

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

CRM-M-62101-2018

Reserved on: 16.12.2023

Pronounced on : 21.12.2023

2023:PHHC:164770

SUNIL SETHY

. . . . Petitioner

Vs.

State of Punjab

. . . . Respondent

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Veneet Sharma, Advocate, for the petitioner.

Mr. M.S. Nagra, AAG, Punjab.

DEEPAK GUPTA, J.

By way of this petition filed under Section 482 CrPC, petitioner prays for quashing of complaint N: 280-I dated 13.08.2008 (Annexure P1) under sections 3(k)(i), 17, 18 and 33 of the Insecticides Act, 1968 [for short 'the Act'] punishable under Section 29 of the Act read with Rule 27(5) of the Insecticides Rules, 1971 [for short 'the Rules']; order dated 13.08.2008 (Annexure P2) passed by Id. Chief Judicial Magistrate, Ferozepur and order dated 07.10.2013 (Annexure P7) along with all consequential proceedings arising therefrom.

2. (i) Contention of Id. counsel for the petitioner is that insecticide in question, the sample of which was drawn, was manufactured by M/s Agrimas Chemicals Ltd., whereas sample was drawn from the dealer M/s Sant Lal Tara Chand, Guruharshai, District Ferozepur. M/s Chambal

Fertilizers and Chemicals Ltd., New Delhi had only marketed the insecticides in question, as is evident from the complaint (Annexure P1).

(ii) Ld. counsel contends that said marketing firm i.e., M/s Chambal Fertilizers and Chemicals Ltd. Was duly represented by Sh. V.K. Fotedar, who was nominated to be responsible for the conduct of the business. Besides, Rajnish Kumar was the Godown Incharge; whereas petitioner-Sunil Sethy, has been arrayed as an accused in the complaint being the Managing Director of the Company. It is argued that petitioner simply being the managing director of the marketing firm, cannot be held responsible, once another person had been nominated to be responsible for the business of the firm.

(iii) Ld. counsel further contends that in the complaint, as filed by the Insecticides Inspector, the dealer as well as the manufacturer faced trial and vide judgment dated 07.10.2016 (Annexure P3), they have already been acquitted by Id. CJM, Ferozepur.

(iv) Still further, it is contended that a marketing firm, cannot be held responsible under the Act, when the sample was drawn in packed condition, duly manufactured by a manufacturing firm, like in the present case. Ld. counsel has referred to a decision of Coordinate Bench of this Court in **CRM-M-21496-2019** titled **Anil Kapoor Vs. State of Punjab**, decided on 07.05.2022.

3. Ld. State counsel, though could not refute the contention of Ld. Counsel for the petitioner to the effect that dealer as well as manufacturer have already been acquitted by the trial Court concerned, vide judgment

dated 07.10.2016 (Annexure P3), but contended that during proceedings, petitioner had been declared proclaimed person and that he cannot take benefit of the acquittal of the co-accused. Prayer is made for dismissing the petition.

4 A Coordinate Bench of this Court in **CRM-M-21496-2019** titled **Anil Kapoor Vs. State of Punjab** decided on 07.05.2022, dealt with the similar question pertaining to the marketing firm. After referring to various provisions of the Act, it was held as under: -

*17. It would be pertinent to make a reference to the relevant judicial pronouncements to appreciate the **obligation and responsibility of a marketing agent and also his liability to be criminally prosecuted in the event that the sample in question is drawn out of a sealed container, that was intact at the time of sampling, is found to be misbranded after analysis. This court in the matter of Lochen Kheti Sewa Centre Vs. State of Punjab, 2008 (2) RCR (Criminal) 22 observed as under: -***

3. Learned counsel appearing for the respondent/State has very fairly stated that the petitioner is not the manufacturer. The sample was drawn from sealed packets and there is no material to indicate that it was properly stored. Under the circumstances the petitioner cannot be held liable for misbranding of the insecticide. Only the manufacturer, who is being proceeded against would be responsible.

