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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 24.04.2023

M/s Shambu Khad Store and anr. ... Petitioners
V/s
State of Punjab through Insecticide Inspector ...Respondent

CORAM: HON’BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Naresh Kumar Manchanda, Advocate,
for the petitioners.

Mr. Kirat Singh Sidhu, DAG, Punjab.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition is for the quashing of criminal complaint No.COMA-2714-2020 dated 09.11.2020 titled as ‘State of Punjab versus M/s Shambu Khad Store and others’ (Annexure P-1), summoning order dated 09.11.2020 (Annexure P-2) and all subsequent proceedings arising therefrom.

2. The brief facts of the case are that on 27.08.2019, the complainant alongwith Sh. Dharvinder Singh, Agriculture Sub Inspector, Nabha, visted the premises of M/s Shambu Khad Store, SCF-41, Near Truck Union, New Grain Market, Block Nabha, District Patiala (petitioner No.1) and at that time, Gaurav Singla (petitioner No.2) son of Shambu Ram Singla, Proprietor was present at the shop. He was found in possession of 51

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litre FOLDER Brand Tebuconazole 6.7% + Captan 26.9% SC 1 litre packing manufactured and marketed by M/s Anu Products Ltd., New Delhi-110002. At that time, two persons were stated to be standing at the spot and were asked to become witness to which they refused. Therefore, the Agriculture Inspector Dharvinder Singh was asked to act as a witness. After disclosing his identity to the representative of the Firm, namely, Gaurav Singla, Jupinder Singh Gill selected one bottle of Tebuconazole 6.7% + Captan 26.9% SC of FOLDER Branch Batch No.SAP1220/06 date of manufacturing 12.08.2019 and expiry 11.08.2021. The original bill of the product was obtained. Out of the selected bottle, the complainant drew 03 samples of 250 ml each into a plastic bottle as prescribed under the Insecticide Act, 1968. Various other formalities were completed at the spot. Thereafter, certain other formalities were also completed at the office.

Based on the said allegations, a complaint came to be instituted against M/s Shambu Khad Store through Gaurav Singla son of Shambhu Ram Singla, Gaurav Singla son of Shambhu Ram Singla, M/s Anu Products Ltd. C/o M/s Bhagwati Trading Co., through Sh. Hariaotar Singh, Hariaotar Singh son of Rambir Singh, M/s Anu Products Ltd. Through Mahinder Singh, Mahinder Singh son Karam Singh and Sanjay Kumar son of Ram Samujh Singh, under Sections 3(K)(i), 17, 18, 29, 33 of Insecticide Act, 1968 read with Rule 27(5) of Insecticides Rules, 1971. A copy of the complaint is attached to the present petition as Annexure P-1.

3. Based on the allegations in the complaint, the petitioners and

their co-accused came to be summoned under Sections 3(K)(i), 17, 18, 29

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and 33 of Insecticide Act, 1968 and Rule 10(4)(iii) of the Insecticide Rules, 1971 punishable under Section 29 of the Act vide order dated 09.11.2020 (Annexure P-2).

4. The aforementioned complaint (Annexure P-1), summoning order dated 09.11.2020 (Annexure P-2) and all subsequent proceedings arising therefrom are under challenge in the present petition qua the petitioner.

5. The learned counsel for the petitioner has raised a number of grounds in the present petition. However, the primary ground raised by him is that the Insecticide Inspector had drawn the samples of Insecticide Tebuconazole 6.7% + Captan 26.9% SC of FOLDER Brand from the original packing of 01 litre as supplied by the marketing company i.e. M/s Anu Products, Samba (J & K). The petitioners who are the dealers did not have knowledge that the insecticide was mis-branded. In fact, once they had sold the insecticide in the same condition and in the same packing in which they had received the same, the petitioners could not be held to be liable in terms of the protection accorded to them under Section 30(3) of the Insecticide Act. Taking the argument further, the learned counsel for the petitioners contends that the Chief Agriculture Officer, Patiala had cancelled the licence of the petitioners-Firm. The petitioners had filed an appeal before the Joint Director Agriculture (Plant Protection) Punjab and the appeal had been accepted in terms of the protection available to a dealer under Section 30(3) of the Insecticide Act and the licence of the petitioners-Firm

