

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

267

CRM-M-8727-2020

Date of decision: 20.09.2023

Prince Kumar

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Amandeep Singh Manaise, Advocate
for the petitioner.

Mr. Amit Rana, Sr. DAG, Punjab.

MANJARI NEHRU KAUL, J. (ORAL)

1. The petitioner, who is a partner of M/s Delta Crop Science, Gramn Market, Bathinda (hereinafter referred to as 'Marketing Firm') is seeking quashing of Complaint bearing No.328 dated 11.09.2019 (Annexure P-1) under Sections 3k(1), 17, 18, 29 and 33 of the Insecticides Act, 1968 (for short, 'the Act') read with Rule 27(5) of the Insecticides Rules, 1971 along with summoning order dated 11.09.2019 (Annexure P-2) passed by learned SDJM, Phul, District Bathinda and all subsequent proceedings arising therefrom.

2. As per allegations levelled in the complaint (Annexure P-1), on 21.08.2018, Insecticides Inspector Hardip Singh (hereinafter referred to as 'Inspector') visited the premises of dealer M/s Shiva Pesticides and selected a 14 x 1 Litres (14 litres) pack with packaging batch No.01 marketed by the Marketing Firm. From the original packing, 03 samples of lambda-cyhalothrin 4.9% CS were drawn as per the procedure prescribed. The Chief Agriculture Officer, Bathinda sent

one of these sealed samples to the Senior Analyst at the Insecticides Testing Laboratory at Ludhiana (hereinafter referred to as 'Ludhiana Laboratory'). As per the test report received on 17.09.2018 from the Ludhiana Laboratory, the samples were found to be misbranded as one of the active ingredient contents was found to be only 2.46% as against the required I.S. specification of 4.9%. Upon a request of the Manufacturing Company, a counter sample was sent to Central Insecticides Laboratory, Faridabad (hereinafter referred to as 'Faridabad Laboratory'). As per the report received from the Faridabad Laboratory on 19.12.2018, it too found the sample to be misbranded. After carrying out the requisite formalities including obtaining necessary consent from the competent authority, the complaint in question was instituted before SDJM Phul under Sections 3K(1), 17, 18, 29 and 33 of the Act on 11.09.2019. The Court below vide order dated 11.09.2019 (Annexure P-2), summoned the petitioner along with other co-accused to face the trial. Hence, the instant petition.

3. Learned counsel for the petitioner is seeking quashing of the complaint as well as the summoning order on the following grounds that:-

(i) the basic ingredients necessary to constitute the offences alleged are missing in the present case; from a bare perusal of the complaint, the alleged offence is even prima facie not made out against the petitioner. Though the sample had been declared misbranded, however, the petitioner was in no manner associated with the manufacture of the 'misbranded' insecticides as per Section 3(j) of the Act nor was he an importer of the same.

(ii) in addition, the pack, from which the samples were drawn, was in a sealed and intact condition, hence, the petitioner could not possibly have known, even after application of due diligence, as to whether the product which had been supplied to them by the manufacturers was misbranded or not.

While placing reliance upon *M/S Kisan Beej Bhandar, Abohar v Chief Agricultural Officer, Ferozpur, 1990 (SUPP) SCC 11*, learned counsel has contended that thus, the alleged offences under Sections 18, 29, 33 of the Act were not made out against the petitioner, moreso in the light of protection against prosecution, provided under Section 30(3) of the Act.

(iii) at the time of the alleged recovery, the petitioner was neither responsible nor in charge of the affairs of the company. It was a matter of record that as per the provisions of Section 33 of the Act, co-accused Ankit Malik had been nominated as the person who would be responsible for the conduct of their business. In support, learned counsel has drawn the attention of this Court to the affidavit of Ankit Malik annexed as Annexure P-4 dated 02.07.2018.

(iv) barring vague and bald allegations that one Sukhdev, a dealer, had purchased misbranded insecticides with the knowledge, consent, and connivance of the Marketing Firm i.e. M/s Delta Crops, Bathinda, there were no allegations much less by way of a whisper against the Marketing Firm or even the petitioner. In support, learned counsel has placed reliance upon judgment of Supreme Court in *State of NCT of Delhi Vs. Rajiv Khurana : 2010(3) RCR (Criminal) 912* wherein it was held that it is imperative to specifically aver in the

complaint that accused was in charge of, and was responsible for the conduct of business of the company.

(v) furthermore, liability, if any, would arise on part of the Manufacturing Company only, and that too of Avinash Sharma, who was designated as the person, in charge for quality control, much prior to the raid in question. In support, learned counsel has drawn the attention of this Court to his affidavit annexed as Annexures P-3.

