

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

227

CRM-M-9794-2018 (O&M)

Date of decision: 23.11.2022

M/s Thandi Fertilizers and another

...Petitioners

Vs.

**State of Punjab through Insecticide
Inspector, District SAS Nagar, Mohali**

...Respondent

CORAM : HON'BLE MR. JUSTICE DEEPAK MANCHANDA

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

Mr. Jashandeep Singh, AAG, Punjab.

DEEPAK MANCHANDA, J.(ORAL)

By way of present petition filed under Section 482 Cr.P.C. the petitioners have sought quashing of the criminal complaint No.17 dated 22.07.2014 (Annexure P-4) titled as “State through Insecticide Inspector, SAS Nagar Vs. M/S Thandi Fertilizer, Kharar and others” for offences under Sections 3(k)(i), 17, 18, 29 and 33 of the Insecticides Act, 1968 read with Section 27(5) of the Insecticides Rules, 1971 as well as consequential proceedings, including summoning order dated 05.08.2015 (Annexure P-5).

The facts emanating from the pleadings of the present case are that the petitioner No.1 is a firm, who through its proprietor-petitioner No.2 has licence to sell, stock or exhibit for sale or distribute by retail, insecticide Stock under Insecticides Act, 1968 and the said licence dated 06.02.2008 (Annexure P-1) was in force from 06.02.2008 to 31.12.2009. On 09.12.2009, Insecticide Inspector, Kharar, District SAS Nagar along with Agriculture Development Officer, Kharar inspected the premises of

the petitioner-firm and took samples of the insecticide medicine Clodinafop-Propargyl 15% W.P. and selected 03 packets of 160 gram each bearing batch No.WZAP8006 & Date of manufacturing 25.10.2008 having expiry date 24.10.2010 which were manufactured by M/S Punjab Pesticides Co-operative Industries Limited, Khanpur (Kharar) and supplied by M/S Chambal Fertilizer & Chemical Limited. As per the test report of the Senior Analyst, Insecticide Testing Laboratory, Bathinda, sample was received in the office of Chief Agriculture Officer, SAS Nagar on 06.01.2010, the sample was declared misbranded with the remarks that sample does not confirm to IS specifications with respect of this percentage, as the active ingredient was 13.76% W.P. instead of 15% W.P. Then, on the request of the dealer (petitioner-firm) the sample was resent for retesting in the Central Insecticide Laboratory, Faridabad, however, the Central Insecticide Laboratory, Faridabad on 15.04.2010 also declared the sample as misbranded with the remarks that the sample does not confirmed with the relevant specifications, as active ingredient was 12.3% W.P. instead of 15% W.P. Further, a copy of the analysis report was delivered to petitioner No.1, supplier/firm-M/s Chambal Fertilizer and Chemicals Ltd. And Manufactures Firm, M/s Punjab Pesticides Co-operative Industries Ltd.Khanpur, Kharar with a show cause notice as per provision of Section 24(2) of the Insecticides Act, 1968 by Chief Agriculture Officer, SAS Nagar through letter No.50-53 dated 08.01.2010. Reply to the show cause notice was received from Dealer/Supplier and Manufacturer firm vide letter No.TF/sample/44 dated 19.01.2010 and supplier vide dated 18.01.2010 and manufacturer firm vide 19.01.2010. Further, notice of personal hearing was given to dealer firm M/s Thandi Fertilizer Kharar by