was restored vide order dated 29.05.2020 (Annexure P-7). Reliance is

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placed on the judgments of this Court in *M/s S.S. Fertilizers and another versus State of Punjab, 2017(2) RCR (Criminal) 59*, *M/s Garg Agro Chemicals and another versus State of Punjab, 2011(2) RCR (Criminal) 395*, *Naresh Kumar and others versus State of Punjab through Insecticide Inspector, Kapurthala, 2011(2) RCR (Criminal) 202* and *Ramesh Kumar and others versus State of Punjab, 2010 (2) RCR (Criminal) 273*.

6. The learned counsel for the State, on the other hand, vehemently contends that the case against the petitioners and their co-accused is well-established. They were at liberty to raise all the grounds as raised in the present petition at the stage of the Trial. No case for quashing of the complaint (Annexure P-1) and the summoning order dated 09.11.2020 (Annexure P-2) was made out. He, however, concedes that there is no denial in the reply dated 27.04.2022 to the averments raised in the petition that the samples obtained by the complainant/answering respondent was from a sealed original packing of 01 litre as had been supplied to the dealer/petitioners by the marketing company M/s Anu Products Limited, Samba (J & K).

7. I have heard the learned counsel for the parties at length.

8. Before proceeding further, it would apposite to refer to the provisions of Section 30 of the Insecticide Act. The same are reproduced as hereinbelow:-

“30. Defences which may or may not be allowed in prosecutions under this Act.—

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(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 a 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;

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

9. The aforementioned provision has been interpreted by this Court in a number of judgments.

In the case of ***‘M/s S.S. Fertilizers and another versus State of Punjab, 2017(2) RCR (Criminal) 59’***, it was held as under:-

“7. Learned counsel by referring to Section 30(3) of the Insecticides Act submitted that the liability of the dealer was questioned as they were involved in sale of pesticides and in the event of finding the pesticides to be mis-branded, the dealer could not be held liable as he was merely selling the packing as supplied by the manufacturer. There was no allegation that sealed were tampered or the packing were not properly stored. The complaint was conspicuously silent about the aforesaid allegation. Since the samples were drawn from the original packing as per para No.4 of the complaint, therefore, provision in terms of Section 30(3) of the Insecticides Act was duly attracted.

8. The provisions of Section 33 of the Insecticides Act are pari materia with that of Section 141 of the Negotiable Instruments Act. Petitioner No.1 is the firm of which petitioner No.2 is the proprietor and responsible person. In case of company, interpretation of law was considered in terms of Section 33 of the Insecticides Act which was considered to be pari materia with Section 141 of the Negotiable Instruments Act by the Hon'ble Apex Court in *S.M.S. Pharmaceuticals Ltd. v. Neeta Bhall and another*, 2005(4) RCR (Criminal) 141. The principal accused being the company, could not be held liable for want of

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necessary averments ought to have been made in the complaint in terms of analogous provisions of Negotiable Instruments Act.

9. In case of National Small Industries Corporation v. Harmeet Singh Paintal and another, 2010(2) RCR (Criminal) 122 : 2010(2) Recent Apex Judgments (R.A.J.) 22 : 2010(3) SCC 330, the Apex Court has interpreted on the aforesaid lines that requirement in terms of pleading has to be strictly construed not only to the extent of mentioning the Director to be Incharge of and responsible to the Company for doing its business but strictly spell out as to how and in what manner he was Incharge and responsible for the conduct of its business.

10. Similarly in case of 2014(2) RCR (Criminal) 945 P.D. Garg and others v. State of Punjab, this Court considered the similar issue and while interpreting Section 33 of the Act came to the conclusion that prosecution against Director cannot be held sustainable in the absence of aforesaid requirement of pleadings in the complaint.