4. Per Contra learned State Counsel while reiterating the allegations leveled in the complaint has vehemently opposed the submissions made by the counsel opposite. He submits that since the petitioner was consciously engaged in marketing a misbranded insecticide, his complicity in the crime was writ large. Still further, it was incumbent upon the petitioner to duly comply with the provisions of the Act and the Rules while marketing the insecticides which he had evidently failed to do by marketing misbranded insecticide. It was thus, not available for the petitioner now to turn around and raise a defence that he was unaware about the contents of the recovered insecticide. Learned counsel, however, has not been to dispute that the insecticide was found in a sealed and intact condition when the samples were drawn by the Inspector. Learned State counsel still further submits that since the jurisdiction of this Court under Section 482 of the Cr.P.C. is circumspect, the defence raised by the petitioners cannot be gone into at this stage, and would be appreciated during trial.

5. I have heard learned counsel for the parties and perused the relevant material on record.

6. The question which arises for the consideration of this Court is as to whether the petitioner who is a partner of the Marketing Firm can be held responsible under the Act for the contents of samples which were admittedly drawn out of a sealed package and were later on found to be misbranded by the Laboratory.

7. Before proceeding further, it would be apposite to reproduce the relevant provisions of the Act, as hereunder:-

“3 (k) “misbranded”—an insecticide shall be deemed to be misbranded—

(1) if its label contains any statement, design or graphic representation relating thereto which is false or misleading in any material particular, or if its package is otherwise deceptive in respect of its contents;

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17. Prohibition of import and manufacture of certain insecticides.—

(1) No person shall, himself or by any person on his behalf, import or manufacture—

(a) any misbranded insecticide;

(b) any insecticide the sale, distribution or use of which is for the time being prohibited under section 27;

(c) any insecticide except in accordance with the conditions on which it was registered;

(d) any insecticide in contravention of any other provision of this Act or of any rule made thereunder: Provided that any person who has applied for registration of an insecticide under any of the provisos to sub-section (1) of section 9 may continue to import or manufacture any such insecticide and such insecticide shall not be deemed to be a misbranded insecticide within the meaning of sub-clause (vi) or sub-clause (vii) or sub-clause (viii) of clause (k) of section 3, until he has been informed by the Registration Committee of its decision to refuse to register the said insecticide.

(2) No person shall, himself or by any person on his behalf, manufacture any insecticide except under, and in accordance with the conditions of, a licence issued for such purpose under this Act.

18. Prohibition of sale, etc., of certain insecticides.—

(1) No person shall, himself or by any person on his behalf, sell, stock or exhibit for sale, distribute, transport, use, or cause to be used] by any worker—

(a) any insecticide which is not registered under this Act;

(b) any insecticide, the sale, distribution or use of which is for the time being prohibited under section 27;

(c) any insecticide in contravention of any other provision of this Act or of any rule made thereunder.

(2) No person shall, himself or by any person on his behalf, sell stock or exhibit for sale or distribute or use for commercial pest control operations any insecticide except under, and in accordance with the conditions of, a licence issued for such purpose under this Act. Explanation.—For the purposes of this section an insecticide in respect of which any person has applied for a certificate of registration under any of the provisos to sub-section (1) of section 9, shall be deemed to be registered till the date on which the refusal to register such insecticide is notified in the Official Gazette.

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29. Offences and punishment.—

(1) Whoever,—

(a) imports, manufactures, sells, stocks or exhibits for sale or distributes any insecticide deemed to be misbranded under sub-clause (i) or sub-clause (iii) or sub-clause (viii) of clause (k) of section 3; or tc" (a) imports, manufactures, sells, stocks or exhibits for sale or distributes any insecticide deemed to be misbranded under sub-clause (i) or sub-clause (iii) or sub-clause (viii) of clause (k) of section 3; or"

(b) imports or manufactures any insecticide without a certificate of registration; or tc" (b) imports or manufactures any insecticide without a certificate of registration; or"

(c) manufactures, sells, stocks or exhibits for sale or distributes an insecticide without a licence; or tc" (c) manufactures, sells, stocks or exhibits for sale or distributes an insecticide without a licence; or"

(d) sells or distributes an insecticide, in contravention of section 27; or tc" (d) sells or distributes an insecticide, in contravention of section 27; or"

(e) causes an insecticide, the use of which has been prohibited under section 27, to be used by any worker; or tc" (e) causes an insecticide, the use of which has been prohibited under section 27, to be used by any worker; or"

(f) obstructs an Insecticide Inspector in the exercise of his powers or discharge of his duties under this Act or the rules made thereunder, tc" (f) obstructs an Insecticide Inspector in the exercise of his powers or discharge of his duties under this Act or the rules made thereunder,"

