

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

254

CRM-M-18115-2015 (O&M)

Date of decision: 25.07.2023

Satish Kumar Gupta and another

...Petitioners

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Manish Verma, Advocate for the petitioners.

Mr. HS Sullar, Sr. DAG, 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.314-2, dated 24.12.2013, registered under Sections 3(k)(i), 17, 18, 29 and 33 of Insecticide Act, 1968 (for short 'the Act') read with rule 27(5) of Insecticide Rules, 1971 and summoning order dated 24.12.2013 passed by Chief Judicial Magistrate, Fazilka and all other consequential proceedings arising therefrom.

2. The factual matrix of the case is that the complainant-Insecticide Inspector drew a sample from an originally sealed packet on 12.06.2012, of one insecticide i.e. Chlorpyrifos 20% EC, bearing Batch no. JU-01/035, from the premises of M/s Dhamija Pesticide and Fertilizer, Fazilka, manufactured in the month of December, 2011 by M/s Rallis India Limited with an expiry after one year. 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 State Insecticide Testing Laboratory, Bathinda wherein active ingredients were found to be 16.28% instead of 20% and thereafter, the referral part of the sample was sent to Central Insecticide Laboratory, Faridabad, upon which active ingredients were found to be 16.33% . A show cause notice was issued to the petitioners leading to filing of the complaint dated 24.12.2013, Annexure P-1, was filed, and the summoning order was passed vide order of even date, Annexure P-2, by the learned Trial Court.

3. Learned counsel contends that in light of Section 33 of the Act, the proceedings against the petitioners are liable to be quashed. While referring to the aforesaid provision, he had submitted that since the petitioners are Director-Satish Kumar Gupta and Godown Incharge-Ashwani Kumar Garg qua whom no specific allegations have been leveled in the complaint except for stating that they are responsible persons. However, vide affidavit dated 24.12.2010, Annexure P3, reference to which has been made in paras 8 and 11(i) of the petition, a responsible person namely Bijender Kumar had already been appointed by the company, who has also been arraigned in the complaint as accused No.5, who is not a petitioner herein. In this regard reliance is placed on a judgment of this Court in the case of **M/s Cheminova India Limited and others vs. State of Punjab and others**, CRM-M-12082-2016 decided on 12.05.2020 and **M/s Cheminova India Limited and another vs. State of Punjab and another**, 2021 SCC OnLine SC 573.

4. Learned counsel further submitted that as per Section 33 of the Act, only if there is a specific allegation of consent, connivance or neglect is leveled against the Director, Manager, Secretary or any other officer concerning the commission of offences, the concerned can be proceeded against which in the present case is absent against the present petitioners, who are the Director and the

Godown incharge. He relies of **State of NCT of Delhi vs. Rajiv Khurana**, (2010) 11 SCC 469. Insofar as, the quashing of proceedings against Godown Incharge are concerned, reliance is placed on **M/s Cheminova India Limited and another** (supra), **KCS Bhatti vs. State of Haryana**, 2015 (1) RCR (CrI)162(2), **Kanwaljit Singh Joson vs. State of Punjab**, 2018(2)R.C.R. (CrI) 30, **P.D. Garg and others vs. State of Punjab**, 2014 SCC OnLine P&H 24782, **Surinder Singh Kooner vs. State of Punjab**, 2015 SCC Online P&H 10280 and **Yadwinder Singh vs. State of Punjab and others**, CRM-M-20884-2018 decided on 05.12.2018.

5. Learned State counsel, on the other hand, submits that the present petition is not maintainable and liable to be dismissed, in view of the availability of an alternate remedy of revision. Reliance in this regard, was placed upon the judgment passed by Hon'ble The Apex Court in case of **Girish Kumar Suneja vs. CBI**, (2017) 14 SCC 809.

