

CRM-M-49611-2021 (O & M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 02.05.2023

(1) CRM-M-49611-2021 (O & M)

M/s Gagan Trading Co. and anr. Petitioners

V/s

State of Punjab ...Respondent

(2) CRM-M-51184-2021 (O & M)

M/s Modern Kheti Store and ors. Petitioners

V/s

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. R.K. Girdhar, Advocate,
for the petitioners.

Mr. Kirat Singh Sidhu, DAG, Punjab.

JASJIT SINGH BEDI, J. (Oral)

This order shall dispose of two petitions bearing Nos. CRM-M-49611-2021 filed by M/s Gagan Trading Company and another (Distributor) and CRM-M-51184-2021 filed by M/s Modern Kheti Store and others (Dealer).

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2. For the sake of convenience, the facts are being taken from CRM-M-49611-2021 filed on behalf of M/s Gagan Trading Company and another.

3. The prayer in the present petitions is for the quashing of criminal complaint No.COMA-368/2021 dated 24.05.2021 under Sections 3(k)(i), 17, 18 and 33 of the Insecticide Act, 1968 and Rule 10(4)(iii) of Insecticide Rules, 1971 punishable under Section 29 of the Insecticides Act, 1968 (Annexure P-4), the summoning order dated 23.08.2021 (Annexure P-5) passed by the Chief Judicial Magistrate, Amritsar and all consequent proceedings arising therefrom.

4. The brief facts of the case are that on 08.08.2020, the Insecticide Inspector, Block Verka, District Amritsar, alongwith Sh. Balwinder Singh ADO (P.P.), District Headquarter, Amritsar inspected the shop of the dealer-M/s Modern Kheti Store, Amritsar (petitioner in CRM-M-51184-2021) and drew a sample of insecticide-Cartap Hydrochloride 4% G having Batch No.2007010, manufacturing date July 2020 and expiry date June 2020 manufactured by M/s Coromandel Agrico Pvt. Ltd., Buland Shehar. The sample was drawn from one sealed packet of 5 kg. packing.

5. Out of the two test samples, one of the sample was sent to the Senior Analyst, Insecticide Testing Laboratory, Ludhiana for analysis on 13.08.2020 and the same was declared mis-branded as per the report dated 14.08.2020 since it contained only 2.51% active ingredients instead of 4.00%. Thereafter a copy of the analysis report alongwith show cause notice dated 26.08.2020 was served to the dealer-M/s Modern Kheti Store

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dated 25.07.2020 vide which the insecticide was shown to have been purchased from M/s Gagan Trading Company (Distributors/petitioners in CRM-M-49611-2021).

6. Thereafter, a show cause notice dated 08.09.2020 alongwith the analysis report was sent to M/s Gagan Trading Company. A detailed reply to the show cause notice was submitted alongwith a copy of the invoice dated 22.07.2020 vide which the insecticide in question had been shown to be purchased from M/s Coromandel Agrico Pvt. Ltd., Buland Shehar.

7. Thereafter, a show cause notice dated 11.09.2020 alongwith a copy of the analysis report was issued to the manufacturing company i.e. M/s Coromandel Agrico Pvt. Ltd., Buland Shehar. The said manufacturing company submitted a reply and made a request to the chief Agriculture Officer, Amritsar for re-analysis of the reference sample by the Central Insecticide Laboratory, Faridabad as per the provisions of Section 24(3) and Section 24(4) of the Insecticide Act, 1968. However, the request for re-analysis was declined by the Chief Agriculture Officer, Amritsar.

8. On 18.09.2020, the dealer-M/s Modern Kheti Store filed an application before the Judicial Magistrate Ist Class, Amritsar seeking re-analysis of the reference sample from the Central Insecticide Laboratory, Faridabad. This application was allowed on 18.11.2020 and the reference sample of Cartap Hydrochloride (4.00% G) was sent to the Central Insecticide Laboratory, Faridabad vide letter dated 24.11.2020. The Central Insecticide Laboratory, Faridabad again declared the sample as mis-branded. However, it was found that the sample contained 3.54% active ingredients instead of 4.00% G.

