IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-14908-2018 (O & M)
Date of decision: 20.03.2023

Jatinder Mehta ..... Petitioner

V/s

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr.Sherry K. Singla, Advocate,
for the petitioner.

Ms. Navreet Kaur Barnala, AAG, Punjab.

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JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of the complaint No.35 dated 06.06.2016 under Section 22(5) of the Insecticide Rules, 1971 and Section 3 (k) (I), 17, 18, 19 and 33 of Insecticides Act, 1968 titled titled as 'State of Punjab versus M/s Punia Kheti Centre and others (Annexure P-1) pending before the Court of the Chief Judicial Magistrate, Patiala, summoning order dated 06.06.2016 (Annexure P-2) and all subsequent proceedings arising therefrom.

2. The brief facts of the case are that on 12.07.2013, the complainant-Gurmit Singh, Insecticide Inspector alongwith Gurmail Singh, ADO(PP), Bhunerheri (Patiala), visited the premises of M/s Punia Kheti Centre Mardanhedi. At that time, Gurjit Singh son of Gurpreet Singh, Proprietor was present at the shop. He was found in possession of 10 Kgs. Quit Brand Carbendazim 12%+Mancozeb 63% WP of 1 Kg. packing manufactured and marketed by M/s Darrick Insecticides Limited. The

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respondent-complainant disclosed his identity to the accused-Gurjit Singh and selected one pack of Carbendazim 12%+ Mancozeb 63% WP Quit Brand Batch No.DIL 1904. A sample of 250 grams each was drawn. The various formalities were completed at the spot, and subsequently, on receipt of the test report, it was found that the same was mis-brand as it did not confirm to I.S. specifications, leading to the filing of the complaint dated 06.06.2016 against six persons (Annexure P-1) and the consequent summoning order dated 06.06.2016 (Annexure P-2).

3. The learned counsel for the petitioner contends that the petitioner was the Godown Incharge and accused/respondent No.6 in the complaint (Annexure P-1). His contention is two fold. Firstly, it is his contention that the summoning order (Annexure P-2) is not a reasoned summoning order and in the absence of any reasoning, the same was liable to be quashed. He relies upon the judgment passed in the case of ***'Madan Mohan Nayar versus State of Punjab, 2009(1) RCR (Criminal) 52'.***

Secondly, he contends that a perusal of the complaint would reveal no specific attribution whatsoever to the petitioner. He relies upon the judgment in '***Surinder Singh Kooner versus State of Punjab, 2015(4) RCR (Criminal) 996'*** in this regard**.**

He, therefore contends that the complaint (Annexure P-1), summoning order (Annexure P-2) and all subsequent proceeding arising therefrom are liable to be quashed qua the petitioner.

4. The learned counsel for the State, on the other hand, has referred to the reply dated 26.07.2018 filed by way of an affidavit of Gurmit Singh, Insecticides Inspector, Bhunerheri, District Patiala. She contends that

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from the report of the Laboratory, the offence is prima facie established. Therefore, no case for quashing of the proceedings is made out.

5. I have heard the learned counsel for the parties.

6. Before proceeding further, it would be apposite to refer to Section 33 of the Insecticides Act, 1968. The same is reproduced hereinbelow:-

> "**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. tc "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. tc "(2) Notwithstanding anything contained in sub-*

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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 any body corporate and includes a firm or other association of individuals; and tc" (a) "company" means any body corporate and includes a firm or other association of individuals; and"

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

7. This Court in the case of ***'Surinder Singh Kooner versus State of Punjab, 2015(4) RCR (Criminal) 996,*** has held as under:-

"11. The requirement of law in respect of creating vicarious liability must be strictly construed. Since it is a penal provision, creating vicarious liability, therefore, it is not sufficient to make bald, cursory statement in the complaint that Director is Incharge and responsible to the Company for the conduct of business of the Company without anything more role of the Director. The complaint must spell out as to how and in what manner Director was Incharge or was responsible to the Company in conduct of its business. This should be in consonance with strict interpretation of penal statutes, especially, where such statute creates vicarious liability.

12. In case of National Small Industries Corporation v. Harmeet Singh Paintal and another, 2010(2) RCR (Criminal) 122 : 2010(3) SCC 330, the Apex Court has interpreted on the

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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.

13. Learned counsel further cites 2010(3) RCR (Criminal) 912, State of NCT of Delhi v. Rajiv Khuranawherein the Apex Court has formulated the same principles of vicarious liability for quashing of the proceedings arising out of Insecticide Act and the provisions were also pari materia with that of Sections 141 of N.I. Act.

14. In 2005 (4) RCR (Criminal) 68, S.K. Jindal v. State of Haryana, this Court held that in the absence of specific averments in the complaint, no Director can be proceeded against. No Director is required to prove his innocence by leading evidence in the trial, once the averments to this effect are not incorporated in complaint. By relying upon 2005(1) RCR (Criminal) 31, Shabbir Itarsi and another v. State of Haryana and 2005(3) RCR (Criminal) 113 M/s Oswal Agro Sales Corporation v. State of Punjab, this Court held that the averments made in complaint in the context of Incharge and Responsible for the conduct of Company fell short of statutory requirement.

15. 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.

XXXXX XXXXX XXXXXX

17. In view of aforesaid, this Court is of the considered opinion that prosecution against petitioner is based upon the averments in the complaint which are short of mandatory requirement

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and, therefore, vicarious liability upon petitioner cannot be fastened merely by citing him to be Director of the Company".

