

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CRM-M-48664-2017 (O&M)
Date of Decision: 16.3.2023

Uday Kairon

....Petitioner

VERSUS

State of Punjab through Insecticide Inspector, Hoshiarpur

....Respondent

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by : Mr. Rakesh Verma, Advocate and
Mr. Manish Verma, ADvocate
for the petitioner.

Mr. C.L.Pawar, Addl. AG, Punjab.

KARAMJIT SINGH, J.

The petitioner has filed this petition under Section 482 of Cr.P.C. for quashing of complaint No.46 dated 15.12.2016 titled State of Punjab through Insecticide Inspector Vs. Ms. Raju Seed Store and others filed under Section 3k(i), 17, 18, 29 and 33 of the Insecticides Act, Annexure P-1, pending in the Court of learned Judicial Magistrate 1st Class Mukerian, District Hoshiarpur, summoning order dated 15.12.216, Annexure P-2 passed by the said Court and all consequential proceedings arising therefrom, qua the petitioner.

The brief facts of the complaint are that on 20.05.2014, Kamaldeep Singh, Insecticide Inspector Block Hazipur visited the shop premises of M/s Raju Seed Store, Ransota, Block Hazipur, District Hoshiarpur (Dealer), in exercise of the powers conferred upon him by the State Govt. and he checked the stock lying in the aforesaid shop and drew a

1.6.2013 and expiry date 31.5.2015 manufactured by M/s Shivalik Agro Chemicals B-59, Phase-7, SAS Nagar, Punjab, for the purpose of analysis and the same was put in three clean and dry polythene bags separately each weighing 500 grams. The polythene bags were tightly fastened and put in three separate cloth bags. The seizure memo forms No. XX and XXI were prepared in presence of Jaswant Singh proprietor. Form No.XXI was also put in the aforesaid three cloth bags. Then the samples were sealed by following the proper procedure and one part of the sealed sample was handed over to Jaswant Singh against proper receipt. The other two parts of the sealed samples were handed over to Jasbir Singh Agriculture Development Officer (PP) on the same very day. One part of the sample was sent for its analysis to Insecticide Testing Laboratory Amritsar on 23.05.2014. After analysis, the said laboratory gave its report which was received in the office of Chief Agriculture Officer, Hoshiarpur on 10.6.2014 and as per the said report the sample did not conform to IS specifications in respect of the percentage of active ingredient content, hence was found to be mis-branded. Copies of the analysis report along with show cause notices were served to the dealer, distributor and manufacturer of the said insecticide. On request made by one of the accused the sample was sent for retesting as per provisions of Section 24 of the Act and accordingly, one part of the sealed sample was sent to Central Insecticide Laboratory Faridabad vide letter dated 24.09.2014 for re-analysis. Even as per the said report of retesting dated 29.12.2014 the sample was not found conforming to the relevant specifications in active ingredient content and thus was declared misbranded. After receipt of the report of retesting of the sample, all the formalities were completed and the case was sent to Director Agriculture,

Punjab for getting sanction to prosecute the accused persons as per the provisions of Section 31(1) of the Insecticides Act. Then Director Agriculture Punjab gave necessary sanction to prosecute the accused persons vide letter dated 9.11.2015 and thereafter, impugned complaint Annexure P-1 was filed by the complainant on 15.12.2016 and the notice of the same was issued to the accused persons for 20.02.2017 by the trial Court.

The petitioner is impleaded as an accused being the Director/Partner of the manufacturing company of the insecticide in question, i.e., M/s. Shivalik Agro Chemicals, B-59, Phase-7, SAS Nagar.

Counsel for the petitioner, while challenging complaint (Annexure P-1) and summoning order (Annexure P-2), has contended that the present petitioner could not be summoned to face the prosecution, merely on account of holding the post of Director/Partner. He further submits that neither there are specific averments in the complaint (Annexure P-1) nor it has been mentioned that the petitioner was incharge and responsible for the conduct of business of the manufacturing company at the relevant period or the alleged offence was committed with his consent and connivance.