Chief Agriculture officer SAS Nagar vide letter No.860-863 dated 21.01.2010 and reply dated 29.04.2010 to the same was received. Thereafter, the Chief Agriculture Officer, SAS Nagar cancelled the licence vide order dated 30.04.2010. Thereafter, the petitioners filed appeal under Section 15 of Insecticide Act, 1968 against the order dated 30.04.2010 of Chief Agricultural Officer, SAS Nagar before the Joint Director Agriculture, Punjab (Appellate Authority) where counsel for the appellant (petitioner-firm) contended that the appellant-firm had purchased the medicine prepared by the registered manufacturing company and under whichever condition were purchased, in that very condition were stored by the dealer and no tampering was done of any type with the medicine. The appellate authority vide order dated 12.07.2010 gave its findings that charges of unauthorized keeping/storing and selling insecticide Clodinafop-Propargyl 15% W.P. manufactured by M/S Punjab Pesticides Co-operative Industries Limited, Khanpur (Kharar), by the dealer are proved and held that dealer by keeping the misbranded medicine and by selling has violated the Insecticides Act, 1968 and Rules 1971. Accordingly, the Appellate Authority written to Chief Agriculture Officer, SAS Nagar for taking further necessary action under Insecticides Act, 1968 and Rules 1971 on the basis of facts. Hence, the present complaint, which is under challenge along with all the consequential proceedings including the summoning order.

Learned counsel for the petitioners contended that the sample was taken on 09.12.2009, the order of the Appellate Authority is of dated 12.07.2010 wherein although the appellate authority written to Chief Agriculture Officer, SAS Nagar for taking further necessary action under

the Insecticides Act, 1968 and Rules, 1971 on the basis of facts with respect to sale of Clodinafop-Propargyl 15% W.P. manufactured by M/S Punjab Pesticides Co-operative Industries Limited, Khanpur (Kharar) which were supplied to the petitioner-firm, but the remaining licence No.6 of the petitioner-firm was restored. However, petitioners were not exempted from any legal action in the present complaint filed on 22.07.2014, wherein the test report was available on 06.01.2010 declaring the sample mis-branded and the complaint as time barred. Learned counsel for the petitioners further contended that the said complaint has been filed in violation of Sections 29 and 30 of the Insecticide Act, 1968 as the packets of the insecticide from which samples were stated to have been drawn by the complainant were found to be sub-standard, as the same were drawn from a stitched bag and petitioners not being the manufacturers of the said insecticides are not responsible. Even the complaint filed by the respondent-State against the petitioners is misconceived as even as per the complaint itself the expiry date was duly displayed on the packets and the insecticide had not expired.

In support of his contentions, learned counsel for the petitioners relies on the judgment passed by the Hon'ble Supreme Court in *"M/S Cheminova India Ltd. & Anr. Vs. State of Punjab and Anr."* 2021 (3) RCR (Criminal) 750 and the judgments passed by the this Court in CRM-M-38165-2017 *M/S Tata Chemical Limited and another Vs. State of Punjab*, CRM-M-5022-2011 *"M/s Sandhu Kheti Store Sewa Centre and others Vs. State of Punjab"*, CRM-M-21176-2019 *"M/s Preet Kheti Sewa Center & Anr. Vs. State of Punjab"*, CRM-M-1384-2007 *"M/s Bajwa Seed Store and others Vs. State of Punjab"*, CRM-M-13774-2009

“Ramesh Kumar and others Vs. State of Punjab” and CRM-M-27699-2012 “M/S Swastik Pesticides Pvt. Ltd. and others Vs. State of Punjab”.

Vide order dated 08.03.2018, this Court had issued notice of motion and stayed the proceedings before the trial Court. In pursuance to the same, the respondent-State filed reply dated 21.01.2021 by way of affidavit of Amarjit Singh, Insecticide Inspector, Kharar. Learned State counsel referring to the same submits that the present petition is not maintainable against the summoning order as the petitioners have remedy of filing revision petition against the summoning order (Annexure P-5) and petitioners have straightway approached this Court without availing the said remedy. Learned State Counsel further submits that the shop premises of the petitioners were inspected in the presence of petitioner No.2 where 31 packets of Clodinafop-Propargyl 15% W.P. bearing batch No.WZAP8006 having manufacturing date 25.10.2008 and expiry date 24.10.2010 manufactured by M/S Punjab Pesticides Co-operative Industries Limited, Khanpur (Kharar) and supplied by M/S Chambal Fertilizer & Chemical Limited for public sale to farmers. The sample was collected from 03 packets weighing 160 grams each, were sealed and put in three polythene bags and were fastened with thread and were put in three clean and dry cloth bags and were sealed and one part of the sealed sample was sent to Senior Analyst Insecticide Testing Laboratory, Bathinda vide letter No. 1339 dated 11.12.2009 whereafter receiving the report dated 06.01.2010, the sample did not confirm to IS specification with respect to its present active ingredient content found 13.76% W.P. instead of 15% W.P. hence, the same was misbranded. He also submits that the petitioners were rightly summoned along with other accused persons for offence under