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9. The copies of the re-analysis reports of the Central Insecticide Laboratory, Faridabad were sent to all the accused including the present petitioners alongwith show cause notices. Meanwhile, the licence of the dealer-M/s Modern Kheti Store was cancelled for mis-branding. However, in an appeal before the Joint Director, Agriculture (PP)-cum-Appellate Authority, Punjab, Mohali, the licence was restored by holding that the sample had been taken from an original packing and its seal had not been tampered with. However, the dealer was restrained from selling and marketing the insecticides manufactured by M/s Coromandel Agrico Pvt. Ltd.

10. Thereafter, on 24.05.2021, the respondent-complainant filed a complaint under Sections 3(k) (i), 17, 18 and 33 of the Insecticides Act, 1968 and Rule 10(4)(iii) of Insecticides Rules, 1971 punishable under Section 29 of the Insecticides Act, 1968 against the dealer-M/s Modern Kheti Store (petitioner in CRM-M-51184-2021), the distributor-M/s Gagan Trading Company (petitioner in CRM-M-49611-2021) as well as against the manufacturing company-M/s Coromandel Agrico Pvt. Ltd. It was *inter alia* alleged in the complaint that the dealers and the distributors had committed the offences under the Insecticides Act by selling, stocking and distributing the insecticide in question and the manufacturer had committed the offence by manufacturing the same. A copy of the complaint dated 24.05.2021 is attached as Annexure P-4 to the petition.

11. On 23.08.2021, the petitioners alongwith their co-accused came to be summoned to face Trial for the offences in question. A copy of the

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impugned summoning order dated 23.08.2021 is attached as Annexure P-5 to the petition.

12. The aforementioned complaint (Annexure P-4), summoning order dated 23.08.2021 (Annexure P-5) and all subsequent proceedings arising therefrom are sought to be quashed by way of the present petitions qua the petitioners.

13. The learned counsel for the petitioners contends that admittedly, the petitioners are either dealers or distributors. Since the purchase of insecticide from the manufacturer by the distributor was on the basis of a proper invoice, in original sealed packing of 5 kg. and the same was sought to be sold by the distributor to the dealer, neither the distributor nor the dealer could be held to be liable and the liability, if any, lay with the manufacture i.e. M/s Coromandel Agrico Pvt. Ltd. In fact, Form-V(D) (Annexure P-2) would clearly establish that loose samples were taken by the complainant from a sealed packing. He, thus, contends that in view of the judgments '*M/s Preet Kheti Sewa Center and another versus State of Punjab (CRM-M-21176-2019 decided on 18.03.2020)*', *M/s S.S. Fertilizers and another versus State of Punjab, 2017(2) RCR (Criminal) 59*', *M/s Josan Khad Store and others versus State of Punjab, 2014(1) RCR (Criminal) 43*', *M/s Sandhu Kheti Store Sewa Centre and others versus State of Punjab, 2013(4) RCR (Criminal) 893*', *M/s Naresh Kumar and others versus State of Punjab through Insecticide Inspector, Kapurthala, 2001(2) RCR (Criminal) 202*, *M/s Garg Agro Chemicals and another versus State of Punjab, 2011(2) RCR (Criminal) 395*, *Ramesh Kumar and others versus State of Punjab, 2010(2) RCR (Criminal) 273*,

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M/s Sanjeev Sales Corporation and another versus State of Punjab, 2010(1) RCR (Criminal) 33' and M/s Bajwa Seed Store and others versus State of Punjab, 2009(1) RCR (Criminal) 378', the petitioners were entitled to the protection as per Section 30(3) of the Insecticides Act, 1968, and therefore, they could not be held to be responsible for the manufacturing defect, if any, for which the liability only lay with the manufacturing company.

Additionally, as regards the allegations that M/s Coromandel Agrico Pvt. Ltd., the manufacturers could not have sold the insecticide in question directly to the distributor-M/s Gagan Trading Company and the sale had to be from the company godown at Kothi No.1981 Street No.6 Guru Gobind Singh Nagar, Barnala Road, Bathinda, Punjab, it is his contention that as per the terms of the licence of the distributor-M/s Gagan Trading Company (Annexure P-1), the distributor could purchase the insecticide directly from M/s Coromandel Agrico Pvt. Ltd. Thus, as M/s Gagan Trading Company being the distributor could purchase the insecticide directly from any premises of the manufacturer, the subsequent sale to the dealer M/s Modern Kheti Store cannot be faulted. Therefore, the liability for violation of Rule 10(4)(iii) of the Insecticides Rules, 1971 punishable under Section 29 of the Insecticides Act, 1968 for selling the insecticide from the place other than the company godown at Kothi No.1981 Street No. 6 Guru Gobind Singh Nagar, Barnala Road, Bathinda, Punjab, was of the manufacturer-M/s Coromandel Agrico Pvt. Ltd. alone.

