IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

268 CRM-M-34767-2021
Date of Decision: 27.9.2022

HARPREET KAUR

…Petitioner

Versus

STATE OF HARYANA AND OTHERS

…Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present:- Mr. R. K. Saini, Advocate for the petitioner.

Ms. Aditi Girdhar, AAG, Haryana.

AMAN CHAUDHARY, J.

Petition under Section 482 Cr.P.C. is for quashing the complainant No.59 dated 05.10.2020, (Annexure P-1) under Section 29 of the Insecticide Act and Rules made thereunder for the Violation of 3 (K), 17 and 18 of the Insecticide Act and summoning order dated 13.10.2020 (Annexure P-2).

Briefly put the facts are that on 9.6.2020, the Quality Control Inspector, inspected the shop premises of respondent No.3-M/s Sharma Seeds and Pesticides, Raipur Rani and drawn a sample of Sulphur 80% WDG bearing batch No. ACS0050, manufacturing date August, 2019 and expired date July, 2021 under Section 21(1)(a) of the Insecticide Act, 1968 which was marketed by Harpreet Kaur, present petitioner, being the representative of respondent No.4- M/s Aashirwad Crop. Sciences Ltd., the manufacturer. Subsequently, one sealed part of the sample was sent to the Quality Control Laboratory Pesticides, Karnal vide letter dated 21.11.2019. As per the report of Senior Analyst, the sample was found misbranded. Based on the said report, a show cause notice dated 6.7.2020 was issued by the Licensing Officer-cum-

GAURI SHANKER
2022.11.10 14:24
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Deputy Director of Agriculture, Panchkula. Thereafter, on request of the said Licensing Officer-cum- Deputy Director, vide order dated 9.9.2020, Director General, Agriculture and Farmers Welfare Department, Haryana, Panchkula gave sanction for prosecution and a complaint was filed against the petitioner and three others.

Learned counsel submits that vide appointment letter dated 6.1.2020, Annexure P-6, the petitioner was appointed as a chemist with respondent No.4. She been arrayed as an accused No.3 in the complaint filed by State of Haryana to Quality Control Inspector, Panchkula (Annexure P-1) wherein she had summoned vide order dated 13.10.2020 (Annexure P-2). The solitary argument advanced by learned counsel is that the petitioner not being the responsible person as per provision of Section 33 of the Insecticides Act, 1968, is not liable for prosecution and the summoning order has been wrongly issued against her. It is his submission that the company wherein she is working as a chemist, one Sh. Kulwinder Singh has already been appointed as a responsible person appointed under Section 33 of the Insecticide Act, 1968 and has also executed an affidavit to the effect that he is the responsible person on behalf of the company.

Learned counsel submits that the the product, which has been found to be misbranded waqs sold on 14.11.2019 and its date of manufacturing was of August, 2019, whereas the petitioner was appointed on 6.1.2020, Annexure P-6 and even no show cause notice was issued to her, as had been issued to respondent Nos.2 to 4. Learned counsel for the petitioner further referred to para 8 of the reply dated 27.09.2021 of the Quality Control Inspector wherein it has admitted that the petitioner was not in service when the disputed pesticides were manufactured. It is also been stated there that as

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2022.11.10 14:24
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per the affidavit of Sh. Kulwinder Singh s/o Gurdial Singh resident of village Mohri, he himself is the responsible person for quality control, which has been attached as Annexure R-3.

Learned State counsel is unable to controvert the aforestated facts as stated by the petitioner and those admitted regarding the petitioner in the written statement filed by the Quality Control Inspector, who is the complainant in the case.

Heard.

Para 8 of the reply filed by the State reads thus:-

> "8. That after receiving the copy of petition from this Hon'ble Court, it came into the notice of answering respondent, that the petitioner was not in service when the disputed pesticide i.e. Sulphur 80% WDG was manufactured is in question. It is submitted that the Licensing Officer-cum-Deputy Director, Agriculture & Farmers Welfare Department, Panchkula on 22.09.2021 approached to the respondent No.4 i.e. M/s Aashirwad Crop Science Pvt. Ltd Vill. Mohri Distt. Ambala for providing the name of responsible person in respect of misbranded sample of Sulpher 80% WDG. The copy of the same is annexed as Annexure R-2 for the kind perusal of this Hon'ble Court. It is further submitted that in response to the above letter, the respondent No.4 provide a copy of an affidavit of the responsible person for the quality control i.e. Sh. Kulwinder Singh S/o Sh. Gurdial Singh, resident of Village Mohri, Tehsil & Distt. Ambala. The copy of the same is annexed as Annexure R-3 for the kind perusal of this Hon'ble Court. It is further submitted that the petitioner was not responsible person for the quality control of the pesticide i.e. Sulphur 80% WDG when it was manufactured. It is humbly submitted that the name of the petitioner was shown in the complaint on the basis of information provided by the Deputy Director, Agriculture & Farmers Welfare Department Haryana, Ambala inadvertently. It is further submitted that the answering respondent have no malafide intention for launching prosecution against the petitioner and the same have launched on the basis of information as provided by the Deputy Director, Agriculture & Farmers Welfare Department Haryana, Ambala."

