IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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1. CRM-M-50657-2023
***2023: PHHC:* 164567**

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DHARAM PAL GOEL

. . . . Petitioner

Vs.

STATE OF PUNJAB

. . . . Respondent

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2. CRM-M-54743-2023
***2023: PHHC:* 164570**

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VIKASH KUMAR AND ANOTHER

. . . . Petitioners

Vs.

STATE OF PUNJAB

. . . . Respondent

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Reserved on:16.12.2023
Pronounced on: 21.12.2023

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CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

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Present: - Mr. Rakesh Verma, Advocate, for
Mr. Manish Verma, Advocate, for the petitioners.

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

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DEEPAK GUPTA, J.

By way of above titled two petitions, both filed under Section 482 CrPC, petitioners pray for quashing of complaint No.201 dated 25.01.2021 (Annexure P1) under sections 3(k)(i), 17, 18, 29 and 33 of the Insecticides Act, 1968 [for short 'the Act'] read with Rule 27(5) of the Insecticides Rules, 1971 [for short 'the Rules'], pending before ld. Chief Judicial Magistrate, Bathinda; summoning order dated 16.02.2021

(Annexure P2) passed by ld. Chief Judicial Magistrate, Bathinda and all consequential proceedings arising therefrom qua the petitioners herein.

2. (i) As it emerges on perusal of the paper book, on 17.09.2019, Insecticide Inspector, Sangat, District Bathinda inspected the premises of ***M/s Shiv Narain Periwal & Sons***, Sangat Mandi, District Bathinda, dealing in the business of selling and stocking for sales of insecticides/pesticides etc., in the presence of Agriculture Officer, Sangat. Insecticide Inspector found 27 pieces of *Azoxystrobin 11% + Tebuconazole 18.30% SC* bearing Batch No. MCS- 117/06, mfg. date Aug, 2019, exp. date July, 2021 in 1 litre packing, manufactured by ***M/s Mass Crop Science Pvt. Ltd.***, Village Bhagwanpur, Derabassi, Distt. SAS Nagar and supplied by ***M/s Delta Crop Science, Punjab,*** displayed at the premises for sale.

(ii) Out of 27 pieces, one of the pieces was taken for sampling, after making necessary statutory compliances. The sampled material insecticide was in the form of homogenous liquid, so its contents were properly shaked. Three neat, clean and dry sampling bottles were filled with 250 ml of insecticide each taken from the 1 litre piece and they were property sealed as per rules. One of the sampled bottles was sent to senior Insecticide Analyst. One of the samples in intact position was sent through the office of Chief Agriculture Officer, Bathinda to Directorate of Plant Protection Quarantine and Storage, NH-4, Faridabad, vide letter dated 24.09.2019; whereas remaining two sealed samples were deposited with Chief Agriculture Officer, Bathinda. The test report dated 30.12.2019 of the sampled bottle, declared the sample to be mis-branded. The copy of the analysis report was delivered to the dealer firm M/s Shiv Narain Periwal & Sons through its proprietor Deepak Kumar alongwith with show cause notice under Section 24(2) of the Act vide letter dated 22.01.2020. Reply vide letter dated 27.01.2020 was received and based on the request of the dealer, the reference sample was sent to Central Insecticide Testing Laboratory (CIL), Faridabad vide letter dated 17.07.2020, which was again declared mis-branded by the Central Insecticide Testing Laboratory vide its report dated 20.08.2020. The analysis report was delivered to the dealer, marketer as well as the manufacturing firm vide different letters dated 29.8.2020, 18.9.2020 & 21.09.2020.

(iii) After making necessary statutory compliances, complaint dated 25.01.2021 was filed on 16.02.2021 in the Court of Ld. Chief Judicial Magistrate, Bathinda, so as to prosecute the dealer, the marketer and the manufacturing firm along with their respective representatives. Ld. CJM, vide his order dated 16.02.2021 directed summoning of accused No.3 to 8 to face trial under sections 3(k)(i), 17, 18, 29 and 33 of the Insecticides Act, 1968 read with Rule 27(5) of the Insecticides Rules, 1971.