14. The learned counsel for the State, on the other hand, vehemently contends that the case against the petitioners and their co-

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accused is well-established. They were at liberty to raise all the grounds as raised in the present petitions at the stage of the Trial. No case for quashing of the complaint (Annexure P-4) and the summoning order dated 23.08.2021 (Annexure P-5) was made out. He, however, concedes that there is no denial in the respective replies dated 16.09.2022 filed by of affidavit of Gurjot Singh, Insecticide Inspector Block Verka, District Amritsar to the averments made in both the petitions that the samples obtained by the complainant/answering respondent from the dealer-M/s Modern Kheti Store was from a sealed original packing as had been received from the distributor-M/s Gagan Trading Company, who had further received the same from the manufacturer-M/s Coromandel Agrico Pvt. Ltd.

15. I have heard the learned counsel for the parties at length.

16. Before proceeding further, it would apposite to refer to the provisions of Section 30 of the Insecticide Act, 1968. The same are reproduced hereinbelow:-

“30. Defences which may or may not be allowed in prosecutions under this Act.—

(1) Save as hereinafter provided in this section, it shall be no defence in a prosecution under this Act to prove merely that the accused was ignorant of the nature or quality of the insecticide in respect of which the offence was committed or of the risk involved in the manufacture, sale or use of such insecticide or of the circumstances of its manufacture or import.

(2) For the purposes of section 17, an insecticide shall not be deemed to be misbranded only by reason of the fact that—

(a) there has been added thereto some innocuous substance or ingredient because the same is required for the manufacture or the preparation of the insecticide as an article of commerce in a state fit for carriage or consumption, and not to increase the bulk, weight or measure of the insecticide or to conceal its inferior quality or other defect; or

(b) in the process of manufacture, preparation or conveyance some extraneous substance has unavoidably become intermixed with it.

(3) A person not being an importer or a manufacturer of an insecticide or his agent for the distribution thereof, shall not be liable for a contravention of any provision of this Act, if he proves—

(a) that he acquired the insecticide from an importer or a duly licensed manufacturer, distributor or dealer thereof;

(b) that he did not know and could not, with reasonable diligence, have ascertained that the insecticide in any way contravened any provision of this Act;

(c) that the insecticide, while in his possession, was properly stored and remained in the same state as when he acquired it”.

17. The aforementioned provision has been interpreted by this Court in a number of judgments.

In ***M/s Preet Kheti Sewa Center and another versus State of Punjab (CRM-M-21176-2019 decided on 18.03.2020)***, it was held as under:-

“5. Attention of the Court has thereafter be drawn to the Complaint itself in which, Petitioner No.1 has been described as a "Dealer Firm" of which Petitioner No.2 is the Proprietor and

responsible person. According to Ld. Counsel for Petitioners, when admittedly his client happens to be only the local Dealer of the Products, which were found to be misbranded, and the samples whereof had been drawn from the sealed container, no criminal liability would lie against them except in the case that they had any source of information about such misbranding, which admittedly has not been alleged in the Complaint.

6. Reliance in this regard has been placed on the decision of the Supreme Court in 'M/S KISAN BEEJ BHANDAR, ABOHAR Versus CHIEF AGRICULTURAL OFFICERS, FEROZEPUR AND ANOTHER' 1990 Supreme Court Cases (Crl.) 623, in which it was observed inter-alia-

"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 area 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

discharges, 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."

(Emphasis added)

7. *The aforesaid decision of the Apex Court was followed by various Benches of this Court in 'Jindal Fertilizers and Chemicals and others Vs. State of Punjab' 2010(4) R.C.R. (Criminal) 146; M/s S.S.Fertilizer and another Vs. State of Punjab' 2017 (2) R.C.R. (Criminal) 59; 'M/s Sukhana Kheti Bari Centre Vs. State of Punjab' CRM-M-5825-2017; 'M/s Zimidara Kheti and another Vs. State of Punjab' 2019(1) R.C.R. (Criminal) 288 and 'Gurinder Singh and another Vs. State of Punjab' 2019(3) R.C.R. (Criminal) 356.*