Counsel for the petitioner, in support of his contentions, referred to complaint (Annexure P-1), to submit that the only allegations against the petitioner are that M/s Shivalik Agro Chemicals, SAS Nagar, Punjab and its responsible persons for quality control and business conduct, have violated the provisions of Insecticides Act, 1968. It is further contended that in the entire complaint (Annexure P-1), it has not been

averred that the petitioner was incharge of the business of the company in question or was responsible for the functioning of the company, more so, with respect to quality of the products manufactured. He while referring to **Monaheb Ketanbhai Shah and another v. State of Gujarat and others**, 2004 (3) RCR (Criminal) 800, contends that primary responsibility is on the complainant to make necessary averments in the complaint so as to make the petitioner vicariously liable and only when the said necessary averments are made, occasion would arise for the petitioner to rebut the same.

Counsel for the petitioner further submits that as per provisions of Section 33 of the Insecticides Act, it is 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. Counsel for the petitioner has further contended that in the present case, State has filed the reply by way of affidavit of Kamaldeep Singh, Insecticide Inspector and along with said reply, the State also filed Annexure R-1 and a perusal of the same would show that Swaran Singh (Production Supervisor) mentioned at Serial No.3 and Nadeem Ahmed (Chief Chemist) mentioned at Serial No.4 are stated to be responsible for the quality control of the products manufactured by M/s Shivalik Agro Chemicals whereas the present petitioner is shown at Serial No.1 and although, he is designated as partner but the corresponding column under the heading, “responsible for” is left blank. It has been further argued that from the aforesaid document Annexure R-1 which has not been disputed by the State counsel, it is clear that Swaran Singh (Production Supervisor) and Nadeem Ahmed (Chief Chemist), were responsible for the quality control of the insecticides manufactured by the manufacturing company which was being run by the petitioner as its partner.

He has further contended that undoubtedly, aforementioned Swaran Singh and Nadeem Ahmed are already facing prosecution in the complaint (Annexure P-1). Counsel for the petitioner, while referring to judgment passed by Hon'ble Supreme Court in **M/s Cheminova India Limited and another v. State of Punjab and another**, 2021 (3) RCR (Criminal) 750, has contended that once a person has been named as the person responsible for the quality control of the manufactured goods, then the person who is a Director/partner of the company cannot be held vicariously liable for the acts or omissions committed by the manufacturing company and thus, the prosecution of the petitioner is nothing but an abuse of the process of law, even if he was found to be overall incharge of the affairs of the company.

Counsel for the petitioner has further submitted that in the instant case, there was non-compliance of Section 22 of the Insecticides Act as there was delay in sending the sample for its analysis; that in the instant case, the sample was drawn on 20.5.2014 but was sent to the testing laboratory for its analysis on 23.5.2014 i.e. after delay of 3 days in contravention of the provisions of Section 22(6) of the Insecticides Act which provides that the sample is to be sent for its testing to the laboratory as soon as possible without any delay. In this context, he has placed reliance upon order dated 16.1.2023 passed by Coordinate Bench of this Court in **Sohan Singh v. State of Punjab**, CRM-M-12926-2018 whereby the complaint filed under the Insecticides Act was quashed on the ground of delay of 6 days in sending the sample for its analysis to the testing laboratory.

The present petition is contested by the State counsel who has

submitted that in the present case, the sample of the insecticide

manufactured by M/s Shivalik Agro Chemicals, SAS Nagar, Mohali was found to be misbranded. State counsel has further contended that the petitioner was responsible to the manufacturing company for the conduct of its business, he being the partner of the manufacturing company and shall be liable to be proceeded against vicariously along with the company for violations of various provisions of the Insecticides Act. State counsel has further contended that specific averments are there in the complaint that the petitioner being the partner of the manufacturing company is responsible person for the quality control of the manufactured goods and the sample taken from the same was found to be not in consonance with IS specifications for its percentage of active ingredients. State counsel has further submitted that as per Annexure R-1, Swaran Singh, Production Supervisor and Nadeem Ahmed, Chief Chemist were responsible for the quality control of the products but still, the petitioner being partner is over all incharge and responsible for conduct of the business of the manufacturing company and thus, cannot escape from his liability.

State counsel has further contended that there was no inordinate delay in sending of the sample for its analysis to the testing laboratory as the sample was collected on 20.5.2014 and was received by the concerned laboratory on 23.5.2014 and by that time, its shelf life had not expired as its expiry date was 31.5.2015. State counsel, while concluding his arguments, has submitted that the present petition deserves to be dismissed being devoid of merits.