3. Shri Dharam Pal Goel *(petitioner in CRM-M-50657-2023)* is the director of manufacturing firm M/s Mass Crop Science Pvt. Ltd.; whereas Shri Vikash Kumar *(petitioner No.1 in CRM-M-54743-2023)* is manager (the responsible person for the quality control) of the manufacturing firm. Both of them have filed these separate petitions, praying for quashing of the complaint alongwith summoning order and the

consequent proceedings on the grounds of violations of the various provisions of the Act.

4. (i) It is contended by ld. counsel appearing for both the petitioners that as per Section 22(6) of the Act, the sample is required to be sent forthwith i.e., without any delay, but in the present case, after drawing the sample on 17.09.2019, the same was sent for analysis on 24.09.2019 i.e., on the 8th day.

(ii) Further, as per Section 24(1) of the Act, the insecticide analyst, to whom the sample is submitted for test/analysis, is required to deliver the report in respect of the sample within a period of 30 days. However, in the present case, the report has been prepared and forwarded by the insecticide analyst on 30.12.2019 i.e., after more than 3 months from the date of sending the sample for analysis.

(iii) Ld. counsel for the petitioner further contends that after receipt of the report of the insecticides analysts, the show cause notice was sent only to the dealer, as is evident from the complaint (Annexure P1) and not to the manufacturer, which is in violation of the mandate of the Act. Still further, the dealer firm sent its reply to the show cause notice on 27.01.2020 i.e., within the statutory period of 28 days from receiving the show cause notice, but the concerned insecticides inspector did not comply with the mandatory provisions of Section 24(4) of the Act, as referral part of the sample was required to be analyzed by the Central Laboratory within a period of 30 days. But in this case, the referral part of the sample was sent to the Central Laboratory for re-analysis on 17.07.2020 i.e., after a period of almost 6 months.

(iv) Ld. counsel on behalf of Shri Dharam Pal Goel *(petitioner in CRM-M-50657-2023)* has taken an additional ground to the effect that the petitioner is only a Director of the manufacturing company and as per the settled preposition of law explained by Hon'ble Supreme Court in ***M/s Cheminova India Ltd. and another Vs. State of Punjab and another,*** *(2021) SCC 573,* it is only nominated/appointed responsible person of the company, who is liable to be proceeded against in case of the contravention of the Act.

(v) To support their contentions, Ld. counsels have referred to the following decisions of this court: -

Sr. No.	Case No.	Title	Decided on
1.	*CRM-M-41152-2018*	*Sohan Singh Vs. State of Punjab*	*16.01.2023*
2.	*CRM-M-9632-2015*	*M/s S.S. Fertilizer and another Vs. State of Punjab [2017 (2) RCR (Criminal) 59]*	*24.01.2017*
3.	*CRM-M-12926-2018*	*Sohan Singh Vs. State of Punjab*	*16.01.2023*
4.	*CRM-M-9358-2022*	*Sh. Chetan Shah Vs. State of Punjab*	*27.04.2023*

5. Reply by way of affidavit of Sh. Asmanpreet Singh Sidhu, Insecticide Inspector, Sangat on behalf of respondent/State has been filed in CRM-M-54743-2023 titled 'Vikash Kumar Vs. State of Punjab', with a prayer by Ld. State Counsel to treat the same in both the petitions.

6. Refuting the contentions raised on behalf of the petitioners, it is contended by ld. State counsel that as the sample received in the Central Insecticide Laboratory was with its seal intact and after re-analysis, the sample was found to be misbranded, so delay in sending the reference

sample or delay in sending report, cannot be the reason for quashing of the complaint. Prayer is made for dismissing the petitions.