8. *In all the above cases, proceedings arising out of the criminal complaint against the Dealers when samples of the mis-branded insecticides were taken against them in the form of sealed containers were quashed.*

9. *Ld. State Counsel however, has submitted that for the purpose of seeking benefit under [Section 30\(3\)](#) of the Insecticides Act, it was incumbent upon the Petitioners to prove certain questions of fact to the effect that, (i) the Insecticides were acquired by it from an importer or a duly licensed manufacturer, distributor or dealer thereof; that (ii) they did not know and could not, with reasonable diligence, have ascertained that the insecticides in any way contravened any provisions of the Act; and that, (iii) the insecticides, while in their possession, were properly stored and remained in the same state as and when acquired. Reliance in this regard has been made on the decision of this Court in 'Ashwani Kumar Bhakoo Vs. State of Punjab' 1994(1) R.C.R. (Criminal) 349.*

10. After having carefully perused the entire material on record, this court finds that reference to the aforesaid decision relied upon by the State is unwarranted. This is so in view of specific averments made in Paras 17 & 18 of the original Complaint itself, which are set out as follow -

"17. That it is submitted that after receiving the re-analysis report of this insecticide sample from the Central Insecticides Laboratory Faridabad on 13.01.2016, then the Chief Agricultural Officer, Ludhiana (Sh.Sukhpal Singh Sekhon) had served show cause notice to this dealer firm M/s Preet Kheti Sewa Centre, Malaudh (Ludhiana) vide Office Letter No.238-239/PP dated 21.01.2016 to explain their position due to the violation of Sections 3k (1), 17, 18, 29 & 33 of the [Insecticides Act](#), 1968 and had submitted the re-analysis report of this sample along with notice. That a copy of this show cause notice served to the dealer is annexed as Annexure R-18 (original office copy). That the Chief Agricultural Officer Ludhiana had also served the show cause notice to this manufacturing company M/s Sumitomo Chemical India Pvt. Ltd. Mumbai through the responsible persons of this company due to the violation of [Sections 3k\(1\), 17, 18, 29 & 33](#) of the Insecticides Act, 1968 vide Office Letter No.241- 248/PP dated 21.01.2016 to explain the matter due to the failure of this sample and had sent the re-testing report of this sample along notices. That a copy of this show cause notice is annexed as Annexure R-19 (original office copy).

18. That it is submitted that this dealer firm M/s Preet Kheti Sewa Centre, Malaudh (Ludhiana) had submitted the reply on 05.02.2016. That this dealer firm had submitted in this reply that this insecticide Quinalphos

25% EC bearing Batch No.IVSCKLX003 had been purchased from the manufacturing company M/s Sumitomo Chemical India Pvt. Ltd. from this company's own Sales Centre, 2818/0, Ambala Bypass Road, Transport Nagar, Ludhiana vide Invoice No.CPDB/Sale/LU/705 dated 11.06.2015. That a copy of this invoice is already annexed as Annexure R-10. That a copy of reply submitted by this dealer firm M/s Preet Kheti Sewa Centre, Malaudh (Ludhiana) is annexed as Annexure R-20 (original office copy). That the manufacturing company M/s Sumitomo Chemical India Pvt. Ltd., Vapi, Distt. Valsad (Gujarat) had also submitted their replies on 02.02.2016 and 05.02.2016 in response to the show cause notice dated 21.01.2016. That copies of these replies dated 02.02.2016 and 05.02.2016 are annexed as Annexure R-21, Annexure R-22 and Annexure R-23 (original office copies)."

(Emphasis added)

11. It is therefore, seen from the own averments of the Respondent/complainant in Para 18 of the original Complaint that a reply was submitted by the Petitioners to the effect that the Insecticides in question had been purchased from the manufacturing Company M/s Sumitomo Chemical India Pvt. Ltd., which was separately arraigned as accused No.3 by the Complainant. Admittedly, the samples were obtained from the sealed containers and there is no averment anywhere in the Complaint that the same were not properly stored or kept in the same state as when acquired after such purchase. Even otherwise, there is no averment nor any suggestion to the effect that the Invoice under which those Insecticides purchased by the Petitioners under the specific Invoice No.CPDB/Sale/LU/705 dated 11.06.2015 was ever got scrutinized or not found to be genuine. In such circum-

stances, there remains no doubt that no criminal liability can be fastened upon the Petitioners. This is so because, as already seen, the samples of the misbranded articles were collected from their Premises while in "sealed containers", which were not found to be stored improperly and, in any event, there is nothing on record to indicate that being the Dealers, the Petitioners had any other source of information that the concerned product was misbranded. The case therefore, squarely falls under the ratio of Supreme Court's decision in M/s Kisan Beej Bhandar, Abohar's case (supra) and the other Judgments passed by various Benches of this Court in the aforesaid decisions. Consequently, the Court finds the Complaint to be untenable qua the present Petitioners. The same and all subsequent proceedings including the indicated impugned Summoning Order stand quashed qua the Petitioners”.