11. In the light of aforesaid, I am of the considered view the prosecution against the petitioners in terms of the offences as mentioned in the complaint is not sustainable in the eyes of law. Consequently, this criminal petition is allowed. Criminal complaint No.6702 dated 24.09.2014 under Sections 3K (1), 17, 18, 29 and 33 of the Insecticides Act, 1968 read with Rule 27(5) of the Insecticides Rules, 1971 titled as State through Insecticide Inspector, Baddowal v. M/s S.S. Fertilizers and others pending in the Court of Chief Judicial Magistrate Ist Class, Ludhiana and entire consequential proceedings undertaken in pursuance thereof are hereby quashed”.

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In the case of '*M/s Garg Agro Chemicals and another versus State of Punjab, 2011(2) RCR (Criminal) 395*', it was held as under:-

“7. In the instant case, a perusal of Form XX (Annexure P-2) in respect of sample of Butachlor, shows that the sample was in fact drawn from the original packing. The original packing was being kept by the dealer in his premises. When sample was drawn, it was stated in column No. 5 of aforesaid Form "Loose sample from Company Packing". Similarly, in the sample of Endosulfan taken by the Insecticide Inspector in Form-XX (Annexure P-3), it was clearly mentioned that loose samples had been taken from the company packing. In view of these documents, which are on record, it is clear that the samples in question was taken by the Insecticide Inspector from the original packing as given by the manufacturer. In *M/s Kishan Beej Bhandar's* case (*supra*), the apex court while allowing a similar plea observed as under:-

"4. The High Court took the view that by enacting Sub-section (1) of Section 30 of the Act, Parliament had taken out the element of mens rea from consideration and, therefore, knowledge was not at all material. Appellant's counsel has argued that protection of sub-section (3) is available not only to prosecutions but also to every contravention of the Act and cancellation of licence for contravention of the Act is also a matter covered by sub-section (3). We are inclined to accept the submission and take the view that whether it is prosecution or contravention leading to cancellation, sub-section (3) applies. In that view of the matter, on the facts found that it was a full tin in a sealed condition, the liability arising out of misbranding was not of the appellant. Unless he had any other source of information about misbranding -

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and it has not been established - the appellant is entitled to the protection of sub-section (3). In the facts once the appellant's contention that it was a sealed tin intact has been found, the burden that lay on him under the provisions of sub-section (3) had been satisfactorily discharged, even in the matter of considering the question of cancellation of licence and, therefore, his licence should not have been cancelled. We allow the appeal, reverse the order of the High Court and the authorities and restore the licence. The appeal is disposed of accordingly. No costs."

8. In view of above, it is clear that petitioner is entitled to protection of Section 30 (3) of the Act as he cannot be held liable for misbranding of the sample. He was merely selling Butachlor and Endosulfan in the same packing as the manufacturer had supplied to him. I am, thus, of the considered view proceedings against the petitioner under the Insecticide Act, 1968 cannot be allowed to continue".

In the case of '**Naresh Kumar and others versus State of Punjab through Insecticide Inspector, Kapurthala, 2011(2) RCR (Criminal) 202**', it was held as under:-

"9. Learned Single Bench of this Court in the case of Ramesh Kumar and others v. State of Punjab, in 2010(2) RCR (Criminal) 273 : CRM M-13774 of 2009, decided on 15.01.2010, in similar circumstances, held as under :-

"7. As would be apparent on the face of Form XX Annexure P-3, the sample of the insecticide was taken in original packing by Harpreet Singh, Insecticide Inspector from the premises of M/s Malka Kheti Store,

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Rajoke Road, Amarkot Tehsil Patti, District Tarn Taran. It is well settled that if the sample is taken from the original packing of the manufacturer and stored for sale in the same condition, the dealer/distributor is entitled to get protection under Section 30(3) of the Act, if the substance/sample drawn was in its original condition. In the instant one, as is being evidenced by Annexure P-3, the sample in question was contained in its original packing of 500 mls. There is nothing on the record to show that the pretilachlor 50% EC Preet Batch No. TR 00002 of which sample was drawn was not stored in the same state. If the sample had been tampered with, the original packing would have certainly got disturbed. The same would have not been in the same state. Such being the circumstances, the petitioners being the dealers/distributors cannot be held liable."

10. Learned counsel for State has not been able to dispute that the present case is squarely covered by the ratio of judgment rendered by this/Court in the case of Ramesh Kumar's (supra).

