

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

245-6

CRM-M-3430-2021 (O&M)

Date of decision: 28.07.2023

Anil Kumar and others

...Petitioners

Versus

State of Punjab through Insecticides Inspector,
Fatehgarh Sahib

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Rakesh Verma, Advocate and
Mr. Manish Verma, Advocate for the petitioners.
Ms. Himani Arora, AAG, Punjab.

AMAN CHAUDHARY, J.

1. Prayer in the present petition filed under Section 482 of the Code of Criminal Procedure is for quashing of complaint No.58 dated 03.11.2020 under Sections 3(k) (i), 17, 18, 29 and 33 of the Insecticide Act, 1968 read with Rule 27(5) of Insecticide Rules, 1971 titled as 'State vs. M/s National Fertilizers and Others' and summoning order dated 11.11.2020, Annexure P-2, passed by Chief Judicial Magistrate, Fatehgarh Sahib.

2. The petitioner No.1 is the proprietor of the firm i.e petitioner No.2- M/s National Fertilizers, who purchased the product in question from Darrick Insecticide Ltd., petitioner No.3 and petitioner No.4 to 6 are its Godown Incharge, Director and Manager respectively, both the firms are licensed sellers of insecticides and pesticides of authorised manufacturing companies under originally sealed and packed containers.

3. The brief facts that emerge from the complaint are that the complainant-Insecticide Inspector drew a sample on 17.06.2019, of one

insecticide i.e. Bispyribac Sodium 10% SC, Batch No. 0002, from the premises of M/s National Fertilizers, Fatehgarh Sahib, manufactured in the month of May, 2018 by M/s Ravi Crop Sciences, Samba (J&K) with an expiry after two years. It was sent for testing and the report of the first sample was received, declaring it to be misbranded. The sample aforesaid was found misbranded on having been examined by the Insecticide Testing Laboratory, Bathinda, wherein active ingredients were found to be 8.75% instead of 10% SC and thereafter, the referral part of the sample was sent to Central Insecticide Laboratory, Faridabad, upon which active ingredients were found to be 7.91% SC. A show cause notice was issued to the petitioners leading to filing of the complaint dated 03.11.2020, Annexure P-1, was filed, and the summoning order was passed vide order dated 11.11.2020, Annexure P-2, by the learned Trial Court.

4. Learned counsel contends that the petitioners, who purchased the insecticide with proper seal from a registered manufacturer, are not liable in view of the Section 30(3) of the Act, which states that a person who acquired a product from the importer, or a duly licensed manufacturer/ distributor or a dealer would not be responsible for any misbranding. Further, he submits that it is the responsibility of the concerned official of the department, who took the sample to ascertain facts regarding storage having been done in proper manner or not. In the present case, the Insecticide Inspector failed to make any such observation and also there is no averment in the complaint that the product was not stored in proper condition. By placing reliance, learned counsel submits that the case of the petitioners is squarely covered by the judgment in **Amarjeet Singh and others vs. State of Punjab**, CRM-M-2441-2017 decided on 01.03.2023.

5. Per contra, learned State counsel submits that the petitioners are

liable to be prosecuted under Section 29 of the Act as it is not only the manufacturer, who is liable, but also the stockist. In the eventuality, it is found that the misbranded product was not stored properly, which is a matter of trial, it would be the liability of the petitioners as well. A reference is made to Section 30 of the Act to submit that merely stating to be ignorant of quality and nature of the product on account of the fact that they were not the manufacturers would not be a valid defence. Thus, she prays for dismissal of the present petition. Reliance is placed on **M/s Gill Pesticides and another vs. State of Punjab**, CRM-M-27108-2016, decided on 15.05.2018. However, she has not been able to controvert the submissions made by the counsel for the petitioner and distinguish the aforesaid judgment.

6. Heard the learned counsel on either side.

7. This Court in **Amarjeet Singh and others vs. State of Punjab**, (supra), where this Court while taking into consideration **M/s Cheminova India Limited and another vs. State of Punjab and another**, 2021 SCC OnLine SC 573, **M/s Rallis India Limited and others vs. State of Punjab through Insecticide Inspector**, CRM-M-20338-2017 decided 20.04.2022, **Surinder Kumar vs. State of Punjab**, 2011 (1) RCR (Criminal) 211, **Naresh Kumar and others vs. State of Punjab**, **Jindal Fertilizers and Chemicals vs. State of Punjab**, 2010 (4) RCR (Criminal) 146, **Lochen Kheti Sewa Centre vs. State of Punjab**, 2008 (2) RCR (Criminal) 22, **Deepak Sharma vs. State of Punjab**, 2008(2) RCR (Criminal) 24, **M/s Vimal and Co. Grain Market, Mullanpur vs. State of Punjab**, 2002(2) RCR (Criminal) 56 and **M/s Kisan Beej Bhandar, Abohar vs. Chief Agricultural Officer, Ferozepur and another**, 1990 (supp) Supreme Court Cases 111, quashed the complaint instituted against dealers/ partner/ supplier, on the ground that the sample was

taken from sealed packets; no specific averment of it being not stored properly; judgment referred by State Counsel, **M/s Gill Pesticides and another** (supra), being distinguishable on facts; necessary ingredients of the offence were not attracted, thus continuation of proceedings amounting to abuse of process of law.

8. In the present case, the petitioners are the dealer firms and its proprietor, Godown Incharge, Director and Manager. The sample was drawn from a sealed packet, which fact has remained undisputed and there is no specific allegation of it being not stored in a proper manner. Further that, they had merely traded the product manufactured by the company and were not appointed or responsible for ensuring its quality as also there is no specific allegation of selling unregistered or prohibited products against them, therefore, the case of the petitioners falls within four corners of judgments in **M/s Rallis India Limited** and **Surinder Kumar** (supra), which fact the State counsel was unable to controvert, thus, the present petition deserves to be and is hereby allowed.

9. Resultantly, the complaint case No.58 dated 03.11.2020, Annexure P-1 as also the summoning order dated 11.11.2020, Annexure P-2 are quashed qua the petitioners.

28.07.2023
ashok

(**AMAN CHAUDHARY**)
JUDGE

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No