*18. Additionally, in the matter of **Deepak Sharma Vs. State of Punjab 2008 (2), RCR (Criminal) 24**, this court observed as under: -*

2. The sample seized, on analysis, was found to be misbranded. The plea raised on behalf of the petitioner is that a seller cannot be prosecuted. In support thereof, reliance is placed upon M/s Kisan Beej Bhandari, Abhor v. Chief Agricultural Officer, Ferozepur and another, 1990 (supp) Supreme Court Cases 11 and M/s Vimal and Co. Grain Market, Muldaur v. State of Punjab, 2002(2) RCR (Criminal) 56. The former judicial pronouncement was rendered by the Apex Court, while the latter was rendered by this Court. Both these judicial pronouncements are fully supportive of the advocate point of view.

19. Furthermore, this Court in the matter of **Surinder Kumar Vs. State of Punjab, 2011(1) RCR (Criminal) 211** held as under: -

2. Learned counsel for the petitioner contends that the petitioner is a licensee under Insecticide Act, 1968 to deal with various kinds of insecticides and pesticides of registered and approved manufacturers. It has further been clarified that the petitioner sells only sealed and packed insecticides/pesticides. A sample of insecticide that has been manufactured by a company approved by Government of Punjab was drawn on 25.05.2001. The sample was drawn from originally sealed and packed container. In above regards, learned counsel has referred to para-No.3 of the petition which is extracted hereunder:

“3. That as per complainant version on 25.05.2001, he drew a sample of one insecticide i.e., Metal ax 8% + Mancozeb 64% EC bearing Batch No.KG-09, Mfg. November, 2000 and Expiry October, 2002 out of two 500 gms. Originally sealed and packed containers lying properly from the shop premises of the petitioner-firm as manufactured by M/s. Fungicide India Ltd. Jammu. The said manufacturing company i.e., M/s Fungicide Ltd. Jammu is the registered and authorised manufacturing company by Govt. of Punjab to sell its products in the State of Punjab”

3. Learned counsel states that it is admitted case of the respondents that sample was drawn from sealed and packed container. In this regard, learned counsel has referred to Para No.3 of the reply on merits which reads as under: -

3. That the contents of para-No.3 of the petition are matter of record.

5. It is not in dispute that the petitioner has a licence to sell insecticides and pesticides manufactured by companies approved by Government of India and Government of Punjab. It is further not in dispute that the sample that has been drawn has been manufactured by approved manufacturer. There is no material available on the file to indicate that the insecticide was stored in violation of rules. It is also the admitted position that sample was drawn from originally sealed and packed containers.

6. In view of the above, the only conclusion that can be drawn is that the petitioner who is merely selling the insecticide had no occasion to tamper with the contents of the container/insecticide.

7. In view of the above, I am of the considered opinion that continuance of proceedings against the petitioner would be abuse of process of law and abuse of process of Court. The petitioner being only involved in sale of insecticide, cannot be held responsible for the contents of the container from which the sample has been drawn.

20. This Court has further in the matter of **Naresh Kumar Vs. State of Punjab, 2011(2) RCR (Criminal) 202** held as under: -

7. It is evident from above that sample was taken from original packing.

8. Affidavit dated 06.12.2010 of S Navtej Singh, Insecticide Inspector, District Kapurthala has been filed. Para 1 of the said affidavit reads under: -

“1. Original packing as per Form XX refers to the stock in possession of accused, which at the time of sampling is in a sealed condition which is purported to be same as packed, labeled and sealed by the manufacturer. Although, it is stated in the subsequent paragraph that it is yet to be determined whether the insecticide in question (Monocrotophos 36% SL of one liter each) was in original sealed packing or as to whether the sealed packing was tampered with or not, the allegation in the complaint and Form No. XX speaks for themselves. There is no doubt left that the sample was drawn from the originally sealed and packed containers weighing one liter and packed by the registered and authorized manufacturing company. There is no allegation that in the said complaint that the said seal was tampered with or the originally packing was tampered with. There is no allegation that the said sample was not stored in the same state. (.....)

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 petitioner are hereby quashed.”