11. In view of the foregoing discussion, the present petition is allowed. Complaint No. 79 dated 02.03.2007 under sections 3(k) (i), 17, 18, 29 and 33 of the Insecticide Act, 1968 read with rules 27(5) of the Insecticides Rules 1971 titled as State v. M/s. Punjab Khad Store and others pending in the Court of learned Chief Judicial Magistrate, Kapurthala and summoning order and all consequential proceedings arising therefrom qua the petitioners are hereby quashed".

In the case of '**Ramesh Kumar and others versus State of Punjab,**

2010 (2) RCR (Criminal) 273', it was held as under:-

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“5. The learned counsel for the petitioners eloquently urged that as alleged the sample was drawn while picking up three originally sealed and packed containers weighing 500 mls each of one registered and authorised manufacturing company from the shop of petitioner No. 2 lying and stored properly. The seal being intact, the petitioners could not know with reasonable diligence about the contents of the originally sealed packing and that being so, it cannot be attributed to the petitioners that the sample was misbranded by them. As per seizure memo Annexure P-3 prepared at the time of sampling by the Insecticide Inspector, only 8 containers of 500 mls in total were lying in the shop of the aforesaid petitioner. This clearly indicates that the petitioners did not have any culpable intention to cheat any person or to commit any contravention under the Act. To buttress this stance, he has sought to place abundant reliance upon the observations rendered by me in re: M/s. Jai Rath Seed Store, Bhangala and others v. Punjab State through Insecticide Inspector 2009(4) Recent Criminal Reports (Criminal) 831. The learned State counsel could not controvert these submissions in a successful manner.

7. As would be apparent on the face of Form XX Annexure P-3, the sample of the insecticide was taken in original packing by Harpreet Singh Insecticide Inspector from the premises of M/s. Malka Kheti Store, Rajoke Road, Amarkot Tehsil Patti, District Tarn Taran. It is well settled that if the sample is taken from the original packing of the manufacturer and stored for sale in the same condition, the dealer/distributor is entitled to get protection under Section 30(3) of the Act, if the substance/sample drawn was in its original condition. In the instant one, as is being evidenced by Annexure P-3, the sample in question was contained in its original packing of 500 mls.

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There is nothing on the record to show that the Pretilachlor 50% EC Preet, Batch No. TR-00002 of which sample was drawn was not stored in the same state. If the sample had been tampered with, the original packing would have certainly got disturbed. The same would have not been in the same state. Such being the circumstances, the petitioners being the dealers/distributors cannot be held liable.

8. In consequence of the preceding discussion, this petition is accepted. The complaint bearing caption "State of Punjab v. M/s. Malka Kheti Store and Others (Annexure P-1) pending in the court of learned Sub Divisional Judicial Magistrate, Patti, the summoning order dated 7.11.2008 Annexure P-2 and all consequential proceedings arising therefrom qua the petitioners are hereby quashed".

10. A perusal of the aforementioned judgments would show that where the Insecticide Inspector had drawn the sample of insecticide from the original packing as had been supplied by the manufacturer to the dealer from whom the sample was being taken, the dealer could not be held to be liable as he could possibly not have known that the insecticide was mis-branded as the same had been received by him in a sealed condition and he (dealer) was also selling the same ahead in a sealed condition.

11. In view of the aforementioned discussion, as the sample in the present case had been drawn from the original packing as had been supplied by the marketing company i.e. M/s Anu Products Limited, Samba (J & K) to the petitioners who are stated to be the dealers and even the Department has restored the licence to the petitioners' Firm, the continuance of the

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proceedings arising out of the complaint (Annexure P-1) and the summoning order dated 09.11.2020 (Annexure P-2) would be nothing but an abuse of the process of the Court.

12. Therefore, I find merit in the present petition and the complaint (Annexure P-1), the summoning order dated 09.11.2020 (Annexure P-2) and all subsequent proceedings arising therefrom stand quashed qua the petitioners only.

13. The present petition is disposed of accordingly.

April 24, 2023
sukhpreet

(JASJIT SINGH BEDI)
JUDGE

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