7. I have considered submissions of both the sides and have appraised the record.

8. Section 22 of the Insecticides Act, 1968 provides the procedure to be followed by the Insecticide Inspectors. The relevant portion of the said Section reads as under:-

> **"22. Procedure to be followed by Insecticide Inspectors.-**
> *(1) xxxx*
> *(2) xxxx*
> *(3) xxxx*
> *(4) xxxx*
> *(5) xxxx*
> *(6) The Insecticide Inspector shall restore one portion of a sample so divided or one container, as the case may be, to the person from whom he takes it and shall retain the remainder and dispose of the same as follows:-*
> *(i) one portion or container, he* ***shall forthwith send to the Insecticide Analyst for test or analysis****; and*
> *(ii) the second, he shall produce the Court before which proceedings, if any, are instituted in respect of the insecticide."*

9. In the case of CRM-M-12926-2018 titled ***Sohan Singh vs. State of Punjab (Supra)***, this Court, after referring to Section 22(6) of the Act as above, held as under: -

> *"8. It is evident from the aforesaid provision that one portion of the sample so divided by the Insecticide Inspector is required to be sent forthwith to the Insecticide Analyst for test or analysis.*
> *9. Although the term 'forthwith' is not defined in the Act, in ordinary sense, it simply means 'immediately'. For the purpose of Section 22(6) of the Act, the said word 'forthwith' is to be read as on the date of sampling or by the next date or at the most by next working day, in case the day next to taking the sample was a holiday. However, in the present case, sample has been sent to the Public Analyst after a delay of six days without any explanation*

forthcoming from the side of the respondent for causing the delay in sending the sample.

*10. A similar issue was also considered by a co-ordinate Bench of this Court in case of **"B.S. Rana vs State of Punjab"** reported as 2008(3) R.C.R. (Criminal) 210, wherein sample was drawn on 29.10.2003 and the same reached the Laboratory on 17.11.2003. Holding that provisions of Section 22(6) of the Act was mandatory requiring the sample to be sent to the Analyst forthwith and that the violation of the said provisions rendered the complaint liable to be quashed.*

*11. In case of **"M/s S.S. Fertilizer and another vs State of Punjab"**, reported as 2017(2) R.C.R.(Criminal) 59, there was a delay of 4 days in sending the sample, which was not sent forthwith in violation of Section 22(6) of the Act. Holding that delay in sending the sample was fatal to the prosecution, a co-ordinate Bench of this Court quashed the complaint.*

12. In the present case also, the delay of 6 days in sending the sample is held to be fatal as the mandatory requirement of Section 22(6) of the Act has not been complied with. It does not lie in the mouth of the respondent to plead that second sample was sent to the Central Insecticide Laboratory or that the sample was received in the State Insecticide Testing Laboratory, Bhatinda with its seal intact."

10. In the present case, though the sample was drawn on 17.09.2021, but the same was sent for analysis on 24.09.2019 i.e., 8^{th} day and not forthwith and thus, there is clearly non-compliance of Section 22(6) of the Act.

11. Further, Section 24 of the Act reads as under: -

24. Report of Insecticide Analyst. —

(1) The Insecticide Analyst to whom a sample of any insecticide has been submitted for test or analysis under sub-section (6) of section 22, shall, within a period of thirty days, deliver to the Insecticide Inspector submitting it a signed report in duplicate in the prescribed form.

(2) The Insecticide Inspector on receipt thereof shall deliver one copy of the report to the person from whom the sample was taken and shall retain the other copy for use in any prosecution in respect of the sample.

> *(3) Any document purporting to be a report signed by an Insecticide Analyst shall be evidence of the facts stated therein, and such evidence shall be conclusive unless the person from whom the sample was taken has within twenty-eight days of the receipt of a copy of the report notified in writing the Insecticide Inspector or the court before which any proceedings in respect of the sample are pending that he intends to adduce evidence in controversion of the report.*
>
> *(4) Unless the sample has already been tested or analysed in the Central Insecticides Laboratory, where a person has under subsection (3) notified his intention of adducing evidence in controversion of the Insecticide Analyst's report, the Court may, of its own motion or in its discretion at the request either of the complainant or of the accused, cause the sample of the insecticide produced before the Magistrate under sub-section (6) of section 22 to be sent for test or analysis to the said laboratory, which shall, within a period of thirty days, make the test or analysis and report in writing signed by, or under the authority of, the Director or the Central Insecticides Laboratory the result thereof, and such report shall be conclusive evidence of the facts stated therein.*
>
> *(5) The cost of a test or analysis made by the Central Insecticides Laboratory under sub-section (4) shall be paid by the complainant or the accused, as the court shall direct.*

