

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-9538-2022
Date of Decision: April 27, 2023

Sh. Chetan Shah ...Petitioner
Versus
State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: - Mr. R.S. Rai, Sr. Advocate with
Mr. Ashim Aggarwal and Ms. Sushma Aggarwal, Advocates
for the petitioner.

Mr. Gurpreet Singh Shergill, AAG, Punjab.

DEEPAK GUPTA, J.

By way of this petition filed under Section 482 of the Code of Criminal Procedure, prayer is made to quash Complaint bearing No. COMA/39956/2013 dated 16.08.2013 titled as *“State of Punjab through Insecticide Inspector, Bathinda vs M/s Kheti Sewa Centre Bathinda and others”* under Sections 3(k)(i), 17, 18, 29 & 33 of the Insecticides Act, 1968 (hereinafter referred as 'the Act'), pending in the Court of learned Chief Judicial Magistrate, Bathinda; and also the summoning order dated 02.09.2013 (Annexure P-9) and all the consequential proceedings arising therefrom qua the petitioner.

2. It emerges on perusal of paper book that on 27.07.2011, Insecticide Inspector, Bathinda inspected the shop premises of M/s Kheti Sewa Centre, Bathinda. After making necessary statutory compliances, he

drew 3 samples each of one liter of *Imidacloprid* 17.8% bearing Batch No.NCL-27, Manufacturing date 17.02.2011, Expiry date 16.02.2013, supplied by M/s. New Chemi Industries Ltd., Ludhiana, displayed at the premises for sale. Out of three samples collected by the Insecticide Inspector, one of them was sent to the Senior Analyst, Insecticide Testing Laboratory, Amritsar and vide report received on 05.08.2011, the sample was declared as mis-branded. Complaint (Annexure P-8) was filed to prosecute the dealer M/s Kheti Sewa Centre, Bathinda and its proprietor Rajinder Kumar Jindal; and manufacturer M/s New Chemi Industries Ltd., its Managing Director Chetan Shah (petitioner), Dharmesh D. Patel, Quality Control Chemist; and Satinder Singh Saini, the Regional Manager and Godown In-charge, so as to prosecute them under Sections 3(k)(i), 17, 18, 29 & 33 of the Act.

3. Learned Chief Judicial Magistrate, Bathinda vide order dated 02.09.2013 (Annexure P-9) ordered summoning of all the accused including the petitioner by observing that there are sufficient grounds to proceed against the accused under Section 3(k)(i), 17, 18, 29 & 33 of the Act read with Rule 27(5) of the Insecticides Rules, 1971.

4. Challenging the complaint as well as the summoning order, it is contended by learned counsel for the petitioner that the petitioner had furnished an undertaking nominating and fixing responsibility of quality control on senior officials of the company, who have also been arraigned as accused in the present complaint. Said officials had also furnished affidavits stating that they shall be responsible for all acts of M/s New

Chemi Industries Ltd. i.e., manufacturing company and therefore, in view of the judgment of the Hon'ble Supreme Court in case of "*M/s Cheminova India Ltd. & Anr. vs State of Punjab and Anr.*", reported as (2021) SCC 573, present proceedings against the petitioner ought to be quashed as simply because he is the Managing Director of M/s New Chemi Industries Ltd., he cannot be fastened with any liability.

5. Learned senior Advocate for the petitioner has drawn attention towards the complaint (Annexure P-8) in order to contend that there is no averment as to how and in what manner the petitioner was responsible for the conduct and affairs of the company and that as per settled law, only the persons, who are responsible and in-charge for day-to-day affairs of the company can be made liable, if there are necessary pleadings to that effect in the complaint. Without complying the said mandatory requirements and ignoring the settled position of law, the impugned summoning order has been passed.

6. Learned State counsel appearing for the respondents opposed the petition by drawing attention towards the reply of Shri Jaskaran Singh, Insecticide Inspector, Bathinda, as per which petitioner being the Managing Director is responsible for the affairs of the firm and that it was his moral and constitutional duty to appear before the Court to clear his position.

7. Having considered the submissions of learned Senior Advocate for the petitioner and State counsel, I find merit in this petition.

8. It is not disputed that the product in question, the sample of

which was taken, was manufactured by M/s New Chemi Industries Ltd. It is also not in dispute that petitioner is the Managing Director of the said company.

9. Section 33 of the Insecticides Act, 1968 deals with offences by the company. It reads as under: -

“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 well as the company, shall be deemed to be guilty of the offence and 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 anybody corporate and includes a firm or other

association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm"

10. It is clear from the above-said provision that when the offence under the Act is committed by a company, it is only that person, who was in-charge of or was responsible to the company for the conduct of the business of the company; and the company, who shall be deemed to be the guilty of the offence.