In the case of ‘**M/s S.S. Fertilizers and another versus State of Punjab, 2017(2) RCR (Criminal) 59**’, it was held as under:-

“7. Learned counsel by referring to Section 30(3) of the Insecticides Act submitted that the liability of the dealer was questioned as they were involved in sale of pesticides and in the event of finding the pesticides to be mis-branded, the dealer could not be held liable as he was merely selling the packing as supplied by the manufacturer. There was no allegation that sealed were tampered or the packing were not properly stored. The complaint was conspicuously silent about the aforesaid allegation. Since the samples were drawn from the original packing as per para No.4 of the complaint, therefore, provision in terms of Section 30(3) of the Insecticides Act was duly attracted.

8. The provisions of Section 33 of the Insecticides Act are pari materia with that of Section 141 of the Negotiable Instruments Act. Petitioner No.1 is the firm of which petitioner No.2 is the

proprietor and responsible person. In case of company, interpretation of law was considered in terms of Section 33 of the Insecticides Act which was considered to be pari materia with Section 141 of the Negotiable Instruments Act by the Hon'ble Apex Court in S.M.S. Pharmaceuticals Ltd. v. Neeta Bhall and another, 2005(4) RCR (Criminal) 141. The principal accused being the company, could not be held liable for want of necessary averments ought to have been made in the complaint in terms of analogous provisions of Negotiable Instruments Act.

9. In case of National Small Industries Corporation v. Harmeet Singh Paintal and another, 2010(2) RCR (Criminal) 122 : 2010(2) Recent Apex Judgments (R.A.J.) 22 : 2010(3) SCC 330, the Apex Court has interpreted on the aforesaid lines that requirement in terms of pleading has to be strictly construed not only to the extent of mentioning the Director to be Incharge of and responsible to the Company for doing its business but strictly spell out as to how and in what manner he was Incharge and responsible for the conduct of its business.

10. Similarly in case of 2014(2) RCR (Criminal) 945 P.D. Garg and others v. State of Punjab, this Court considered the similar issue and while interpreting Section 33 of the Act came to the conclusion that prosecution against Director cannot be held sustainable in the absence of aforesaid requirement of pleadings in the complaint.

11. In the light of aforesaid, I am of the considered view the prosecution against the petitioners in terms of the offences as mentioned in the complaint is not sustainable in the eyes of law. Consequently, this criminal petition is allowed. Criminal complaint No.6702 dated 24.09.2014 under Sections 3K (1), 17, 18, 29 and 33 of the Insecticides Act, 1968 read with Rule 27(5) of the Insecticides Rules, 1971 titled as State through Insecticide Inspector, Baddowal v. M/s S.S. Fertilizers and others pending in the Court of Chief Judicial

Magistrate Ist Class, Ludhiana and entire consequential proceedings undertaken in pursuance thereof are hereby quashed”.

In *M/s Josan Khad Store and others versus State of Punjab, 2014 (1) RCR (Criminal) 43*, it was held as under:-

4. Learned State counsel has not disputed the submissions made by learned counsel for the petitioners.

Admittedly, the petitioners are not manufacturer as petitioner No. 1 is dealer, petitioner No. 2 is proprietor of petitioner No. 1-firm, petitioner No. 3 is distributor and petitioner No. 4 is proprietor of petitioner No. 3. It is an admitted fact that the sample was drawn from the sealed container and date of expiry was also mentioned. It is also an admitted fact that the sample was drawn on 28.12.2006, which was found misbranded on 30.01.2007 and present complaint was filed on 01.05.2010. The maximum punishment of present offence is two years and complaint was lodged after a delay of more than three years, which is barred by limitation as per provisions of Section [468](#) Cr.P.C.