12. As is evident from Section 24(1) of the Act, the Insecticide Analyst, to whom a sample of any insecticide has been submitted for test or analysis as per section 22(6) of the Act, is required to deliver to the Insecticide Inspector a signed report in duplicate, within a period of thirty days, positively. The use of the word 'shall' makes the provision mandatory.

13. In the present case, although the sample was sent to the Insecticide Analyst vide letter dated 24.09.2019 and the Insecticide Analyst prepared its report (Annexure P3) on 14.10.2019 but sent the same to the office of Chief Agriculture Officer vide letter dated 30.12.2019, as is evident from para-No.8 of the complaint (Annexure P1).

Meaning thereby, the office of Chief Agriculture Officer, Bathinda received the report on the 96th day, from the date when the sample was sent for analysis, which is in gross violation of Section 24(1) of the Act.

14. Further, after the report was received from the Insecticides Analyst, no doubt that as per Sub Section (2) of Section 24 of the Act, initially copy of the report is required to be sent only to the person from whom sample was taken and not to the manufacturer, as has been contended in the present case. However, as Sub Section (3) to be read with Sub-section (4) of Section 24 of the Act would reveal that once the person from whom the sample was taken has notified his intention in writing within twenty-eight days of the receipt of the copy of the report, to the Insecticide Inspector or the court before whom proceedings are pending that he intends to adduce evidence in contravention of the report, then the reference sample is required to be sent for test/analysis to the said laboratory, which shall test/analyze the same within a period of 30 days and submit its report in writing in this regard under the signature/authority of Director of Central Insecticide Laboratory.

15. In the present case, despite the fact that the dealer firm expressed its intention to get the reference sample re-analyzed by sending reply on 27.01.2020, but the concerned Insecticides Inspector, sent the reference sample to Central Laboratory on 17.07.2020 i.e., after 5 months and 20 days from the date of request made by the dealer. The re-analyst report was then prepared and forwarded on 20.08.2020. Thus, the provisions of Section 24(4) of the Act have been clearly violated.

16. Proceeding ahead, it is not disputed that the insecticide in question, the sample of which was drawn, was manufactured by M/s Mass Crop Science Pvt. Ltd., of which Dharam Pal Goel *(petitioner in CRM-M-50657-2023)* is the Director.

17. Section 33 of the Insecticides Act, 1968 deals with offences by the company. It reads as under: -

> ***"Section 33. Offences by companies.***
>
> *(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 anybody corporate and includes a firm or other association of individuals; and*
>
> *(b) "director", in relation to a firm, means a partner in the firm"*

18. It is clear from the above-said provision that when the offence under the Act is committed by a company, it is only that person, who was in-charge of or was responsible to the company for the conduct

of the business of the company; and the company, who shall be deemed to be the guilty of the offence.

19. In the present case, ld. counsel on behalf of Dharam Pal Goel *(petitioner in CRM-M-50657-2023)* has drawn attention towards affidavit dated 16.07.2019 (Annexure P5 in *petitioner in CRM-M-50657-2023)* of Vikash Kumar *(petitioner No.1 in CRM-M-54743-2023),* which reads as under: -