8. This Court in the case of ***'Madan Mohan Nayar versus State of Punjab, 2009(1) RCR (Criminal) 52,***has held as under:-

"10. Reverting back to the facts of the present case, as is borne out from the complaint, there is not even a remote reference to the role played by the petitioners in the management of the affairs of the Company though the concept of judicial precedent as emerges out of the afore-quoted plethora of rulings is that it is incumbent upon the complainant to specify the role of the accused and it must be indicated as to whether he or she was managing the affairs of the company and was responsible to the Company Adverting to the impugned summoning order, the same reads in the following terms :

"In the Court of Shri K.S. Cheema, Chief Judicial Magistrate, Ludhiana.
State v. M.M. Nayar and others
Present : Complainant in person.
Complaint presented today. It be registered. Now, its notice to the accused be issued for 20.4.2007.

(K.S. Cheema)

Dated : 8.3.2007

Chief Judicial Magistrate, Ludhiana"

11. Axiomatically, this order is laconic and non-reasoned. This is quite cryptic. It clearly indicates non-application of mind. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. As is well settled, the accused can approach the High Court under Section 482 of the Code of Criminal Procedure or under Article 227 of the Constitution to have the proceedings quashed when the complaint does not make out any case against him. The complaint, Annexure P-1 reads in the following terms :-

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"In the Court of C.J.M., Ludhiana
No. 424/8/3/2007

State	*vs.*	*1. Sh. M.M. Nayar*
		2. Sh. Rakesh Nayar
		3. Sh. Ajay Nayar

of M/s. FMI Ltd., G.T. Road, Ludhiana Complaint under Sections 4143 read with 62 of the Standards of Weights and Measures Act, 1976.

1. It is respectfully prayed that after conducting inquiry Sh. Harpal Singh, Assistant Controller Legal Metrology Patiala and Sh. Ravinder Singh, Assistant Controller Metrology Jalandhar given reports to Controller Legal Metrology Pb. Vide letter No. 135 dated 22.3.04.

2. On the basis of inquiry Sh. Charanjit Singh, Inspector Legal Metrology Ludhiana-3 booked the case No. PB-Ldh-5/11 Dated 1.4.04.

3. The Report of Offence was sent to Assistant Controller Legal Metrology Patiala for onwards submission to Director Legal Metrology New Delhi through Controller Legal Metrology Pb.

4. The Director Legal Metrology has authorised me vide his letter No. WM-20(5) 2000 (Govt. of India) Krishi Bhawan, New Delhi dated 13.10.2006 to initiate legal action in the court of law (copy enclosed).

5. It is respectfully prayed that (1) Sh. M.M. Nayar (2) Sh. Rakesh Nayar (3) Sh. Ajay Nayar of M/s. FMI Ltd. Ferozepur Road, Ludhiana violated Sections 4143 of the Standards of Weights and Measures Act, 1976.
6. That the offence is punishable under Section 62. The accused may kindly be punished in accordance with the law.

7. List of witnesses

1. Sh. Satwinder Singh the then area Inspector Legal Metrology Ludhiana-5 now at Sarhand.

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2. Sh. Harpal Singh the then Assistant Controller Legal Metrology, Patiala now at (H.Q.) Jeevandeep Building, Sector 17, Chandigarh.

3. Sh. Ravinder Singh the then Assistant Controller Legal Metrology Jalandhar now at Ferozepur.

Sd/-
Assistant Controller
Legal Metrology,
(Weights and Measures)
Patiala Div. Patiala "

Apparently there are no allegations that the petitioners Madan Mohan Nayar, Rakesh Nayar and Ajay Nayar of M/s. FMI Limited, Ferozepur Road, Ludhiana had supplied/distributed and delivered Standard Tape Measures to various States in the Inter State Trade Transaction, without verification and stamping by the Weights and Measures Department. Ostensibly, the reference has been made merely to the inquiry report. It also does not reveal that the copy of such inquiry report was supplied to the accused to enable them to know about the substance of accusation against them. The complaint is too cryptic about the actual date of occurrence and the bundle of allegations constituting the offence. In the face of such circumstances, it would amount to an abuse of process of the Court as well as law, if the proceedings in the complaint are allowed to continue.

As a sequel of the above discussion, this petition is accepted and the complaint (Annexure P-1) bearing No. 424 dated 8.3.2007 pending in the Court of learned Chief Judicial Magistrate, Ludhiana, the summoning order dated 8.3.2007 (Annexure P-2) passed in the said complaint, and all the subsequent proceedings taken in pursuance thereof are hereby quashed.

Petition allowed".

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9. Coming back to the facts of the present case, it is apparent that the summoning order dated 06.06.2016 passed by the Chief Judicial Magistrate, Patiala (Annexure P-2) is completely cryptic, and reads as under:-

> *"Complaint presented today. It be registered. Let notice to the accused be issued for 20.07.2016."*

Therefore, it is liable to the quashed in view of the judgments ***Surinder Singh Kooner (supra) and Madan Mohan Nayar (supra).***

10. As regards the contention of there being no specific averment qua the petitioner in the complaint, it may be pointed out that a perusal of the complaint would reveal no averment at all qua the petitioner. In fact, Para 12 of the complaint only states that accused No.1, 2, 3 and 4 were incharge for the manufacturing, distributing and selling of the insecticides. No role has been attributed to the petitioner. Therefore, even on this ground alone, the proceedings are liable to be quashed.

11. In view of the aforementioned discussion, I find merit in the present petition. Therefore, the complaint No.35 dated 06.06.2016 (Annexure P-1), summoning order dated 06.06.2016 (Annexure P-2) and all subsequent proceedings arising therefrom are hereby quashed qua the petitioner alone. It is clarified that the proceedings qua the other accused may continue in accordance with law.

(JASJIT SINGH BEDI)
JUDGE

March 20, 2023
sukhpreet

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

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