

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

264

CRM-M-2923-2018

Date of decision: 20.09.2023

M/s Krishi Rasayan Exports Pvt. Ltd. and others

.....Petitioners

Versus

State through Gurnam Singh (Insecticides Inspector), Ludhiana

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Pritpal Singh, Advocate for the petitioner.

Mr. Amit Rana, Sr. DAG, Punjab.

MANJARI NEHRU KAUL, J. (ORAL)

1. The petitioners i.e. the Marketing Company Krishi Rasayan Exports Pvt. Ltd., its Director and the Godown Incharge are seeking quashing of Criminal Complaint No.COMA/2425/2014 dated 28.02.2014 (Annexure P-1) registered under Sections 3(k)(i), 17, 18, 29, 33 of the Insecticides Act, 1968 (for short, 'the Act') read with Section 27(5) of the Insecticides Rules, 1971, and all subsequent proceedings arising therefrom including summoning order dated 28.02.2014 (Annexure P-2), passed by learned Chief Judicial Magistrate, Ludhiana.

2. As per the allegations leveled in the complaint, on 13.07.2011, Insecticides Inspector Gurnam Singh (hereinafter referred to as 'Inspector') visited the premises of petitioner No.1, M/s Krishi Rasayan Exports Pvt. Ltd. (hereinafter referred to as 'Marketing Company') and selected a sealed pack of 05 kgs with packaging batch No.P1/KR/46, manufactured by M/s Prescient Industries Ltd. From the

original 05 kgs sealed pack, 03 samples of Triacntanol 0.05% GR were drawn as per prescribed procedure. The Chief Agriculture Officer, Ludhiana sent the abovementioned 03 sealed samples to the Senior Analyst at the Insecticides Testing Laboratory in Ludhiana. The test report of the samples was received from the Insecticides Testing Laboratory, Ludhiana on 26.07.2011 (hereinafter referred to as 'Ludhiana Laboratory'). As per the report, the sample was 'misbranded' as one of the active ingredient contents was found to be only 0.00680% GR as against the labelled declaration of 0.05% GR. Thereafter, on the request of the the Marketing Company, one of the three samples was sent to the Central Insecticides Laboratory, Faridabad (hereinafter referred to as 'Faridabad Laboratory') for retesting. The report of Faridabad Laboratory too found the sample to be misbranded vide its report received on 21.12.2011. After obtaining the requisite consent from the competent authority, the complaint in question (Annexure P-1) was filed before learned Chief Judicial Magistrate, Ludhiana 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 on 28.02.2014 (for short, 'the Rules'). The Court below vide order dated 28.02.2014 (Annexure P-2) summoned the petitioners along with the other co-accused to face trial.

3. Learned counsel for the petitioners is seeking quashing of the aforementioned complaint primarily on the following grounds that:

(i) the essential ingredients to constitute the offences alleged are amiss in the present case, and still further from a bare perusal of the complaint, no offence as alleged is prima facie made out against the

petitioners. Though the sample had been declared misbranded, however, the petitioners were in no manner associated with the manufacture of the 'misbranded' insecticides, as per Section 3(j) of the Act nor were they importers of the insecticides.

(ii) the insecticides were received by them in a sealed and intact condition from the manufacturers; there was no allegation levelled against the petitioners in the complaint in question that the petitioners had tampered with the insecticides packs or had replaced the contents of the packs received from the Manufacturing Company with any other substance. It was also a matter of record that the samples were drawn only after opening a sealed container of 5 kgs package. Since the package was in a sealed condition, the petitioners could not have possibly known, even after application of due diligence, as to whether the product 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 offences under Sections 18, 29, 33 of the Act were not made out against the petitioners, moreso in the light of protection against prosecution, provided under Section 30(3) of the Act.

(iii) it was a matter of record that the complaint was dismissed against the main accused i.e. manufacturing company on account of non-filing of RC/AD by the complainant. Since no appeal was preferred by the State to challenge the order of dismissal, it had attained finality.

In support, attention of this Court has been drawn to the abovementioned order of dismissal dated 29.08.2017 (Annexure P-4).

It has been vehemently argued that once the Manufacturing Company which allegedly manufactured misbranded insecticides stood acquitted, no cause of action would survive against the marketing company i.e. the petitioners, who had no concern whatsoever with the process of manufacturing. Thus, continuation of proceedings against the petitioners would be nothing but an abuse of the process of Court.

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 petitioners' company was consciously marketing misbranded insecticide, their complicity was writ large. Still further, it was incumbent upon the petitioners to duly comply with the provisions of the Act and the Rules while marketing the insecticides which they had obviously failed to do by marketing misbranded insecticide; it was not now available for the petitioners to turn around and raise a defence that they were unaware about the contents of the recovered insecticide.

5. Learned State counsel though, has not disputed that the insecticides were drawn from a sealed container and the samples were only drawn after opening the sealed container, however, he submits that since the sample was drawn from the godown of the petitioners' company, therefore, the petitioners could not escape prosecution merely because the pack containing the insecticides was sealed. Learned State counsel still further submits that since the scope 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.

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

7. Before proceeding further, it would be apposite to reproduce Section 3(k)(1), 17, 18 and 29 of the Act which are reproduced hereinbelow:-

“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.

<i>XXXX</i>	<i>XXXX</i>	<i>XXXX</i>
<i>XXXX</i>	<i>XXXX</i>	<i>XXXX</i>

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. Coming to the case in hand, apart from general allegations in the complaint (Annexure P-1) there is no specific allegation against the petitioners of having undertaken any of the activities laid down under Section 3(k)(1) of the Act. Admittedly, the petitioner company is neither the manufacturer nor the importer of the insecticide, hence, offence under Section 17 of the Act is not made out against them. Even the necessary ingredients as per Section 18 of the Act are clearly amiss

as there are no allegations against the petitioners of having indulged in sale of the insecticides which were either not registered or were prohibited under Section 27 of the Act. No doubt, learned State counsel has vehemently argued that the Marketing Company would be liable under Section 29 of the Act, however, he has not disputed that the packet from which the alleged samples were drawn was in a sealed and intact condition and there was no indication of it having been even tampered with.

9. It would be pertinent 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. Still further, a perusal of the complaint reflects that the manufacturing company, which happens to be the source of the alleged misbranded insecticides, though was arrayed as an accused, however, for reasons best known and rather strange, the State did not even show any zeal to prosecute it even after the complaint qua the manufacturing company was dismissed for non-filing of RC/AC. It has not been disputed by the learned State counsel that the order dismissing the complaint qua the manufacturing company had since attained finality as no appeal was preferred against it. This Court, therefore, finds merit in the contentions of the learned counsel for the petitioners that once the complaint against the manufacturing company had been dismissed, continuation of criminal proceedings against the petitioners would be nothing but an abuse of the process of the law.

11. In the abovementioned facts and circumstances, the instant petition is allowed and the complaint in question along with all consequential proceedings arising therefrom including the summoning order are quashed qua the petitioners.

20.09.2023		(MANJARI NEHRU KAUL)
Vinay		JUDGE
Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No