> *"I, Vikash Kumar S/o Sh. Veer Singh R/o Vill: Pusar Distt: Baghpat (U.P.) working as Chemist In M/s Mass Crop Science Pvt. Ltd. Vill: Bhagwanpur, Barwala Road. Derabassi Distt: SAS Nagar (Punjab) do hereby solemnly affirm & declare as under: -*
>
> ***1) That I have been appointed/nominated by the company on dated 01.06.2019 for the compliance of provision of section 33 of Insecticide Act 1968 and Rules 1971 and responsible person for Quality Control u/s 33 of the Insecticides Act, 1969 and Insecticide Rules 1971.***
>
> ***2) I am fully In-charge in the company for looking after day to day business regarding Quality of manufacturing pesticides by the company and sole responsible for the Quality of Pesticide throughout its shelf life. I shall be Insecticide Act 1968 and Rules 1971.***
>
> *3) That the said firm is Manufacturing/Stocking/Marketing Insecticides, Pesticides, Weedicides & Fungicides.*
>
> *4) That I shall be Responsible Person for the Quality Control as per the scope & spirit of the section 33 of the Insecticides Act, 1968 and I shall be responsible for all the acts & omission of M/s Mass Crop Science Pvt. Ltd. & marketed by M/s Delta Crop Science Pertaining to Quality Control and manufacturing of Insecticides, Pesticides, Weedicides & Fungicides by the above said firm at Modi Cotspin, Jassi Pauwall Road, Industrial Growth Centre Bathinda (Punjab) Unit."*

20. It is, thus, clear from the aforesaid document that that prior to the visit of the Insecticide Inspector to the premises of the dealer on 17.09.2019, Vikash Kumar *(petitioner No.1 in CRM-M-54743-2023)* had been nominated to be the person responsible for quality control and for the

conduct of business of the manufacturing firm under Section 33 of the Act.

21. A similar issue arose before Hon'ble Supreme Court in ***Cheminova India Limited's case (supra),*** wherein it was observed as under: -

"14. In the case on hand, it is not in dispute that on behalf of the 1st Appellant - Company, 2nd Appellant - Managing Director has furnished an undertaking dated 22.01.2013, indicating that Shri Madhukar R. Gite, Manager of the Company, has been nominated in the resolution passed by the Company on 28.12.2012 to be in charge of and responsible to the said Company, to maintain the quality of the pesticides manufactured by the said Company and he was authorized to exercise all such powers and to take all such steps, as may be necessary or expedient to prevent the commission of any offence under the Act. Filing of such undertaking with the respondent is not disputed. Even, at Para 5.10 in the counter affidavit filed before this Court, it is pleaded by the Respondents that by appointing persons responsible for affairs of the Company, quality control, etc., 2nd Appellant - Managing Director cannot escape his liability from offences committed by 1st Appellant - Company. 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.

15. 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.

16. Though, the Managing Director is overall in charge 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 Ist Appellant - Company."

22. In ***"Managing Director, Castrol India Limited v State of Karnataka and Another", (2018) 17 Supreme Court cases 275*** also, similar question was involved, though the case was under the provisions of Standards of Weights and Measures Act, 1976. Section 74 of the said Standards and Weights and Measures Act, 1976 is pari-materia with Section 33 of the Insecticide Act. In that case also, the Managing Director of the company was sought to be prosecuted under Section 39 of the provisions of the Standards of Weights and Measures Act, 1976. It was observed by the Hon'ble Supreme Court that there was no averment or statement whatsoever that the appellant as Managing Director was responsible or in charge for the conduct of the business of the company in respect of which offence in question had been allegedly committed and so, the proceedings qua him were permitted to be quashed.

23. In view of the factual matrix and legal position explained above and applying the same to the facts of the present case, it is held that continuing the proceedings against the petitioners in the complaint case in question shall be an abuse of process of law. Therefore, both the petitions are hereby accepted. Complaint (Annexure P1) under sections 3(k)(i), 17, 18, 29 and 33 of the Insecticides Act, 1968 [for short 'the Act'] read with

Rule 27(5) of the Insecticides Rules, 1971 [for short 'the Rules'], pending before the ld. Chief Judicial Magistrate, Bathinda; summoning order dated 16.02.2021 (Annexure P2) passed by ld. Chief Judicial Magistrate, Bathinda and all consequential proceedings arising therefrom qua the petitioners in both the petitions, are hereby quashed.

Pending application(s), if any, shall stands disposed of.

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

21.12.2023 **(DEEPAK GUPTA)**
Vivek **JUDGE**

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