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

CRM-M-7078-2018

Date of decision : 09.12.2022

Anurag Surana

...Petitioner

Versus

State of Punjab

...Respondent

**CORAM: HON'BLE MR. JUSTICE VIKAS BAHL**

Present: Mr. Gaurav Chopra, Sr. Advocate with  
Mr. Nitin Thatai, Advocate and  
Ms. Seerat Saldi, Advocate and  
Ms. Meghna Garg, Advocate for the petitioner.

Mr. Iqbal S. Mann, DAG, Punjab.

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**VIKAS BAHL, J. (ORAL)**

This is a petition filed under Section 482 of Cr.P.C. for quashing of complaint bearing No.4151 dated 20.04.2017 registered under Sections 3K(1), 17, 18, 29, 33 of the Insecticides Act, 1968 read with Rule 27(5) of the Insecticides Rules, 1971 (Annexure P-1) and also summoning order dated 20.04.2017 (Annexure P-2) passed by the Chief Judicial Magistrate, Ludhiana alongwith all other consequential proceedings arising therefrom.

Learned Senior Counsel for the petitioner has submitted that a perusal of the complaint dated 20.04.2017 would show that the present

petitioner has been shown to be the Responsible Director of the company M/s P.I. Industries Limited, which company is the manufacturing company.

Learned Senior Counsel for the petitioner has further highlighted the fact that there are other accused also who have been made party and one Rahim Aglodia has also been made as an accused and is stated to be the Responsible Quality Control Senior Executive of the company M/s P.I. Industries Limited. Accused No.1 is stated to be M/s PI Industries Limited which has been impleaded through Sh. Suresh Kumar Sharma, Godown Incharge and the responsible person for conduct of business of the company at Ludhiana. It is further submitted that in the present case, as per the complaint, the premises of M/s PI Industries Limited were inspected on 24.07.2014 and vide analysis report dated 01.08.2014, it was found that there was 9.02% active ingredient contents of Phorate instead of Phorate 10% CG and hence, it was found that the sample procured during inspection did not confirm to IS specifications. It is contended that a perusal of para 23 of the complaint would show that while giving the details of the persons who were responsible officials on behalf of the manufacturing company, reference was made to statement No.1 of the licence of the company and copy of the same was annexed alongwith the complaint. It is highlighted that in para 24, further reference was made to the affidavits submitted by the present petitioner and also by Rahim Adlodia for the compliance of Section 33 of the Insecticides Act, 1968.

Learned Senior Counsel for the petitioner has pointed out that on the basis of the said documents, the conclusion drawn by the complainant in para 24 was to the effect that it was just possible that the said insecticides might have been manufactured, sold, stocked and distributed and offered for sale with the consent or connivance or due to neglect of the accused officials in performing their official duties while working in company. It is further submitted that since, the documents which have been taken into consideration for implicating the present petitioner are the aforesaid licence and the affidavit submitted by the petitioner, thus, reference to the same is required to be necessarily made. It is argued that the licence which had been annexed alongwith the complaint has also been annexed by the respondent-State alongwith its reply as Annexure R-4 (Page 30 of the reply) and a perusal of the said licence would show that in Clause 4, it has been specifically mentioned that the list of responsible persons is contained in statement No.1. At page 32 of the reply, the list of responsible persons has been given in which the said Rahim Aglodia at Sr. No.4 has been designated as Quality Control Manager and is stated to be responsible for the quality control whereas the present petitioner is shown at Sr. No.1 and although, he is designated as the Director but the corresponding column under the heading "Responsible" is left blank. It is further argued that from the said document, it is clear that the said Rahim Aglodia was responsible for quality control of the products manufactured by the manufacturing company and the present petitioner had no role, responsibility or

expertise regarding the same. Reference has also been made to affidavit dated 10.06.2011 (Annexure P-9) (at page 63 of the petition) which was also annexed alongwith the complaint so as to implicate the present petitioner. It is contended that a perusal of the said affidavit would show that the only responsibility which has been taken by the petitioner was that in case, Mr. Rahim Aglodia, Quality Control Manager, responsible for quality control and Mr. S.K. Sharma, Godown Incharge and responsible for conduct of business under Section 33 of the Insecticides Act, 1968 “leaves/retires/left the firm”, then the petitioner would nominate and authorize alternate persons and in case, the authorized or nominated persons did not appear, then he would take the responsibility. It is further contended that licence was valid from 01.01.2013 to 31.12.2014 and as per the said licence, Rahim Aglodia was duly nominated as the person responsible for quality control and thus, on the date when the inspection was carried out i.e. on 24.07.2014, the said Rahim Aglodia was very much responsible as he was working in the aforesaid capacity with the manufacturing company on the said date.