5. This view has been supported by the ratio of judgment of Hon'ble the Supreme Court in M/s Kishan Beej Bhandar, Abohar v. Chief Agricultural Officers, Ferozepur, 1990 SCC (Criminal) 623. The relevant portion of the judgment is reproduced as under:

"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 prosecution 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."

6. As per provisions of Section 468 of the Code, no Court can take cognizance of the offence for which, the punishment for imprisonment is exceeding one year but not exceeding three years.

In the present case, the sample was drawn on 28.12.2006 and it was found misbranded on 30.01.2007 and complaint was filed on 01.05.2010. As per provisions of Section [29](#) of the Insecticides Act, the maximum punishment is two years and as such, the complaint is barred by limitation and the same is liable to be quashed on this ground alone.

7. In view of facts as mentioned above as well as settled position of law, the present petition is allowed and the complaint as well as summoning order and other proceedings arising therefrom are quashed".

In *M/s Sandhu Kheti Store Sewa Centre and others versus State of Punjab, 2013(4) RCR (Criminal) 893*, it was held as under:-

“8. Admittedly, the petitioners are not the manufacturers of the insecticides but the dealer and the distributor. Hence, they cannot be held responsible for misbranding the insecticide, which was not manufactured by them. The petitioners were only involved in the sale of insecticide. The complaint qua manufacturers is pending. There is nothing on record to suggest that the insecticide had not been properly stored by the petitioners.

9. Accordingly, this petition is allowed and complaint No. 38/07 of 25.4.2007 under Section 3k(1), 17, 18, 29 and 33 of Insecticides Act, 1968 read with Rule 27(5) of the Insecticides Rules 1971 (Annexure P-1) and all the consequential proceedings arising out of the said complaint, qua the petitioners, are quashed”.

In the case of *‘Naresh Kumar and others versus State of Punjab through Insecticide Inspector, Kapurthala, 2011(2) RCR (Criminal) 202’*, it was held as under:-

“9. Learned Single Bench of this Court in the case of Ramesh Kumar and others v. State of Punjab, in 2010(2) RCR (Criminal) 273 : CRM M-13774 of 2009, decided on 15.01.2010, in similar circumstances, held as under :-

"7. As would be apparent on the face of Form XX Annexure P-3, the sample of the insecticide was taken in original packing by Harpreet Singh, Insecticide Inspector from the premises of M/s Malka Kheti Store, Rajoke Road, Amarkot Tehsil Patti, District Tarn Taran. It is well settled that if the sample is taken from the original packing of the manufacturer and stored for sale in the same condition, the dealer/distributor is entitled to get protection under Section 30(3) of the Act, if the substance/sample drawn was in its original condition. In

the instant one, as is being evidenced by Annexure P-3, the sample in question was contained in its original packing of 500 mls. There is nothing on the record to show that the pretilachlor 50% EC Preet Batch No. TR 00002 of which sample was drawn was not stored in the same state. If the sample had been tampered with, the original packing would have certainly got disturbed. The same would have not been in the same state. Such being the circumstances, the petitioners being the dealers/distributors cannot be held liable."

10. Learned counsel for State has not been able to dispute that the present case is squarely covered by the ratio of judgment rendered by this/Court in the case of Ramesh Kumar's (supra).

11. In view of the foregoing discussion, the present petition is allowed. Complaint No. 79 dated 02.03.2007 under sections 3(k) (i), 17, 18, 29 and 33 of the Insecticide Act, 1968 read with rules 27(5) of the Insecticides Rules 1971 titled as State v. M/s. Punjab Khad Store and others pending in the Court of learned Chief Judicial Magistrate, Kapurthala and summoning order and all consequential proceedings arising therefrom qua the petitioners are hereby quashed".

In the case of '**M/s Garg Agro Chemicals and another versus State of Punjab, 2011(2) RCR (Criminal) 395**', it was held as under:-

"7. In the instant case, a perusal of Form XX (Annexure P-2) in respect of sample of Butachlor, shows that the sample was in fact drawn from the original packing. The original packing was being kept by the dealer in his premises. When sample was drawn, it was stated in column No. 5 of aforesaid Form "Loose sample from Company Packing". Similarly, in the sample of Endosulfan taken by the Insecticide Inspector in Form-XX (Annexure P-3), it was clearly mentioned that loose samples had been taken from the company packing. In view of these

documents, which are on record, it is clear that the samples in question was taken by the Insecticide Inspector from the original packing as given by the manufacturer. In M/s Kishan Beej Bhandar's case (supra), the apex court while allowing a similar plea observed as under:-

"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."

