

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

904 CRIMINAL WRIT PETITION NO. 608 OF 2022

RAJENDRA S/O CHANDULAL DUBEY
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Petitioners : Mr. Ganesh P. Shinde
APP for Respondent-State : Mr. Y. G. Gujarati

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CORAM : KISHORE C. SANT, J.
DATED : 02.03.2023

PER COURT :-

1. Heard the parties.
2. By consent, taken up for final hearing.
2. This petition raises a challenge to an order passed by the learned Sessions Judge, Jalgaon dated 02.02.2022 in Criminal Revision Application No. 27/2019 thereby rejecting the revision. The revision was filed challenging an order passed by the learned J.M.F.C, Pachora dated 19.11.2018 on an application below Exhibit 18 in S.C.C. No. 516/2017 thereby rejecting the application for discharge.

3. The necessary facts giving rise to the present petition are that the respondent filed a complaint with the court of J.M.F.C., Pachora bearing S.C.C. No. 516/2017 against the present petitioner and one M/s. Paresh Krishi Kendra for the offence punishable under Section 29 of the Insecticides Act, 1968 for violation of various provisions of the said Act and Rules thereunder. Before lodging complaint, prior notice was given to M/s. Heranba Industries Ltd. by the Insecticides Inspector and Sub Divisional Agriculture Officer, Pachora dated 02.01.2017 calling for certain information. After that, a sanction was solicited from the Joint Director of Agriculture, Nashik Division, Nashik. The said authority by its communication dated 11.07.2017 granted sanction to prosecute the seller and manufacturer, however, when the complaint was actually filed, it was filed by arraying the accused persons as below:

1. Shri Rajendra Chandulal Dubey, Age – 50 years,
Zonal Manager,
M/s. Heranba Industries Ltd.,
Survey No. 166, Vishal House, Gajanan Nagar,
Fursungi, Ta. Haveli, Dist. Pune-412308.
2. M/s. Paresh Krushi Kendra,
M. Gandhi Road (Gandhi Chowk),
Pachora, District Jalgaon.
Proprietors
I) Shri. Girish Damodar Rathi, Age-42 Years,
II) Shri. Vijay Eknath Sinkar, Age-49 Years,
C/o M/s. Paresh Krushi Kendra,

M. Gandhi Road (Gandhi Chowk),
Pachora, Dist. Jalgaon.

4. The present petitioner filed an application for discharge in the trial court mainly on the grounds that the petitioner is not the manufacturer nor he is quality controller. It is specific case that he happens to be only zonal manager. Thus, he cannot be held responsible in his individual capacity for any offence under the Act. The second ground is that while granting sanction, the same is granted only against the manufacturer and the seller. He thus submitted that he does not fall into either of the categories.

5. The prosecution filed its say. It is stated in the say that to maintain the quality of the product was the responsibility of the petitioner being manager.

6. Learned trial Judge, after considering the application and after hearing the parties, was pleased to held that no case is made out for discharge as sufficient material is available to prosecute the applicant-accused. It is further held that the charge against the accused is not groundless.

7. The petitioner therefore preferred revision application in the

court of learned Sessions Judge, Jalgaon bearing Criminal Revision No. 27 of 2019. Learned revisional court considered that in para 2 of the complaint it is specifically mentioned that the Heramba Industries Ltd. is the manufacturer of insecticide and the present petitioner, being the zonal manager, is responsible person for conduct of the said company. It is further held that it is defence that is available to the petitioner and in that view, rejected the revision application. The petitioner, aggrieved thereby, is before this Court.

8. Learned counsel for the petitioner has vehemently submitted that sanction to prosecute is a prerequisite for lodging a complaint against any person. In this case, sanction to prosecute, though is granted by the competent authority, however, it is specifically granted only to prosecute the manufacturer and the seller. This petitioner is in no way concerned with the manufacture of the company nor is the seller and thus he cannot be prosecuted in view of Section 31 of the Insecticides Act. Secondly, that there is no sufficient and specific averment that this petitioner is responsible for day to day conduct of the business of the company. Thirdly, that in absence of the company being made as an accused, no prosecution can be launched against any person in view of Section 33 of the Insecticides Act.