the Insecticide Act, 1968 and the present petition has been filed after a gap of 2½ years from passing of the summoning order i.e. 05.08.2015. While referring to para 4 of the reply, he again submits that petitioner No.1 applied for reanalysis of the samples of insecticide from the Central Insecticide Laboratory, Faridabad, which was allowed and even as per report dated 15.04.2010, the sample did not confirm to the relevant IS specification as per the active ingredient content requirement and the same was again found misbranded. He further asserts that petitioner No.2 being the proprietor of petitioner No.1 was incharge and responsible person for conduct of business for petitioner No.1 at the time of taking sample of above insecticides, hence, the petitioners have committed the offence under Insecticides Act, 1968 by storing and selling the misbranded insecticides to agriculturist and thus, liable to be punished under Section 29 of the Insecticides Act, 1968 with Rule 27(5) of the Insecticides Rules, 1971. Accordingly, the complaint was filed after receiving reports and petitioners have been rightly summoned and prays for dismissal of the present petition.

Having heard the learned counsel for the parties.

Before adjudicating the issue, in view of the submission made by learned State counsel the maintainability of the present petition under Section 482 Cr.P.C is to be dealt with and same is answered that in view of the settled proposition of law in case titled as “***Prabhu Chawla Vs. State of Rajasthan & Another***”, 2016 (4) R.C.R.(Criminal) 270, where the Apex Court had dealt with the similar issue and held that the inherent powers under Section 482 of Cr.P.C cannot be limited as the provision of revision attracted against the impugned summoning order and mere

availability of alternative remedy cannot be a ground to disentitle the relief under Section 482 of Cr.P.C. Accordingly, present petition is maintainable under Section 482 of Cr.P.C for quashing of the summoning order dated 05.08.2018.

Two issues which require consideration in the present case are firstly, whether the complaint filed by the respondent-State is time barred and secondly, whether the petitioners can be held liable for the misbranded samples collected by the respondent-State being the distributor, stockist or supplier but admittedly not the manufacturer of insecticides.

To deal with the first issue it would be relevant to examine various judgments on the issue of limitation.

The Hon'ble Supreme Court in the case of "***M/s Cheminova India Ltd. & Anr. Vs. State of Punjab and another***", 2021 (3) RCR (Criminal) 750, held as under:-

"10. In the present case, it is not in dispute, the complainant-2nd respondent has received the report of analysis on 14.03.2011 from the Insecticide Testing Laboratory, Ludhiana and the complaint was lodged on 25.03.2014 which is beyond a period of three years from 14.03.2011. The only submission of the learned counsel for the State is that further report from the Central Insecticide Testing Laboratory was received on 09.12.2011 which is the conclusive evidence of the facts, as such, the complaint is within the period of limitation. We are not convinced with such submission made by learned counsel for the State. When it is clear from the language of Section 469, Cr.PC that the period of limitation shall commence on the date of offence, there is no reason to seek computation of limitation only from the date of receipt of report of the Central Insecticide Testing Laboratory, Faridabad. As per the procedure prescribed under the Statute, i.e., Insecticide Act, 1968 and the rules made thereunder, the Insecticide Testing Laboratory, Ludhiana was the competent authority to which the sample was sent on 17.02.2011, after drawing on 10.02.2011, and the report of analysis was received on 14.03.2011, as such the said date is said to be the crucial date for commencement of period of limitation. By virtue of the said report received on 14.03.2011 which states that the active ingredient of the