6. The learned State counsel submits that Directors and Godown Incharge of the company are the responsible persons and thus rightly summoned by the trial Court. He relies on **M/s Unikil Pesticides Pvt. Ltd. vs. State of Punjab and others**, 2015 SCC OnLine P&H 5565,

7. In this regard, the learned counsel for the petitioners had further referred to judgments of this Court in the cases of **SBVR Prasad vs. State of Punjab**, CRM-M-43740-2018 decided on 06.08.2022 and **Bhagwan Dass vs. State of Punjab**, CRMM-23557-2019 decided on 06.08.2022, wherein it had been held that the complaint and summoning order were quashed qua the Director and Manager cum-Godown Incharge, on the ground that there was no specific averment in the entire complaint to show as to how the said two persons were in charge of the business or the company or were responsible for business of the

company in any manner and had any role to play with respect to quality of the products, which were manufactured by accused No.3-company. Learned counsel further submitted, that it is the act or neglect on the part of those accused, as per Section 33 of the Act, which has to be averred in the complaint which in so far as the persons arrayed in the complaint are concerned, particularly in case of Director and Godown Incharge.

8. Heard the submissions advanced by the respective learned counsel for the parties.

9. Regarding the submission that an alternate remedy of Revision is available, a profitable reference can be made to the judgment in the case of **Dhariwal Tobacco vs. State of Maharashtra**, (2009) 2 SCC 370, wherein Hon'ble The Supreme Court observed and held that, "It is, thus, difficult to conceive that the jurisdiction of the High Court would be held to be barred only because the revisional jurisdiction could also be availed of." In **Prabhu Chawla vs. State of Rajasthan and another**, (2016) 16 SCC 30, also it was held that, "In our considered view any attempt to explain the law further as regards the issue relating to inherent power of High Court under Section 482 Cr.P.C is unwarranted. We would simply reiterate that Section 482 begins with a non obstante clause to state: "Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice." A fortiori, there can be no total ban on the exercise of such wholesome jurisdiction where, in the words of Krishna Iyer, J., "abuse of the process of the Court or other extraordinary situation excites the court's jurisdiction. The limitation is self-restraint, nothing more." We venture to add a

further reason in support. Since Section 397 Cr.P.C. is attracted against all orders other than interlocutory, a contrary view would limit the availability of inherent powers under Section 482 Cr.P.C. only to petty interlocutory orders! A situation wholly unwarranted and undesirable.’’

10. As regards, the liability of Director and Godown Incharge is concerned, a reference to Section 33 of the Act, requires to be made, which reads thus:

“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, and 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.”

11. From the aforesaid, it becomes apparent that in the case of a company which has committed an offence under this Act, only the persons, who were, at the time when the offence was committed, incharge of, or responsible to the company,

for the day to day conduct of the business, as well as the company, would be liable to be proceeded against. Sub Section 2 thereof, further envisages, that the consent or connivance, or neglect of the Director, Manager, Secretary or other officer of the company, is a must for attracting the liability for offences committed by the company. It was held in **Monaheb Ketanbhai Shah and another vs. State of Gujarat and others**, 2004 AIR (SC) 4274 by Hon'ble the Supreme Court that the primary responsibility was on the complainant to make the necessary averments in the complaint to hold accused vicariously liable, only then would an occasion rise for the accused to rebut the same, is relatable to facts of the facts of the present case as perusal of the complaint shows that even averments to satisfy the requirement of the provision are conspicuously missing.

12. In **State of NCT of Delhi vs. Rajiv Khurana** (supra), Hon'ble The Supreme Court considered the scope of Section 33 of the Act and having referred to previous decisions in **Municipal Corporation of Delhi vs. Ram Kishan Rohtagi**, 1983 (1) RCR (Criminal) 73, **State of Haryana vs. Brij Lal Mittal**, 1998 (2) RCR (Criminal) 608, **K.P.G. Nair v. Jindal Menthol India Ltd.**, (2001) 10 SCC 218, **Katta Sujatha (Smt) vs. Fertilizers & Chemicals Travancore Ltd.**, 2002 (4) RCR (Criminal) 502, **Sabltha Ramamurthy vs. R.B.S. Channabasavaradhya**, 2006 (4) RCR (Criminal) 296 and **K.K. Ahuja vs. V.K. Vora**, 2009 (3) RCR (Criminal) 571 had held that, “The ratio of all these cases is that the complainant is required to state in the complaint how a Director who is sought to be made an accused, was in charge of the business of the company or responsible for the conduct of company's business. Every Director need not be and is not in charge of the business of the company. If that is the position with regard to a Director, it is needless to emphasize that in the case of non-Director

officers, there is all the more necessary to state what were his duties and responsibilities in the conduct of business of the company and how and in what manner he is responsible or liable.”