Learned Senior Counsel for the petitioner has relied upon judgment of the Hon'ble Supreme Court in “**M/s Cheminova India Ltd. & Anr. vs. State of Punjab & Anr.**” reported as **2021(3) RCR (Criminal) 750**, to contend that once a person has been nominated as the person responsible for quality control of the products, then a person who is a Director of the company cannot be held responsible.

On the other hand, learned State Counsel, has opposed the

present petition and has submitted that the fact that in the list of responsible persons, the name of the petitioner has also been mentioned and the fact that the petitioner was also a Director of the company at the time of inspection, would show that the petitioner was also responsible for quality of the insecticides in question and cannot wash his hands of the said liability by saying that another person had been appointed as the person responsible for quality control.

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

On 19.02.2018, notice of motion was issued in the present case and on 12.10.2018, a Coordinate Bench of this Court was pleased to grant an interim order in favour of the petitioner which has continued till date. Reply has also been filed by the respondent.

The Hon'ble Supreme Court of India in the case of ***M/s Cheminova India Ltd's*** case (supra) has held as under:-

*“Criminal Appeal No.750 of 2021 (Arising out of SLP (Crl.) No.4144 OF 2020)*

*M/s. Cheminova India Limited & Anr. ...Appellant(s)*

*vs.State of Punjab & Ors. ...Respondent(s)*

*12. This Criminal Appeal is filed by the Petitioners / Accused nos. 3 and 4 in CRM-M-12082-2016 (O & M) before the High Court of Punjab & Haryana at Chandigarh, aggrieved by the Order dated 12.05.2020. By the aforesaid order, the Petitioners' application of quashing of Complaint No. 313 dated 19.08.2015, filed by the Respondent No.2 - The Quality Control Inspector, Bhikhiwind, District Tarn Taran, Punjab for offences under Sections 3(k)(i), 17, 18 and 33, punishable*

under Section 29 of the Insecticides Act, 1968 (for short, "the Act"), was dismissed. The petition was allowed by the High Court for other accused, who was working as Godown Incharge, and quashed the proceedings.

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16.....Learned Counsel has submitted that by making vague and bald allegations, the appellants, who were the Company and the Managing Director, are also sought to be prosecuted.

16(a). It is submitted that unless there is a clear and categorical averment in the complaint, indicating the role played by the appellants, there cannot be any vicarious liability on the 1st Appellant - Company and the 2nd Appellant-Managing Director for commission of the alleged offence. In support of his arguments, learned Senior Counsel has placed reliance on the judgment of this Court in the case of Managing Director, Castrol India Limited v. State of Karnataka & Anr., 2018 (17) SCC 275, and also another judgment of this Court in the case of Shiv Kumar Jatia v. State of NCT of Delhi, 2019 (17) SCC 193.

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17. On the other hand, learned Counsel, appearing for the Respondents, has submitted that the High Court has considered all the grounds raised by the petitioners and rejected the petition to quash the proceedings. It is submitted that the 2nd Appellant, being the Managing Director of the 1st Appellant -Company, which is the manufacturer of the product in question, was rightly prosecuted by the 2nd Respondent - Quality Control Inspector, Bhikhiwind, District Tarn Taran, Punjab. Learned Counsel has submitted that there is no violation of provision under Section 24 (4) of the Act and Section 202 of the Code of Criminal Procedure and

*there are no grounds to interfere with the order of the High Court. It is submitted that the Appellant No.2 was the Managing Director of the Company at the relevant point of time, as such, he is overall responsible person for quality control of the products of the Company, as such, he is also liable for prosecution.*