[shall be punishable—

(i) for the first offence, with imprisonment for a term which may extend to two years, or with fine which shall not be less than ten thousand rupees but which may extend to fifty thousand rupees, or with both; tc" (i) for the first offence, with imprisonment for a term which may extend to two years, or with fine which shall not be less than ten thousand rupees but which may extend to fifty thousand rupees, or with both;"

(ii) for the second and a subsequent offence, with imprisonment for a term which may extend to three years, or with fine which shall not be less than fifteen thousand rupees but which may extend to seventy-five thousand rupees, or with both.] tc" (ii) for the second and a subsequent offence, with imprisonment for a term which may extend to three years, or with fine which shall not be less than fifteen thousand rupees but which may extend to seventy-five thousand rupees, or with both.]"

(2) Whoever uses an insecticide in contravention of any provision of this act or any rule made thereunder shall be punishable with fine 26 [which shall not be less than five hundred rupees but which may extend to five thousand rupees, or imprisonment for a term which may extend to six months, or with both]. tc "(2) Whoever uses an insecticide in contravention of any provision of this act or any rule made thereunder shall be punishable with fine 1 [which shall not be less than five hundred rupees but which may extend to five thousand rupees, or imprisonment for a term which may extend to six months, or with both]."

(3) Whoever contravenes any of the other provisions of this Act or any rule made thereunder or any condition of a certificate of registration or licence granted thereunder, shall be punishable— tc "(3) Whoever contravenes any of

the other provisions of this Act or any rule made thereunder or any condition of a certificate of registration or licence granted thereunder, shall be punishable—

"(i) for the first offence, with imprisonment for a term which may extend to 3[one year, or with fine which shall not be less than five thousand rupees but which may extend to twenty-five thousand rupees, or with both], tc" (i) for the first offence, with imprisonment for a term which may extend to 2[one year, or with fine which shall not be less than five thousand rupees but which may extend to twenty-five thousand rupees, or with both],"

(ii) for the second and a subsequent offence, with imprisonment for a term which may extend to 4[two years, or with fine which shall not be less than ten thousand rupees but which may extend to fifty thousand rupees, or with both]. tc" (ii) for the second and a subsequent offence, with imprisonment for a term which may extend to 3[two years, or with fine which shall not be less than ten thousand rupees but which may extend to fifty thousand rupees, or with both]."

(4) If any person convicted of an offence under this Act commits a like offence afterwards it shall be lawful for the court before which the second or subsequent conviction takes place to cause the offender's name and place of residence, the offence and the penalty imposed to be published in such newspapers or in such other manner as the court may direct. tc "(4) If any person convicted of an offence under this Act commits a like offence afterwards it shall be lawful for the court before which the second or subsequent conviction takes place to cause the offender's name and place of residence, the offence and the penalty imposed to be published in such newspapers or in such other manner as the court may direct."

8. Adverting to the case in hand, apart from general allegations that misbranded insecticides had been purchased by the dealer with the knowledge, consent, and connivance of the Marketing Firm of which the petitioner is a partner, there is no specific allegation against the petitioner of having undertaken any of the activities falling within the definition of 'misbranded' as laid down under Section 3(k)(1) of the Act. Further, it has not been disputed that the petitioner is neither

the manufacturer nor even the importer of the insecticides hence, an offence under Section 17 of the Act is clearly not made out against him. Coming to Section 18 of the Act, the necessary ingredients required are clearly lacking as there is no allegation levelled against the petitioner of having indulged in sale of insecticides which were either not registered or were prohibited under Section 27 of the Act.

9. Though the learned State counsel has vehemently argued that the Marketing Firm would be liable under Section 29 of the Act, however, this Court does not find any merit in the same as he has not been able to dispute that packet from which the alleged samples were drawn was in a sealed and intact condition. In this regard, it would be apposite to refer to the following observations made by the Hon'ble Supreme Court in M/s Kisan Beej Bhandar's case (supra):-

“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 — 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.”

10. Even otherwise, admittedly, the affidavits of the responsible person u/s 33 of the Marketing Firm annexed as Annexure P-4 as well as the Quality Control Manager of Manufacturing Company annexed as Annexure P-3 are on record, which had been given much prior to the raid in question. Undisputedly, the petitioner was neither the incharge for the day to day affairs of his Marketing Firm nor is there any specific allegation levelled against him in the complaint in question.

11. As a sequel to the above, the instant petition is allowed and the complaint in question along with all consequential proceedings arising therefrom including the summoning order dated 11.09.2019 is set aside qua the petitioner.

20.09.2023
Vinay

(MANJARI NEHRU KAUL)
JUDGE

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