8. In view of above, it is clear that petitioner is entitled to protection of Section 30 (3) of the Act as he cannot be held

liable for misbranding of the sample. He was merely selling Butachlor and Endosulfan in the same packing as the manufacturer had supplied to him. I am, thus, of the considered view proceedings against the petitioner under the Insecticide Act, 1968 cannot be allowed to continue”.

In the case of **‘Ramesh Kumar and others versus State of Punjab, 2010 (2) RCR (Criminal) 273’**, it was held as under:-

“5. The learned counsel for the petitioners eloquently urged that as alleged the sample was drawn while picking up three originally sealed and packed containers weighing 500 mls each of one registered and authorised manufacturing company from the shop of petitioner No. 2 lying and stored properly. The seal being intact, the petitioners could not know with reasonable diligence about the contents of the originally sealed packing and that being so, it cannot be attributed to the petitioners that the sample was misbranded by them. As per seizure memo Annexure P-3 prepared at the time of sampling by the Insecticide Inspector, only 8 containers of 500 mls in total were lying in the shop of the aforesaid petitioner. This clearly indicates that the petitioners did not have any culpable intention to cheat any person or to commit any contravention under the Act. To buttress this stance, he has sought to place abundant reliance upon the observations rendered by me in re: M/s. Jai Rath Seed Store, Bhangala and others v. Punjab State through Insecticide Inspector 2009(4) Recent Criminal Reports (Criminal) 831. The learned State counsel could not controvert these submissions in a successful manner.

7. As would be apparent on the face of Form XX Annexure P-3, the sample of the insecticide was taken in original packing by Harpreet Singh Insecticide Inspector from the premises of M/s. Malka Kheti Store, Rajoke Road, Amarkot Tehsil Patti, District Tarn Taran. It is well settled that if the sample is taken from the

original packing of the manufacturer and stored for sale in the same condition, the dealer/distributor is entitled to get protection under Section 30(3) of the Act, if the substance/sample drawn was in its original condition. In the instant one, as is being evidenced by Annexure P-3, the sample in question was contained in its original packing of 500 mls. There is nothing on the record to show that the Pretilachlor 50% EC Preet, Batch No. TR-00002 of which sample was drawn was not stored in the same state. If the sample had been tampered with, the original packing would have certainly got disturbed. The same would have not been in the same state. Such being the circumstances, the petitioners being the dealers/distributors cannot be held liable.

8. In consequence of the preceding discussion, this petition is accepted. The complaint bearing caption "State of Punjab v. M/s. Malka Kheti Store and Others (Annexure P-1) pending in the court of learned Sub Divisional Judicial Magistrate, Patti, the summoning order dated 7.11.2008 Annexure P-2 and all consequential proceedings arising therefrom qua the petitioners are hereby quashed".

In *M/s Sanjeev Sales Corporation and another versus State of Punjab, 2010(1) RCR (Crimianl) 33*, it was held as under:-

6. The present petitioners are not the manufacturer of the relevant insecticide. There is clear-cut plea in the petition that they were selling the insecticide in the sealed container in the original form as obtained from the manufacturer and the sample was also taken from the original packing. This plea has not been denied by the State in its reply. Thus, there remains no controversy that the impugned sample was obtained from the sealed container lying in the premises of the firm and there is no material to indicate that the insecticide was not properly

stored. Thus, the petitioner being the dealer, involved in the sale of insecticides, cannot be held liable for misbranding of the insecticides and only the manufacturer would be liable. In this context reliance can be placed on the cases of M/s Kisan Beej Bhandar, Abohar v. Chief Agricultural Officers, Ferozepur 1990 Supreme Court Cases (Cri.) 623 and M/s Vimal And Co. Grain Market, Mullanpur v. State of Punjab 2002(2) RCR (Criminal) 56 (P&H), followed in the case of Deepak Sharma & Ors. v. State of Punjab, 2008(2) RCR (Criminal) 24 and reliance can be safely placed on the case of M/s Punjab Beej Bhandar Bela & Anr. v. State of Punjab through Insecticide Inspector Ropar, 2008(1) RCR (Criminal) 998, wherein also this Court quashed the criminal proceedings against the licensed dealer”.