*18. Having heard the learned Counsels on both sides, we have perused the impugned Order and other material placed on record.*

*19. Section 33 of the Act deals with 'offences by companies'. A reading of Section 33(1) of the Act, makes it clear that 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. In the case on hand, it is not in dispute that on behalf of the 1st Appellant -Company, 2nd Appellant - Managing 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 authorized 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.....*

*.....In view of the specific provision in the Act dealing with the offences by companies, which fixes the responsibility 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.*

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21. 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 2nd Appellant - Managing Director to prosecute him for the alleged offences.*

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*22. For the aforesaid reasons this Criminal Appeal is partly allowed, so far as the Appellant No.2 - Managing Director is concerned and the impugned Order of the High Court dated 12.05.2020, passed by the High Court of Punjab & Haryana at Chandigarh in CRM-M-12082-2016 (O & M), is set aside. Consequently, Complaint No. 313 dated 19.08.2015, filed by the 2nd Respondent - Quality Control Inspector, Bhikhiwind District Tarn Taran, Punjab, pending before the learned Judicial Magistrate First Class, Patti stands quashed qua the Appellant No.2 namely Mr. Pramod N. Karlekar / Accused No.4. Further, it is made clear that the observations and findings recorded in this order are made only for the purpose of disposal of this Appeal arising out of quash petition and it is open for the Trial Court to record its own findings, based on the evidence on record, and take such other steps, in accordance with law.”*

A perusal of the above said judgment would show that in Criminal Appeal no.750 of 2021 which arose from the proceedings under Section 482 Cr.P.C., which was allowed by the High Court qua the Godown Incharge in the case therein and was dismissed qua accused no.3 and 4 and one of the accused, who had filed the said appeal, was the Managing Director of the company in question therein. It was observed that a reading of Section 33 of the Act 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 and although, the Managing Director is overall incharge of the affairs of the company but in the facts and circumstances of the said case as per which Shri Madhukar R. Gite, was specifically nominated to be the incharge and the responsible officer to maintain the quality of the pesticides manufactured by the said company and after taking into consideration the relevant provisions of law, it was observed that the proceedings against the second appellant, i.e. Managing Director therein, were nothing but an abuse of process of the Court and were thus, quashed qua second appellant therein, however, the proceedings against the company were not quashed. The ratio of law in the above said judgment would apply in the present case also.

A perusal of the complaint would show that the petitioner is stated to be Responsible Director of the company M/s PI Industries Limited, which is the manufacturing company. Rahim Aglodia has also been made an accused and he is stated to be the Responsible Quality Control Senior Executive of the company M/s PI Industries Limited. The company-M/s PI Industries Limited has been shown to be accused No.1 which has been impleaded through Suresh Kumar Sharma, Godown Incharge and Responsible Person for conduct of business of the company at Ludhiana. The premises of M/s PI Industries Limited was inspected on 24.07.2014 and from the analysis report dated 01.08.2014, it was found that 9.02% active ingredient contents of Phorate instead of Phorate 10% CG was contained in the sample of insecticides which was taken at the

time of the said inspection and thus, it was found that the said sample did not confirm to the IS specifications and accordingly, after following the procedure, the present complaint was filed. The present complaint was filed on 20.04.2017 and the summoning order was also passed on the said date. A perusal of the complaint more so, paras 23 and 24 would show that the persons who were stated to be responsible on behalf of the manufacturing company were the present petitioner and Sh. Rahim Aglodia. Reliance was primarily placed upon statement No.1 in the licence of the company and also the affidavits which were submitted to the authorities, including the affidavit submitted by the petitioner for the compliance of Section 33 of the Insecticides Act, 1968 which were annexed along with the complaint. In para 24 of the complaint, the assertion made for initiating proceedings against the present petitioner was not in affirmative terms. A perusal of the licence which was annexed alongwith the complaint, which has also been annexed as Annexure R-4 (page 30 of the reply) would show that the same was valid from 01.01.2013 to 31.12.2014 and in column No.4(i) of the same, it was mentioned that the list of responsible persons was contained in statement No.1. At page 32 of the reply, the said list of the responsible persons has been given. The said list is reproduced hereinbelow:-

