

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

CRM-M No.15356 of 2021
Date of decision: 6th October, 2023

Rajnish Sarna

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Gaurav Chopra, Senior Advocate with
Mr. Saurabh Jain, Advocate for the petitioner.

Mr. Amit Rana, Sr. Deputy Advocate General, Punjab
for the respondent/State.

MANJARI NEHRU KAUL, J.

1. The petitioner, who is the whole-time Director of M/s PI Industries Ltd. (hereinafter referred to as, 'the Manufacturing Company'), is seeking quashing of complaint No.1413/2019 dated 09.05.2019 (Annexure P-1) under Sections 3(k)(i), 17, 18, 29 and 33 of the Insecticides Act, 1968 (hereinafter referred to as, 'the Act') and Rule 27(5) of the Insecticides Rules, 1971 (hereinafter referred to as, 'the Rules') instituted by the respondent, as well as summoning order dated 15.07.2019 (Annexure P-2) passed by the learned Chief Judicial Magistrate, Bathinda.

2. Brief facts of the case may be noticed as thus:

3. Based on the allegations presented in the complaint on 21.12.2017, Jaskaran Singh, who is an Insecticides Inspector, conducted an inspection of M/s Bhagwati Pesticides, Kalzarani, Village Kalzarani, Bathinda. During the inspection, three sets of samples were taken from a sealed packet containing Clonidinafop-Propargyl, which was manufactured on 29.07.2016 with an expiry date of 28.07.2018. The inspection team handed over one sample to the Proprietor of M/s Bhagwati Pesticides, who was allegedly engaged in selling the insecticides. The second sample was deposited at the office of Chief Agriculture Officer in Bathinda, and later sent to the Senior Analyst, Insecticides Testing Laboratory, Amritsar. The third sample was deposited with the Agriculture Information Officer-cum-Assistant Plant Protection Officer, Bathinda. The sample sent to the Senior Analyst, Insecticides Testing Laboratory, Amritsar returned with a report dated 24.01.2018, indicating that the sample was misbranded because it did not conform to IS specifications regarding the active ingredient. The contents were found to be 13.01 % WP against the required 15% WP for Clonidinafop-Propargyl. Consequently, a show cause notice was issued to M/s Bhagwati Pesticides, i.e. the Company, selling insecticides and M/s PI Industries Ltd., i.e. the manufacturing Company. At the request of the Dealer, the sample was sent for re-testing at the Central Insecticides Laboratory in Faridabad. The report from the Laboratory dated 12.03.2018 confirmed that the sample was misbranded as the active

ingredient in question was only 11.9 % WP, failing to meet the IS specifications. Subsequently, a complaint was filed in the trial Court and the petitioner, who serves as full time Executive Director of the manufacturing Company M/s PI Industries Ltd., was arrayed as an accused and summoned by the Court vide order dated 15.07.2019.

4. Learned senior counsel for the petitioner inter alia contends that the order summoning him for trial was passed without exercise of proper judicial mind. He submits that there are no specific allegations levelled against the petitioner with respect to his role in the alleged offence. Though he was a whole time Director, however, he was not responsible for the daily operations nor was he the designated responsible person under Section 33 of the Act. The manufacturing Company had already appointed two persons, i.e. one Rahim son of Noor Mohammad Aglodiya and Raghvindra Shukla as being the responsible individuals for the daily operations and quality control, as shown in affidavits (Annexures P-8 and P-9). Learned senior counsel submits that both these persons are already being prosecuted, so continuing the case against the petitioner would be unjust, and nothing but an abuse of the process of law.

5. Per contra, learned counsel appearing on behalf of the respondents, has reiterated the allegations levelled in the complaint and opposed the submissions made by the petitioner. It has been argued that the petitioner, as a Director of the Company, was well aware of, and duty

bound to comply with the provisions of law while manufacturing insecticides. It has been claimed that the Company, knowingly produced misbranded insecticides, causing great deal of harm to the public, and the petitioner had thus, failed in his responsibilities as a whole time Director by allowing misbranded insecticides to be manufactured in his Company.

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

7. Section 33 of the Act has specific provisions regarding the liability of individuals in the context of offences committed by a Firm/Company. This Section outlines that for a person to be held liable under Section 33 of the Act for an offence committed by a firm/Company, they must fulfill certain criteria. Firstly, the person in question must be the in-charge of, or responsible for overseeing the conduct of the Company's business at the time, when the offence was committed. This means that they should have had a direct role in managing or supervising the Company's activities related to the offence.

8. Importantly, Section 33 of the Act does not establish automatic vicarious liability for an individual simply based on their position or office within the Company. In other words, holding a certain position within the Company does not automatically make someone responsible for the offences the Company may commit. Liability is tied to a person's actual involvement and responsibility for the specific conduct in question. This provision is intended to ensure that individuals

are held accountable for their direct involvement in any unlawful activities carried out by the Company, rather than being held responsible solely due to their association with the Company. It aims to strike a balance between corporate and individual accountability within the framework of the Act.

9. It would be thus apposite to reproduce Section 33 of the Act:

“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 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.”*

10. Adverting to the case in hand, the petitioner is alleged to be a full time Director of the manufacturing Company, however, no averment has been made against him of being in charge of or being responsible for the conduct of the business of the Company, much less, of having played any role in the commission of the offences alleged. It would be pertinent to note that the respondent/State has not disputed the appointments of two persons i.e. Rahim i.e. Quality Control Manager and Raghvindra Shukla i.e. Godown In-Charge, as individuals who were responsible for the operations of the company under Section 33 of the Act. Their affidavits (Annexures P-8 and P-9 respectively) had been submitted well before the raid in question, to the Licensing Authority. It is also on record that both Rahim and Raghvindra Shukla are being prosecuted as co-accused by the State and have already been summoned by the trial Court.

11. In the circumstances, it can be safely said that the complaint against the petitioner does not meet the necessary criteria to invoke the provisions of Section 33 of the Act against the petitioner.

12. The Hon'ble Supreme Court, in '**Cheminova India Ltd. & another vs. State of Punjab & another**' 2021(3) RCR (Criminal) 750, while dealing with identical facts has held as under:

“19. Section 33 of the Act deals with 'offences by companies'. A reading of Section 33(1) of the Act, makes it clear that 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. 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 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. 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. 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.”

13. As a sequel to the above discussion and in view of the ratio of law laid down by Hon’ble the Apex Court in **Cheminova India Ltd.’s case (supra)**, the petition is allowed. The complaint (Annexure P-1) as well as the summoning order (Annexure P-2) passed by the learned Chief Judicial Magistrate, Bathinda are hereby quashed qua the petitioner.

(MANJARI NEHRU KAUL)
JUDGE

October 6, 2023
rps

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