13. Hon’ble The Supreme Court in the case of **M/s Cheminova India Ltd.& another** (supra) with regard to the liability of the Managing Director, in case where the company had nominated other persons, who were already accused, held thus:-

“14. In the case on hand, it is not in dispute that on behalf of the 1 Appellant Company, 2 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 authorised 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., 2 Appellant-Managing Director cannot escape his liability from offences committed by 1 Appellant - Company. In view of the specific provision in the Act dealing with the offences by companies, which fixes the responsibility on the responsible person of the Company for conduct of its business, by making bald and vague allegations, 2 Appellant - Managing Director cannot be prosecuted on vague allegation that he being the Managing Director of the 1 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 on 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 specious 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.

20. As all other nominated/responsible persons of the Company are already accused in the complaint, we are of the view that there is no basis to proceed against the 2 Appellant - Managing Director to prosecute him for the alleged offences”

14. In the case of **KCS Bhatti** (supra) this Court while dealing with somewhat similar facts, had observed thus:-

“8. On perusal of Section 33 of the Act, it is clear that in case of violation by the Company/firm under Insecticide Act, the provisions of Section 33 of the Act are required to be complied with. As per provisions of Section 33 of the Act, in case any offence has been committed by the company, every person who was incharge or was responsible for the conduct of the business in company shall be deemed to be guilty of the offence and he shall be liable to be proceeded against and punished accordingly. Sub section (2) makes it clear that when it is proved that the offence has been committed with the consent and connivance of the Director, Manager, Secretary or other officer of the company, he shall be liable to be proceeded against and punished accordingly. For commission of said offence, there is to be specific averments in the complaint by the complainant that such person against whom the complaint was filed was the incharge and was responsible for the conduct of the company at a particular time and alleged offence has been committed with his consent and connivance.

9. From perusal of section 305 CrPC, it is clear that whenever any offence is committed by the company and the company is prosecuted, then it is for the company to decide that by whom the company is to be represented during trial. The company cannot be compelled to be represented by a particular or a specific officer. Nowhere in the complaint, it is mentioned that the petitioner was incharge and was responsible for the day to day conduct of business of the company at the relevant period or the alleged contravention took place in the company with its consent or connivance. This onus lies upon the prosecution to prove and only then a person can be prosecuted. These requirements have not been fulfilled while filing this complaint as neither requirement of section 33 of the Act has been complied with nor specific averments have been made. The controversy in the present case is squarely covered by the

judgment of case in **P.D. Gara v. State of Punjab**, 2014 (2) RCR (Criminal) 945.

10. In view of the facts as mentioned above and law position explained as discussed in the above said paras, I am of the considered opinion that mandatory provisions of section 33 of the Act have not been complied with as the complaint does not contain any specific averments with regard to role of the present petitioner.”

15. The duty of the Godown Incharge would primarily be to ensure that articles/goods received from the manufacturing firm are kept in safe custody, to maintain a proper inventory of all such articles and goods so received and to further pass on to the same to Distributors and Dealers as per the directions of the manufacturing firm. Unless there is a specific averment in the complaint that he was responsible for quality control, it would not render him liable for prosecution for having committed any offence under Insecticides Act 1968.