“List of Responsible Persons

| <i><b>Sn.</b></i> | <i><b>Name with Father's Name</b></i>                   | <i><b>Designation</b></i> | <i><b>Responsible</b></i> |
|-------------------|---------------------------------------------------------|---------------------------|---------------------------|
| <i><b>1</b></i>   | <i><b>Mr. Anurag Surana<br/>S/o Sh. S.S. Surana</b></i> | <i><b>Director</b></i>    | <i><b>---</b></i>         |

|   |                                                 |                              |                                         |
|---|-------------------------------------------------|------------------------------|-----------------------------------------|
| 2 | Mr. Suresh Kumar Sharma s/o Sh. Lekh Ram Sharma | Regional Manager             | Conduct of business and Godown Incharge |
| 3 | Yogesh Dutt s/o Sh. Vishvambhar Dutt            | Q.C. Executive Unit: Udaipur | Quality Control                         |
| 4 | Sh. Rahim Aglodia s/o Sh. Noor Mohammad         | Q.C. Manager Unit: Panoli    | Quality Control                         |

A perusal of the above would show that Rahim Aglodia is shown to be designated as the Quality Control Manager and is also stated to be responsible for the quality control whereas the petitioner is although, designated as Director but in the column of responsibility (titled “Responsible”), nothing has been mentioned. The affidavit which is stated to have been submitted by the petitioner in compliance of Section 33 of the Act, which was also a part of the complaint, is annexed as Annexure P-9 (at page 63 of the petition). Relevant portion of the said affidavit is reproduced here as under:-

*“2. That I hereby undertake that in case, Mr. Rahim Aglodia Quality Control Manager, responsible for quality control and Mr. S.K. Sharma, Godown Incharge and responsible for conduct of business under Section 33 of the Insecticides Act, 1968. Leave/retires/left the firm, I shall nominate and authorize alternate persons. In case, authorized or nominated persons do not appear, I shall take the responsibility.”*

A perusal of the above affidavit would show that the only responsibility which the petitioner had undertaken was that in case Rahim Aglodia, Quality Control Manager, who was responsible for quality control and Mr. S.K. Sharma who was responsible for conduct of the

business under Section 33 of the Insecticides Act, 1968, leave/retires/left the firm, then he would nominate/authorize alternate persons and in case, the authorized/nominated persons do not appear, then, he shall take the responsibility. In the present case, even as per the complaint, the date of inspection was 24.07.2014 and the analysis report had been submitted on 01.08.2014 and even the subsequent report had been submitted on 26.09.2014. A perusal of the licence (Annexure R-4) would show that the said licence was valid from 01.01.2013 to 31.12.2014 and in the list of responsible persons, the responsible person for quality control was shown to be Rahim Aglodia, thus, it is apparent that Rahim Aglodia was working with the manufacturing company on the date of the alleged occurrence/offence. The said Rahim Aglodia has also been made as an accused in the impugned complaint. The case of the petitioner would be on a higher footing than the case of appellant No.2 in the judgment of Hon'ble Supreme Court in *M/s Cheminova India Ltd's* case (supra) as the appellant No.2 before the Hon'ble Supreme Court in *M/s Cheminova India Ltd's* case (supra) was the Managing Director of the manufacturing company against whom the proceedings were quashed whereas the petitioner, even as per the case of the prosecution, is stated to be only a Director of the manufacturing company.

Keeping in view the abovesaid facts and circumstances and also in view of law laid down in the abovesaid judgments, the present petition is allowed and complaint bearing No.4151 dated 20.04.2017 registered under Sections 3K(1), 17, 18, 29, 33 of the Insecticides Act,

1968 read with Rule 27(5) of the Insecticides Rules, 1971 (Annexure P-1) and also summoning order dated 20.04.2017 (Annexure P-2) passed by the Chief Judicial Magistrate, Ludhiana alongwith all other consequential proceedings arising therefrom qua present petitioner are quashed/set aside.

All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid judgment.

**09.12.2022**

*Pawan*

**(VIKAS BAHL)  
JUDGE**

**Whether speaking/reasoned:-      Yes/No**

**Whether reportable:-                Yes/No**