, provides any person who was in charge of or was responsible to the company for conduct of its business shall be deemed to be

guilty and liable to be proceeded against for any offence committed by the company. As discussed in detail in para 22 above, petitioner No.2, having been nominated as responsible person and evidently being at helm of affairs of the company, a deeming presumption in terms of Section 33 of the Act can safely be drawn so as to proceed against him. The petitioner may well be able to rebut such presumption but the same would be a matter of trial. In these circumstances, this Court does not find it to be a case where inherent powers under Section 482 Cr.P.C. should be invoked for the purpose of quashing the complaint (Annexure P-1) or to set aside the summoning order (Annexure P-4) qua either of the petitioners.

26. The petition is sans merit and is hereby dismissed.

17.8.2022 **(GURVINDER SINGH GILL)**
Mohan/kamal **JUDGE**

Whether speaking /reasoned Yes / No
Whether Reportable Yes / No