

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

245-8

CRM-M-43685-2020 (O&M)
Date of decision: 28.07.2023

Arun Kumar

...Petitioner

Versus

State of Punjab

...Respondent

245-5

CRM-M-41178-2019 (O&M)

Rajesh Aggarwal and another

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Rakesh Verma and

Mr. Manish Verma, Advocates for the petitioners.

Ms. Himani Arora, AAG, Punjab.

AMAN CHAUDHARY, J.

1. The present petitions involve common questions of law and similar facts and are thus being decided together.
2. Prayer in the aforesaid petitions filed under Section 482 of the Code of Criminal Procedure is for quashing of complaint No.25 dated 06.06.2019 under Sections 3(K)(I), 17, 18, 29 and 33 of the Insecticide Act, 1968 (for short 'the Act') read with Rule 27 (5) of Insecticide Rules, 1971 and summoning orders dated 24.01.2019, 01.07.2019 and 10.04.2019 respectively, passed by SDJM, Khanna, Ludhiana.
3. The first petition bearing CRM-M-43685-2020 has been filed by

Godown Incharge, Bathinda of M/s Insecticides (India) Ltd., Samba (J&K) and

the second petition has been preferred by Managing Director and Godown Incharge, Ludhiana of the above company only.

4. The factual matrix of the case is that the complainant-Insecticide Inspector drew a sample from an originally sealed packet on 15.06.2016, of one insecticide i.e. Butachlor 50% EW bearing Batch No. UO150, from the premises of M/s Bajaj Agri Inputs, Khanna, manufactured in April, 2016 by M/s Insecticides (India) Ltd., SIDCO Industrial Growth Centre, Samba (J&K), with an expiry of two year. It was sent for testing and the report of the first sample was received, declaring it misbranded. The sample aforesaid was found misbranded on having been examined by the State Insecticide Testing Laboratory, Amritsar wherein active ingredients were found to be 37.27% and thereafter, the referral part of the sample was sent to Central Insecticide Laboratory, Faridabad, upon which active ingredients were found to be of 41.5% instead of falling within permissible limit of 48.5%-52.5%. A show cause notice was issued to the petitioners leading to filing of the complaint dated 06.06.2019, Annexure P-1, was filed, and the summoning order was passed vide order of even date, Annexure P-2, by the learned Trial Court.

5. 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 Managing Director-Rajesh Aggarwal and Godown Incharge(s)-Arun Kumar and Inderjit Singh, qua whom no specific allegations have been leveled in the complaint except for stating that they are responsible persons. However, a reference has been made in paras 8 and 11(i) of the petition, where a responsible person namely Udai Kumar had already been appointed by the company, who has also been arraigned in the complaint as accused No.7(c), who is not a

petitioner herein. By placing reliance, learned counsel submits that the case of the petitioners is squarely covered by the judgment in **Raghuram K. Shetty vs. State of Punjab**, 2022 SCC OnLine P&H 4060.

6. Learned State counsel submits that the Managing Director and Godown Incharge(s) of the company are the responsible persons and thus, the petitioners have been rightly summoned by the trial Court. She relies on **M/s Unikil Pesticides Pvt. Ltd. vs. State of Punjab and others**, 2015 SCC OnLine P&H 5565. However, she has not been able to controvert the submissions made by the counsel for the petitioner and distinguish the aforesaid judgment.

7. Heard learned counsel on either side.

8. This Court in **Raghuram Shetty** (supra), while taking into consideration the judicial pronouncements in **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, **State of NCT of Delhi vs. Rajiv Khurana**, (2010) 11 SCC 469, **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, **Yadwinder Singh vs. State of Punjab and others**, CRM-M-20884-2018 decided on 05.12.2018, and also the judgment of **M/s Unikil Pesticides Pvt. Ltd.** (supra), referred by the State Counsel being distinguishable on facts, quashed the complaint instituted against Director and Godown Incharge, on the grounds that a specific person had been nominated for quality control; no specific averments as to how they were responsible for the misbranding of the product; coupled with the fact that specific allegations of

their consent, connivance or neglect, resulting in the misbranding, being conspicuously missing, would not suffice, to satisfy the mandatory ingredients of Section 33 of the Act, to hold them even vicariously liable, in order to fasten them with the liability of misbranding and thereby the consequence of being penalized.

9. Reverting to the facts of the present case, the petitioners are also Director, Manager-cum-Godown Incharge as well as Godown Incharge and Udai Kumar was already appointed by the company as the responsible for the quality control. Further that, there are no specific averments made in the complaint against the petitioners as to their duty and responsibilities in the conduct of business of the company as also how and in what manner they were responsible or liable and the allegations regarding their consent, connivance or neglect being absence, therefore, the case of the petitioners falls within four corners of the judgments in **M/s Cheminova India Limited** and **Rajiv Khurana** (supra), which fact the State counsel was unable to controvert, thus, the present petition deserves to be and is hereby allowed.

10. Resultantly, the present petition is hereby allowed and the complaint No.25 dated 06.06.2019, Annexure P-1, as well as the summoning orders dated 24.01.2019, 01.07.2019 and 10.04.2019, Annexures P-2 respectively, are quashed qua the petitioners.

11. A photocopy of this order be placed on the file of the connected case.

(AMAN CHAUDHARY)
JUDGE

28.07.2023
ashok

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