16. In the present case, Bijender Kumar had already been nominated as the responsible person for quality control of the products, who had furnished an affidavit dated 24.12.2010, Annexure-P3, para 3 whereof reads thus:-

“3. That I am responsible for the Control of Quality of the said firm under Section 33 of the Insecticides Act, 1968 and shall be responsible for all the acts and omission of M/s J.U. Pesticides & Chemicals Pvt. Ltd., pertaining to the quality of the products manufactured by M/s J.U. Pesticides & Chemicals Pvt. Ltd., Sikandrabad, Bulandshahar (U.P.).”

17. Even if the allegations made in the complaint that the Director as well as Godown Incharge are the responsible persons, for the conduct of business, are taken into consideration, it would lend no support to the case of the complainant in view of the judgment in the case of **M/s Cheminova India Limited and others vs. State of Punjab and others** (supra), wherein this Court quashed the proceedings against the Godown Incharge and in **M/s Cheminova India Ltd**

(supra) wherein Hon'ble The Supreme Court had quashed the proceedings against the Managing Director.

18. The fact that the petitioner-Satish Kumar Gupta is a Director of the company and not the "Managing Director", coupled with the fact that a specific person had been nominated as the person responsible for quality control as also the absence of averment regarding his consent, connivance or neglect, and therefore, neither the submission of the learned State counsel nor the judgment in the case of **M/s Unikil Pesticides Pvt. Ltd.** (supra) applies to the facts of the present case as also keeping in view the law laid down in the afore-referred judgments.

19. In **Chetan Shah vs. State of Punjab** in CRM-M-9538-2022 decided on 27.04.2023, by relying on **M/s Cheminova India Ltd.** (supra), the proceedings qua the Director were quashed after finding that a responsible person for quality control was nominated.

20. The legal proposition as enunciated by Hon'ble The Supreme Court and this Court while elucidating the provision of Section 33 of the Act, gives a complete conspectus that it would be imperative to not only specifically aver in the complaint that the accused was/were responsible for the conduct of the business, more necessarily to state what was the duty and the responsibilities in the conduct of business of the company and how and in what manner they were responsible or liable and that it was not proper to implead all and sundry as accused in the complaint. It was further held that unless clear averments are specifically incorporated in the complaint, the accused cannot be compelled to face the pangs of a criminal trial.

21. It would be beneficial to refer to the judgment of **Parbatbhai Aahir**

vs. State of Gujarat, (2017) 9 SCC 641, wherein Hon'ble The Supreme Court, while expounding the wide and plenitude powers of High Court observed that "Section 482 CrPC preserves the inherent powers to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court." Further, in **Ramesh Chandra vs. State of U.P.**, 2022 SCC OnLine SC 1634, Hon'ble The Supreme Court held thus:

"15. This Court has an occasion to consider the ambit and scope of the power of the High Court under Section 482 CrPC for quashing of criminal proceedings in **Vineet Kumar v. State of Uttar Pradesh** decided on 31st March, 2017. It may be useful to refer to paras 22, 23 and 41 of the above judgment where the following was stated:

22. Before we enter into the facts of the present case it is necessary to consider the ambit and scope of jurisdiction under Section 482 CrPC vested in the High Court. Section 482 CrPC saves the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice.

23. This Court time and again has examined the scope of jurisdiction of the High Court under Section 482 CrPC and laid down several principles which govern the exercise of jurisdiction of the High Court under Section 482 CrPC. A three-Judge Bench of this Court in **State of Karnataka vs. L. Muniswamy**, (1977) 2 SCC 699 held that the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. In para 7 of the judgment, the following has been stated:

7. ... In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the

very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.”

23. This Court finds that given the aforesaid, the present case falls within the four corners of the law as enunciated in the judgments referred to hereinabove, thus the continuation of the proceedings against the petitioners would amount to an abuse of process of law and to secure the ends of justice the same are liable to be quashed.

24. Consequently, the present petition is hereby allowed and the complaint No.314-2 dated 24.12.2013 (Annexure P-1) as well as the summoning order dated 24.12.2013 (Annexure P-2) are quashed qua the petitioners.

**(AMAN CHAUDHARY)
JUDGE**

25.07.2023
ashok

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No