I have considered the submissions made by the counsel for the parties.

Section 33 of the Insecticides Act provides as follows : -

“(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.”

Hon'ble Apex Court in **State of NCT of Delhi v. Rajiv Khurana**, 2010 (3) RCR (Criminal) 912 while articulating the scope and ambit of Section 33 of the Insecticides Act held that the requirement of Section 33 of the Insecticides Act is that a person sought to be made liable vicariously should be incharge of or responsible to the company for conduct of its business at the relevant time. Further, as per the law laid down in Rajiv Khurana's case (supra), there should be specific averments in the complaint that the concerned Director/Partner was incharge of and responsible to the company for its day to day business at the relevant time. Furthermore, as per the provisions of Section 33 of the Insecticides Act, there should also be averments in the complaint that the alleged offence has been committed with consent or connivance of or is attributable to any neglect on the part of said Director/Partner, to make him vicariously liable. Thus, making it clear that every person connected with the company/firm shall not fall within the ambit of the provisions of Section 33 of the Insecticides Act. Thus, merely being a Director/Partner of a company/firm is not sufficient to make the person vicariously liable under Section 33 of the Insecticides Act.

A perusal of paragraph 13 of the complaint (Annexure P-1) would show that the only allegations levelled against the petitioner are that M/s Shivalik Agro Chemicals, B-15, Phase-VII, SAS Nagar, Punjab and its responsible persons for quality control and business conduct, have violated the provisions of Sections 17 and 18 read with Section 3(k)(i) of the Insecticides Act, they being the manufacturer of misbranded insecticide.

There are no specific averments in the entire complaint to show as to how

the petitioner was incharge of the business of the company or was responsible for conduct of the company's business in any manner or had any role to play with respect to quality of the insecticides manufactured by M/s Shivalik Agro Chemicals. Moreover, in the present case, it is apparent from complaint (Annexure P-1) coupled with Annexure R-1 that Swaran Singh (Production Supervisor) and Nadeem Ahmed (Chief Chemist) are the responsible persons for the quality control of the manufactured goods and both the said responsible persons are already facing prosecution in the present case along with the manufacturing company namely M/s Shivalik Agro Chemicals, SAS Nagar. Further, from the perusal of Annexure R-1, it transpires that the petitioner was not responsible for the quality control of the manufactured products. It is, thus, apparent that Swaran Singh (Production Supervisor) and Nadeem Ahmed (Chief Chemist) had been specifically named as responsible officers of the company for the quality control of manufactured goods. Admittedly, the petitioner being the partner of the manufacturing company/firm, is overall incharge of the affairs of the company/firm but in the given circumstances as two persons namely Swaran Singh and Nadeem Ahmed are specifically deputed by the company/firm for the quality control of the manufactured goods, in the absence of clear and categorical averments in the complaint describing the role played by the petitioner, there cannot be any vicarious liability of the petitioner in light of law laid down by Hon'ble Apex Court in **M/s Cheminova India Limited's** case (supra) and **Rajiv Khurana's** case (supra).

For the foregoing reasons, this Court finds that continuation of the criminal proceedings on the basis of complaint (Annexure P-1) and the

summoning order (Annexure P-2) against the petitioner would amount to misuse of the process of law.

In the instant case, admittedly, the sample was sent for its testing on the 4th day of its collection. In **Sohan Singh's** case (supra) which has been relied upon by the counsel for the petitioner, there was delay of 6 days in sending the sample for its analysis. So, the facts of aforecited case are distinguishable from that of present case. Further, this Court does not want to delve into this issue as it will prejudice the right of the complainant to prosecute the other accused who are facing trial and are not party to the present petition.

In view of the aforementioned discussion, the present petition is allowed and Complaint No.46 dated 15.12.2016 titled State of Punjab through the Insecticide Inspector v. M/s Raju Seed Stores and others (Annexure P-1) and summoning order dated 15.12.2016 (Annexure P-2) along with all subsequent proceedings arising therefrom are hereby quashed qua the petitioner.

(KARAMJIT SINGH)
JUDGE

March 16, 2023

Paritosh Kumar

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