sample was only to the extent 34.70% as against the labelled declaration of 40%, it is clear that it is the date of offence allegedly committed by the accused. Merely because a further request is made for sending the sample to the Central Insecticide Testing Laboratory, as contemplated under Section 24(4) of the Act, which report was received on 09.12.2011, receipt of such analysis report on 09.12.2011 cannot be the basis for commencement of limitation. The report of analysis received from the Insecticide Testing Laboratory, Ludhiana on 14.03.2011 itself indicates misbranding, as stated in the complaint, thus, the period of limitation within the meaning of Section 469, Cr.PC commences from 14.03.2011 only. In that view of the matter, we are clearly of the view that the complaint filed is barred by limitation and allowing the proceedings to go on, on such complaint, which is ex facie barred by limitation is nothing but amounts to abuse of process of law. Though the learned counsel has also raised other grounds in support of quashing, as we are persuaded to accept his submission that complaint filed is barred by limitation, it is not necessary to deal with such other grounds raised."

This Court in the case of “**M/s Doaba Seed Store & Anr. Vs.**

State of Punjab”, 2018 (4) Law Herald 3396, held as under:-

13. In Sanjay Kumar's case (supra), Hon'ble Supreme Court held that the limitation to file complaint starts from the date of receipt of report of Public Analyst and not from the date of collection of sample by the Drug Inspector. Similarly, this Court in Om Parkash Aggarwal's case (supra), held that the limitation for filing a complaint under the Act is three years from the date of receipt of State Public Analyst Report and the complaint instituted after a period of three years is barred under Section 468 Cr.P.C., 1973.

14. In the case in hand, the sample was drawn on 18.07.2012 and the analysis report was received on 22.08.2012, whereas the complaint was filed in the Court on 01.07.2016, as is apparent from Annexure P-1. Therefore, this Court finds that there appears to be substance in the argument of learned counsel for the petitioners. Merely because the sample was sent for a second laboratory test on the request of accused is of no help for the complainant to delay the filing of the complaint. The petitioners cannot be held responsible for the delay, if any, as the same is solely at the behest of the complainant.

15. It would be pertinent to mention here that though the petitioners could have availed the remedy of revision, but when from the face of it, this Court finds that the complaint was filed by the complainant beyond the period of limitation,

*in case the said complaint is allowed to be continued, it would be a futile exercise. Therefore, this Court while invoking the provisions of Section 482 Cr.P.C. 1973 can entertain the present petition. In this regard, this Court finds support from **Prabhu Chawla v. State of Rajasthan and another 2016(4) RCR (Criminal) 270**, wherein Hon'ble Supreme Court has held that a petition for quashing the order of Magistrate is maintainable and the availability of remedy under Section 397 Cr.PC would not make a petition under Section 482 Cr.PC not maintainable.*

16. Thus, for the reasons stated hereinabove, the present petitions are allowed and there being a statutory bar of limitation, this Court has no hesitation to quash the complaint dated 01.07.2016 (Annexure P-1) as well as the summoning order dated 04.08.2016 (Annexure P-3) passed by learned Chief Judicial Magistrate, SBS Nagar."

In the case bearing CRM-M No.4744 of 2018 of "**M/s Insecticides India Ltd. & Ors. Vs. State of Punjab**", held as under:-

"6. Having given thoughtful consideration to the rival submissions made by learned counsel for the parties, this Court finds merit in the instant petition for the reasons to follow:-

1. Undisputedly, the premises of M/s Sitara Lal Raghvir Parkash was raided by the complainant on 16.07.2011. Report qua misbranding of first sample was received on 25.07.2011 and second report from Faridabad authority was received on 01.02.2012. The impugned complaint was filed on 22.07.2015 i.e. after a period of 3 years, 5 months and 10 days. The period of limitation for filing the complaint under sub clause 2(c) of Section 468 Cr.P.C, 1973 is three years. Therefore, after expiry of three years, the impugned complaint could not have been filed. Sanction letter (P-3) shows that the complainant applied for sanction on 19.08.2014 and the same was granted on 10.11.2014 i.e. within three months. In case, the period of three months is excluded, the impugned complaint filed on 22.07.2015 can still easily be declared being hopelessly time barred.