9. Learned counsel for the applicant relied upon a judgment in the case of **Anita Hada v. Godfather Travels and Tours Private Limited [2012 (5) SCC 661]** wherein the Hon'ble Apex Court while considering the provisions of Section 138 of the Negotiable Instruments Act, 1881, with Section 141 of the said Act, has clearly held that unless the company itself is made accused, its director or any other person responsible for the day to day conduct of the company cannot be made an accused.

10. He further relied upon a judgment in the case of **State of Madras v. C. V. Parekh and another [1970(3) SCC 491]**. That was a case under the Essential Commodities Act, 1955. There, the High court had acquitted the accused persons on the count that the Company itself was not chargesheeted. The High Court held that When there is contravention by the third party, respondents cannot be fastened with the liability.

11. The next judgment relied upon by learned counsel for the petitioner is in the case of **Sharad Kumar Sanghi v. Sangita Rane [2015 All MR (Cri) 2405 (SC)]** wherein the High Court had allowed the proceedings under Section 482 of Cr.P.C. and had quashed the complaint as in the complaint there was no specific allegation against

the managing director. In the said case also, the company was not arrayed as a party.

12. Learned counsel also relied upon the judgment in the case of **Hindustan Unilever Limited v. State of Maharashtra and another [2017 All MR (cri) 2017]**, wherein process was issued against the managing director without arrayal of company as accused in a complaint and it was held that therefore, the complaint was not maintainable.

13. He further relied upon the judgment in the case of **Lalankumar Singh and others v. State of Maharashtra [2022 SCC OnLine SC 1383]** and submitted that the petition be allowed.

14. Learned APP vehemently argued the matter. He submits that there is sufficient averment in the complaint in para 2 which reads as under:

“2) That the accused No.1 is manufacturer of Insecticides. The company has valid insecticide registration as well as manufacturing licence. Shri. Rajendra Chandulal Dubey, Zonal Manager M/s. Heranba Industries Ltd. Survey No.166, Vishal House, Gajanan Nagar, Fursungi Ta. Haveli Pune-412308 is responsible person for the conduct of business of accused no.1.”

15. Learned APP submits that this averment is in fact sufficient which clearly indicates that the complaint was filed against the company and it can be company through the present petitioner. As the company is a juristic person, it needs to be represented by some natural person. He further submits that even the sanction order shows that the sanction is granted to prosecute the manufacturer and the seller. Since the petitioner was working as zonal manager, the company was prosecuted through him. In para 2, it is clearly stated that he is responsible for the conduct of the business of M/s. Heranba Industries ltd. He submits that even in the say filed by the prosecution in the trial court, it is clearly stated that the present petitioner is the person responsible for conducting the business. He thus submits that there is no substance in the petition and the same deserves to be dismissed.

16. This Court has considered all the submissions and the judgments relied upon by learned Advocate for the petitioner. It is seen that in the complaint the company is not shown as an accused. The present petitioner is shown as accused no.1. In the title clause M/s. Heranba Industries is not shown as accused through Rajendra Chandulal Dubey. However, the petitioner is shown as accused no.1 in his individual capacity without adding company as a party. This

Court finds that firstly, the company is not a party to the complaint and secondly, though sanction is there, the same is only to prosecute the company and not the zonal manager or the petitioner. This material aspect is not properly considered by both the courts below. This Court therefore finds that case is made out to call for interference in the writ petition. The petition is therefore allowed in terms of prayer clause “E”. The petition is accordingly disposed off.

17. It is needless to say that these findings are recorded only for the purpose of deciding this petition and with regard to the present petitioner only.

[KISHORE C. SANT, J.]