11. Learned counsel for the petitioner has drawn attention towards an affidavit dated 04.04.2009 (Copy Annexure P-14), which has also been relied upon by the Insecticide Inspector, as per which petitioner Chetan Shah, working as Managing Director of M/s New Chemi Industries Ltd., had clearly undertaken that Shri S.S. Saini, Area Sales Manager & Godown In-charge; and Shri Dharmesh Patel, Chemist will be responsible for quality control; whereas Shri S.S. Saini, will be responsible for the conduct of the business under Section 33 of the Act. This affidavit was furnished in the office of Deputy Director, Agriculture Locust (Control and Plant Protection), Punjab, Chandigarh. Affidavit dated 30.12.2010 (copy Annexure P-15) on the similar lines was furnished by Shri Dharmesh D. Patel, as per which he was working as Quality Control Chemist at M/s New Chemi Industries Ltd. and that he is the responsible person of the firm under Section 33 of the Act. Annexure P-16 is the copy of the affidavit dated 13.01.2011 of Shri Satwinder Saini, as per which being the Regional Manager of M/s New Chemi Industries Ltd., he shall be in-charge and responsible for the conduct of the business

of the firm under Section 33 of the Act and shall be responsible of acts and omission of New Chemi Industries Ltd. of the marketing of M/s Gujrat Krishi Chem Corporation, Vapi (Gujarat).

12. It is, thus, clear from the aforesaid documents that prior to the visit of the Insecticide Inspector to the shop premises of M/s Kheti Sewa Centre, Bathinda, petitioner being the Managing Director had nominated Shri Satwinder Singh Saini and Shri Dharmesh D. Patel to be the persons, who shall be responsible for the quality control and for the conduct of business of the firm under Section 33 of the Act.

13. A similar issue arose before the Hon'ble Supreme Court in **Cheminova India Limited's case (*supra*)**, wherein it was observed as under: -

“14. In the case on hand, it is not in dispute that on behalf of the 1st Appellant – Company, 2nd Appellant – Managing Director has furnished an undertaking dated 22.01.2013, indicating that Shri Madhukar R. Gite, Manager of the Company, has been nominated in the resolution passed by the Company on 28.12.2012 to be in charge of and responsible to the said Company, to maintain the quality of the pesticides manufactured by the said Company and he was authorized to exercise all such powers and to take all such steps, as may be necessary or expedient to prevent the commission of any offence under the Act. Filing of such undertaking with the respondent is not disputed. Even, at Para 5.10 in the counter affidavit filed before this Court, it is pleaded by the Respondents that by appointing persons responsible for affairs of the Company, quality control, etc., 2nd Appellant – Managing Director cannot escape his liability from offences committed by 1st Appellant – Company. In view of the specific provision in the Act dealing with

the offences by companies, which fixes the responsibility SLP(Crl.) No. 4144 of 2020 and the responsible person of the Company for conduct of its business, by making bald and vague allegations, 2nd Appellant – Managing Director cannot be prosecuted on vague allegation that he being the Managing Director of the 1st Appellant – Company, is overall responsible person for the conduct of the business of the Company and of quality control, etc.

15. In the instant case, the Company has passed a resolution, fixing responsibility of one of the Managers namely Mr. Madhukar R. Gite by way of a resolution and the same was furnished to the respondents by the 2nd Appellant in shape of an undertaking on 22.01.2013. When furnishing of such undertaking fixing the responsibility of the quality control of the products is not in dispute, there is no reason or justification for prosecuting the 2nd Appellant – Managing Director, on the vague and spacious plea that he was the Managing Director of the Company at the relevant time. A reading of [Section 33](#) of the Act also makes it clear that only responsible person of the Company, as well as the Company alone shall be deemed to be guilty of the offence and shall be liable to be proceeded against.

16. Though, the Managing Director is overall incharge of the affairs of the company, whether such officer is to be prosecuted or not, depends on the facts and circumstances of each case and the relevant provisions of law. Having regard to specific provision under [Section 33](#) of the Act, and the undertaking filed in the present case, respondent cannot prosecute the 2nd Appellant herein. Thus, we find force in the contention of Mr. Sidharth Luthra, learned Senior Counsel, that allowing the prosecution against 2nd Appellant – Managing Director is nothing but, abuse of the process of law. At the same time, we do not find any ground at

this stage to quash the proceedings against the 1st Appellant – Company.”

14. In “*Managing Director, Castrol India Limited v State of Karnataka and Another*”, (2018) 17 Supreme Court cases 275 also, similar question was involved, though the case was under the provisions of Standards of Weights and Measures Act, 1976. Section 74 of the said Standards and Weights and Measures Act, 1976 is *pari-materia* with Section 33 of the Insecticide Act. In that case also, the Managing Director of the company was sought to be prosecuted under Section 39 of the provisions of the Standards of Weights and Measures Act, 1976. It was observed by the Hon’ble Supreme Court that there was no averment or statement whatsoever that the appellant as Managing Director was responsible or in charge for the conduct of the business of the company in respect of which offence in question had been allegedly committed and so, the proceedings qua him were permitted to be quashed.

15. In view of the legal position explained by the Hon’ble Supreme Court in *Cheminova India Limited’s case (supra)* and applying the same to the facts of the present case, it is held that continuing the proceedings against the petitioner in the complaint case in question shall be abuse of process of law. Therefore, this petition is hereby accepted. Complaint bearing No. COMA/39956/2013, dated 16.08.2013, titled as “*State of Punjab through Insecticide Inspector, Bathinda vs M/s Kheti Sewa Centre Bathinda and others*” under Sections 3(k)(i), 17, 18, 29 & 33 of the Act (Annexure P-8) pending in the Court of learned Chief Judicial Magistrate, Bathinda; the summoning order dated 02.09.2013 (Annexure

P-9) and all the consequential proceedings arising therefrom qua the petitioner, are hereby quashed.

April 27, 2023
sarita

(DEEPAK GUPTA)
JUDGE

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