7. In the rulings referred above, it is held that limitation to prosecute under the Act starts from the date of receipt of report of public analysts and not from the date of collection of sample and if, the complaint is filed beyond the period of limitation of three years, the same is not maintainable."

In the case of "**M/s Zimidara Kheti & Anr. Vs. State of Punjab**" 2019 (1) RCR (Criminal) 288, held as under:-

10. Having heard the learned counsel for the parties, this Court finds adequate substance in the argument raised by learned counsel for the petitioners. A bare perusal of the facts of the case on record shows that the report of the Government Analyst had been received by the complainant on 26.06.2007. Even the sanction for prosecution, though applied too belatedly on 12.01.2010, was received on 17.09.2010 itself. Hence as per the mandate of Section 468(3) of Cr.P.C; and judgment of Supreme Court in the case of State of Rajasthan(Supra) complaint in the present case could have been filed, at the best, within a period of 03 years from the date of receipt of report of the Government Analyst. However, the complaint has been filed after 08 years from the said date. Hence, the complaint in the present case is hopelessly time barred.

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13. Since taking of cognizance by the Court itself is prohibited; in case the complaint not filed within the prescribed period, therefore, the subsequent proceeding in the form of summoning, order also stands vitiated. This Court has already considered this aspect in the case of Sohan Singh and others (supra). The case of the present petitioner is further fortified by the fact that in the same complaint, the manufacturer, who is primarily responsible for manufacturing of spurious insecticide, already stands discharged on the basis of complaint being time barred only. Learned State counsel has not brought on record anything to show that the State has even challenged that order in favour of the manufacturer. In view of this, there is no legal justification, whatsoever, for continuing the proceedings against the petitioners; who happens to be only a retailer of the product; found to be spurious."

From a plain reading of the aforementioned judgments, it is apparent that period of limitation begins from the receipt of the report of analyst. In the present case, where the test report was available on 06.01.2010, the complaint was filed on 22.07.2014, therefore, the complaint is hopelessly time barred.

The second issue is whether there is any liability of petitioners for the misbranded samples. In the present case, the complaint dated 22.07.2014 was filed under Sections 3(k)(i), 17, 18, 29 and 33 of the Insecticide Act, 1968 read with Section 27(5) of the Insecticide Rules, 1971. The same are reproduced hereinbelow for ready reference:-

“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 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 as the company, shall be deemed to be guilty of offence 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."

Section 30 of the Insecticide Act is also reproduced hereinbelow:-

"30. Defence which may or may not be allowed in prosecutions under this Act.-

(1) Save as hereinafter provided in this section, it shall be no defence in a prosecution under this Act to prove merely that

the accused was ignorant of the nature or quality of the insecticide in respect of which the offence was committed or of the risk involved in the manufacture, sale or use of such insecticide or of the circumstances of its manufacture or import.

(2) For the purposes of Section 17, an insecticide shall not be deemed to be misbranded only by reason of the fact that-

(a) there has been added thereto some innocuous substance or ingredient because the same is required for the manufacture or the preparation of the insecticide as an article of commerce in a state fit for carriage or consumption, and not to increase the bulk, weight or measure of the insecticide or to conceal its inferior quality or other defect; or

(b) in the process of manufacture, preparation or conveyance some extraneous substance has unavoidably become intermixed with it.

(3) A person not being an importer or a manufacturer of an insecticide or his agent for the distribution thereof, shall not be liable for contravention of any provision of this Act, if he proves-

(a) that he acquired the insecticide from an importer or a duly licensed manufacturer, distributor or dealer thereof;

(b) that he did not know and could not, with reasonable diligence, have ascertained that the insecticide in any way contravened any provision of this Act; and

(c) that the insecticide, while in his possession, was properly stored and remained in the same state as when he acquired it."