It is the admitted fact in the above para that Kulwinder Singh,

GAURI SHANKER
2022.11.10 14:24
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who was the responsible person as is apparent from his affidavit dated 16.12.2016, Annexure R-3, appended with the reply of the State, which reads thus:

"AFFIDAVIT

(To be given by the person responsible under Section 33 of the Insecticides Act, 1968)

> "I, Harpreet Kaur D/o Sh. Jaswant Singh, Resident of H.No.80, Near Peer Baba Road, Jawahar Nagar, Jagadhri Work Shop, Distt. Yamuna Nagar-135002 do hereby solemnly affirm and declare as under:-
>
> 1. That I am working as Country Head for conduct of Business & Quality Control Chemist with M/s Aashirwad Crop Science Private Ltd., having its Insecticides Manufacturing unit located at Village Mohri, PO. Bhanokheri, Tehsil & Distt. Ambala-134003.
> 2. That the above-named firm/ Company has appointed me as Head of manufacturing process/ Quality Control and I shall be responsible for the purposes of Section 33 of the Insecticides Act, 1968 with regard to the quality of insecticides manufactured/ supplied by the above-named company/ firm.
>
> <u>That my particulars are as under:-</u>
>
> 1. Name: HARPREET KAUR
> 2. Father's Name: Sh.Jaswant Singh
> 3. Designation : Exper Staff cum Responsible Person
> 4. Educational Qualification : M.Sc (Chemistry).
> 5. Experience /Training, if any:
> 6. Adhar Card No. 3291 6922 6759
>
> 3. That I am full time employee of the above-named Company/ firm. The attested copies of my relevant documents, certificates of qualification & joining, ID/ Residence proof etc. are in the records of the above-named company/ firm which shall be given to the Licensing Officer, Haryana as and when required/ demanded by him."

Learned State counsel submits that due to inadvertence, the said Managing Director, who is the responsible person for quality control of the company has not been arrayed as accused in the said complaint and instead the petitioner was arrayed as an accused. He submits that an application to implead him in place of the Harpreeet Kaur will be filed.

GAURI SHANKER
2022.11.10 14:24
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Hon'ble the Supreme Court of India in the case of **State of NCT of Delhi vs. Rajiv Khurana** 2010 AIR (SC) 2986, has held as under:-

> "11. The respondent submitted that sub-section (2) of section 33 of the Insecticides Act, 1968 makes "other officers" liable, but that is essential liability not to the position and control of the company at the time of commission of the offence as in sub-section (1), but to the specific act of consent, connivance and negligence, which need to be met and in that sense distinguishable from sub-section (1) of section 33 of the Insecticides Act, 1968.
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> 12. xx xx
>
> 13. xx xx xx
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> 14. K.P.G. Nair v. Jindal Menthol India Ltd. (2001) 10 SCC 218 was a case of this court under the Negotiable Instruments Act, 1881 and it was found that the allegations in the complaint did not either in express words or with reference to the allegations contained therein make out a case that at the time of commission of the offence the appellant was in charge of and was responsible to the company for the conduct of its business. It was held that the requirements of Section 141 of the Negotiable Instruments Act, 1881 were not met and the complaint against the accused was quashed. The same view has been taken in Katta Sujatha (Smt.) v. Fertilizers & Chemicals Travancore Ltd. & Another (2002) 7 SCC 655.
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> 15 xx xx
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> 16. xx xx xx
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> 17. In K.K. Ahuja v. V.K. Vora and Another (2009) 10 SCC 48, this court observed that the averment in a complaint that an accused is a director and that he is in charge of and is responsible to the company for the conduct of the business of the company, duly affirmed in the sworn statement, may be sufficient for the purpose of issuing summons to him. But if the accused is not one of the persons who falls under the category of 'persons who are responsible to the company for the conduct of the business of the company', then merely by stating that 'he was in charge of the business of the company' or by stating that 'he was in charge of the day to day management of the company' or by stating that he was in charge of, and was responsible to the company for the conduct of the business of the company', he cannot be made vicariously liable under Section 141(1) of the Act.
>
> 18. xx xx
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> 19. xx xx xx
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> 20. The court further observed that the trauma, harassment and hardship of the criminal proceedings in such cases may be more serious than the ultimate punishment, it is not proper to

GAURI SHANKER
2022.11.10 14:24
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> subject all and sundry to be impleaded as accused in a complaint against a company, even when the requirements of section 138 read with section 141 of the Act are not fulfilled.
>
> 21. The legal position which emerges from a series of judgments is clear and consistent that it is imperative to specifically aver in the complaint that the accused was in charge of and was responsible for the conduct of business of the company. Unless clear averments are specifically incorporated in the complaint, the respondent cannot be compelled to face the rigmarole of a criminal trial."

It is apparent that the averments made in the complaint in so far as the present petition are concerned are short of the mandatory requirement of Section 33 of the Act, as is the admitted and conceded stand of the State that the petitioner was not in service of respondent No.4, when the disputed pesticides were manufactured and inadvertently, she has been arrayed as an accused in the complaint by the State and also as held by Hon'ble The Supreme Court of India in the case of **Rajiv Khurana** (supra), that a person(s) cited as accused are or were at the time of commission of the offence, in charge of or responsible for the day to day affairs of the business of the company, thus, the present petition deserves to be allowed.

Resultantly, the present petition is allowed, complaint No.59 dated 05.10.2020, Annexure P-1, filed under Section 29 of the Insecticide Act and Rules and impugned summoning order dated 13.10.2020, Annexure P-2, are quashed only qua the petitioner.

September 27, 2022 **(AMAN CHAUDHARY)**
rimpal/gsv **JUDGE**

Whether reasoned/speaking: Yes/No
Whether reportable: Yes/No

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