21. Moreover, it is pertinent to make a reference to the judgment of the Hon'ble Supreme Court in the matter of **M/s Cheminova India Limited & Anr Vs. State of Punjab & Ors** decided on 04.08.2021 passed in Criminal Appeal No.750 of

2021, wherein, the Hon'ble Supreme Court held that proceedings under the [Insecticides Act](#) cannot be instituted against all and sundry persons of the company and that as per mandate of [Section 33](#) of the Act, it is clear that responsible persons of the company alone can be deemed to be prosecuted and liable to be proceeded against. The relevant extracts are stated as under: -

'9. xxxxxxxxxxxxxxxx. In view of the specific provision in the Act dealing with the offences by companies, which fixes the responsibility SLP(Crl.) No. 4144 of 2020 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.'

22. It is evident from a perusal of the petition as well as documents appended along with the same that the undisputed case of the respondent-State is that the **petitioner was a marketing agent of the insecticides**. It has been repeatedly so affirmed by the respondent in various paragraphs of the complaint instituted through Insecticide Inspector and already extracted above. It is also not a subject

matter of dispute that the sample was drawn from a sealed packet and it is nowhere alleged that the sample had not been stored in accordance with the provisions contained under the [Insecticides Act](#) and Rules framed thereunder. There is no allegation that the petitioner was responsible for the quality of the product and for ensuring the labelled ingredients of the same. The petitioner is not nominated as the authorised/responsible officers in terms of [Section 33](#) of the Insecticides Act. The statutory mandate intends to penalize a person who has committed an offence. It does not intend to prosecute the people who are merely dealing with the said product and for which they have no control regarding its quality and content. The petitioner cannot be held vicariously liable and be penalized for misbranding of a product where he is not involved in the manufacturing process at all merely for having traded in the same. [Section 3\(k\)\(i\)](#) defines 'misbranding'. The same relates the label of products and its contents. It is not the case that any of the activities referred to under [section 3 \(k\)](#) attracting 'misbranding' was undertaken by the petitioner. Furthermore, [Section 17](#) of the Act is also not attracted against the petitioner inasmuch as the petitioner is neither the importer of the misbranded insecticides, nor manufacturer thereof. Moreover, the ingredients of [Section 18](#) of the Act are also not satisfied and there is no allegation that the petitioner had indulged in the sale of the insecticides, which was either not registered under the Act or was prohibited under [Section 27](#). Similarly, [Section 29](#) also would not be applicable against the petitioner inasmuch as the same contemplates punishment for offences as stated above. Once the necessary ingredients of the said Sections are not satisfied against the petitioner, they cannot be penalized for the same.

5. In the present case, it is not in dispute that petitioner has been impleaded as the Managing Director of the marketing firm i.e., M/s Chambal Fertilizers and Chemicals Ltd., whereas Mr.V.K. Fotedar, had been arrayed as accused to be the persons responsible for the said firm. It is also not in dispute that sealed packet of sample was drawn from the dealer M/s Sant Lal Tara Chand for the purpose of analysis as manufactured by M/s Agrimas Chemicals Ltd., whereas M/s Chambal Fertilizers was the marketer.

6. Perusal of the paper-book further reveals that vide judgment dated 07.10.2016 (Annexure P-3), the dealer and manufacturers have already been acquitted.

7. In the aforesaid circumstances, Legal position explained in Anil Kapoor’s Case (supra) is fully applicable to the facts of the present case. Moreover, the dealer as well as manufacturers have already been acquitted.

8. On account of the entire discussion above, it would be a futile exercise to continue the proceedings against the petitioner. Therefore, the complaint qua the petitioner dated 13.08.2008 (Annexure P1) under sections 3(k)(i), 17, 18 and 33 of the Act punishable under Section 29 of the Act read with Rule 27(5) of the Rules; order dated 13.08.2008 (Annexure P2) passed by Id. Chief Judicial Magistrate, Ferozepur; order dated 07.10.2013 (Annexure P7) and all subsequent proceedings arising therefrom, are hereby quashed.

(DEEPAK GUPTA)
JUDGE

21.12.2023

Vivek

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| 1. Whether speaking/reasoned? | Yes |
| 2. Whether reportable? | No |