From the plain reading of the aforementioned provisions it transpires that the case of the prosecution is that the samples in question were drawn from sealed packed material and the manufacturer of the said packets were M/S Punjab Pesticides Co-operative Industries Limited and this fact has also not been disputed by the State that the petitioners are the stockist, supplier and not the manufacturers but they have tried to carve out a case by referring the reports that the petitioners were using misbranded

products which lead to violations of the provisions of the Insecticides Act, 1968. However, the respondent has failed to establish the fact that there is no interjection carried out in the packets of insecticides at the hands of petitioners being the marketing agent specially when the petitioners have asserted that at the time of collecting samples, the packets were sealed, which were not even expired as per the expiry date displayed on the said packets. Moreover, there is nothing on record to suggest that the insecticides had not been properly stored by the petitioners before its supply and that the petitioners have manufactured the samples. Though in the complaint itself, it is specifically mentioned by the respondent-State that the petitioners are the stockist, supplier or the marketing agents. A perusal of Section 30 of the Act shows that the petitioners is entitled to protection under the same in case the sample is taken from the sealed container and the seal had not been tampered when the same has been recovered from the premises of the petitioners. Further, the protection would not be available to the dealer or distributor in case the insecticide has not been stored properly but that is not the case of the present petitioners. In support of his contentions that the petitioner is a wholesale dealer and cannot be held liable in such situation. Reliance has been placed on various judgments as well as Annexures P-6 & P-7 wherein on similar facts and in one of the judgments which is related to manufacturer on the same principle of law where the samples were taken which were sealed and were not tampered with, the complaint qua the whole sale dealers and sub-dealers were quashed and relying on the same learned counsel for the petitioners prays for quashing of the present complaint along with summoning order dated 05.08.2015 (Annexure P-5).

After going through the reply as well as submissions made by learned State counsel, who could not dispute the fact that the samples were drawn from the sealed packets and keeping in view the aforementioned said proposition of law, the arguments of the learned State counsel does not stand on its legs.

In the present case, there is no such assertion with regard to tampering or manhandling etc. by the petitioners. Hence, no offence is *prima facie* made out against the petitioners for violation of the provisions of the Insecticides Act, 1968 and Rules, 1971.

It is the settled position of law that in determining the question whether any process was to be issued or not against accused, what the trial Court was to be satisfied was whether there was sufficient ground for proceeding and whether the evidence was adequate for supporting the conviction, could be determined only at the trial and not at the stage of inquiry. Learned counsel for the petitioners has also raised the plea in view of Section 202 Cr.P.C as petitioners were wrongly summoned to face trial vide order dated 05.08.2015. It is impermissible, at the stage of taking cognizance of the offences in a complaint case, to go into the truthfulness or otherwise of the allegations made in the complaint and one has to proceed on a footing that the allegations made were true.

The scope of enquiry under Section 202 of the Cr.P.C. is limited to finding out the truth or falsehood of the complaint in order to determine the question of the issue of the process. If the complaint does not appear to be probable out of evidence under Sections 200 & 202 of Cr.P.C. and the complaint is filed by the complainant just to harass his opponent, then the judicial process cannot be allowed to be used as an

instrument for harassment or oppression of his opponent and such a complaint should be dismissed.

In the present case, the petitioners are neither the manufacturers nor the officers or employees of the manufacturer and are in no manner associated with the manufacturing process.

In view of the above, the present petition is allowed and criminal complaint No.17 dated 22.07.2014 (Annexure P-4) for offences under Sections 3(k)(i), 17, 18, 29 and 33 of the Insecticides Act, 1968 read with Section 27(5) of the Insecticides Rules, 1971 as well as consequential proceedings, including summoning order dated 05.08.2015 (Annexure P-5) are accordingly quashed qua the petitioners alone.

23.11.2022
Nisha-II/vanita

(DEEPAK MANCHANDA)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No