In ‘M/s Bajwa Seed Store and others versus State of Punjab, 2009(1) RCR (Criminal) 378’, it was held as under:-

“3. Learned counsel has further referred to Annexure P-5 i.e. Form filed under Rule 33 of the Insecticide Rules, 1971 (for short, 'the Rules') wherein at column No. 5, it has clearly been mentioned that sample was drawn from an original packing. Reference has also been made to Annexure P-6 which is a Form filed under Rule 24 of the Rules wherein it has been mentioned that the seal was intact and unbroken. In Para 6(ii), it has clearly been asserted that the sample was drawn from the original packing and the seal on the sample taken was intact.

4. Learned counsel for the petitioner has also pointed out that on having found the sample sub standard, licence of the petitioner was cancelled by the Chief Agricultural Officer, Hoshiarpur. An appeal was preferred before the Joint Director

Agriculture, Punjab. The order of cancellation of licence was set aside vide Order 23.5.2005.

5. Having regard to the fact that learned counsel for the respondent has not been able to show that the material had been improperly stored or that the seal was found tampered or broken wherefrom the sample was drawn, it becomes evident that the distributors and vendors of the product cannot be held liable.

6. Learned counsel in this regard has relied on M/s Kisan Beej Bhandar, Abohar v. Chief Agricultural Officers, Ferozepur and Another, 1990 (Supp) Supreme Court Cases 111. Wherein the following has been held in relevant portion of Para 4 :-

"....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."

7. To the same effect is the judgment of this Court viz. M/s. Sidhu Brothers Store v. State of Punjab, 2004(2) RCR (Criminal) 366 (P&H). wherein it has been held that dealer is entitled to get benefit of the protection of Section 30(3) of the Act (Insecticides Act, 1968) if the substance/sample drawn was in its original condition.

8. Reference has also been made to M/s. Sandeep Pesticides & Fertilizers v. State of Punjab, 2005(2) RCR (Criminal) 940 : 2005 CrI.L.J. 2843 wherein it has been held that the dealer has

a right to seek protection under Section 30 (3) of the Act when the container from where the sample was taken was duly sealed and intact.

To similar effect, reference has been made to M/s Monga Pesticides and Fertilizers and others v. State of Punjab, 2006(1) RCR (Criminal) 466 (P&H), Gurmej Singh and another v. State of Punjab, 2008(2) RCR (Criminal) 24 (P&H), Deepak Sharma & Others v. State of Punjab, 2008(2) RCR (Criminal) 24 (P&H) and Sant Ram Munish Kumar & Others v. State of Punjab, 2008(2) RCR (Criminal) 930 (P&H).

9. Learned counsel appearing for the respondent has not been able to dispute the factual and legal position as stated by the learned counsel for the petitioners”.

18. A perusal of the aforementioned judgments would show that where the Insecticide Inspector had drawn the sample of insecticide from the original packing as had been supplied by the manufacturer to the distributor who further supplied it to the dealer from whom the sample had been taken, neither the distributor nor the dealer could be held to be liable as they could possibly have known even with due diligence that the insecticide was misbranded as the same had been received by the distributor in a sealed condition who supplied it to the dealer in a same condition and the dealer was also selling the same ahead in the said sealed condition.

19. In view of the aforementioned discussion, as the sample in the present case has been drawn from the original packing as had been supplied to the dealer by the distributor who received it in a similar condition from the manufacturer and even licence of the dealer-M/s Modern Kheti Store stands restored on the ground that the sample had been taken from a sealed

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container, the continuance of the proceedings arising out of the complaint (Annexure P-4) and the summoning order dated 23.08.2021 (Annexure P-5) would be nothing but an abuse of the process of the Courts.

20. It may also be relevant to point out here that the allegation of the alleged violation of Rule 10(4) (iii) of the Insecticide Rules, 1971 punishable under Section 29 of the Insecticide Act, 1968 cannot be sustained as against the petitioners since as per the terms of the licence of M/s Gagan Trading Company (distributor), the insecticide could be purchased through direct supply. Therefore, if there was a restriction on the sale of the insecticide from a particular premises, the same would apply to the manufacturer alone and not to the distributor or to the dealer.

21. Therefore, I find merit in the present petitions and the complaint (Annexure P-4), the summoning order dated 23.08.2021 (Annexure P-5) and all subsequent proceedings arising therefrom stand quashed qua the petitioners only.

22. The present petitions are disposed of accordingly.

(JASJIT SINGH BEDI)
JUDGE

May 02, 2023
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No