

CRM-M-50867-2019

-1-

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(204)

CRM-M-50867-2019

DATE OF DECISION:- 05.07.2023

DHARAMPAL GOEL

...PETITIONER

VERSUS

STATE OF PUNJAB

...RESPONDENT

Present: Mr. Rakesh Verma, Advocate and
Mr. Munish Verma, Advocate
for the petitioner.

Mr. Arun Luthra, DAG, Punjab
for the State-respondent.

SUVIR SEHGAL, J. (ORAL)

1. By way of present petition filed under Section 482 Cr.P.C., petitioner is seeking quashment of impugned complaint No. 3302 dated 01.08.2018 filed under Section 3 (k) (i), 17, 18, 29 and 33 of Insecticides Act, 1968 (for short “the Act”) read with Rule 27 (5) of Insecticides Rules, 1971, titled as “State Versus M/s Live Crop Science and others” pending adjudication in the Court of Learned CJM, Bathinda, Annexure P-1, summoning order dated 01.08.2018, Annexure P-2, and all consequential proceedings arising therefrom qua the petitioner.

CRM-M-50867-2019

-2-

2. Briefly stating, complaint, Annexure P-1, has been filed by the Insecticide Inspector alleging that in the presence of Agricultural Development Officer, Rampura, on 17.09.2015, he randomly selected a packet of Monocrotophos 36% SL from Vijay Kumar, Godown Incharge of M/s Live Crop Science after obtaining the signatures of witness. A sample was taken from the pack, under signatures of all those present and one sample was sent to the Central Insecticides Laboratory for analysis. A report dated 15.10.2015 was received to the effect that the sample was misbranded and did not conform to the IS specifications as its ingredients were found to be only 27.58% SL Monocrotophos. A copy of the report was delivered to M/s Live Crop Science, Bathinda, the person responsible for conducting the business of the company selling the misbranded product. On the request of the manufacturing and marketing firm, another sample was sent to the Laboratory, which was again declared as misbranded as the active content was found to be only 32.07%, which did not conform to the specifications. Opportunity was given to the dealer, marketing and manufacturing firm before lodging the complaint, Annexure P-1. By impugned summoning order dated 01.08.2018, Annexure P-2, all the accused arrayed in the complaint, Annexure P-1, have been summoned to face trial for the offences and the Insecticides Act, 1968.

3. Counsel representing the petitioner has urged that the petitioner is Director of M/s Mass Crop Science Private Limited, Derabassi, District S.A.S. Nagar, which is the manufacturing company and there is no averment in the complaint, Annexure P-1, that he was

CRM-M-50867-2019

-3-

responsible for the conduct of or incharge of the business of the company. He submits that there is a violation of the mandatory provision of Section 33 of the Act. He has placed reliance upon various judicial precedents to buttress his argument. He asserts that besides the manufacturing company, which has named as an accused, Sh. Vijay Kumar, who is responsible for the quality control' is being prosecuted as accused No. 5 in the complaint, Annexure P-1, and has been summoned. Still further, it is his argument that there is a non-compliance of Section 20 of the Act in as much as the complainant was not notified in the official gazette as the Insecticide Inspector for New Grain Market, Bathinda, from where he drew the sample and, therefore, sample has not been taken in accordance with the provisions of the statute. Still further, he submits that there was a delay of four days in sending the sample for testing, which has resulted in material prejudice to the petitioner, besides gross violation of the provision under Section 22 (6) of the Act, 1968 as the sample was required to be sent for testing forthwith.

4. *Per contra*, State counsel, by making a reference to the response filed on behalf of the State has submitted that the sample had been sent to the Laboratory for testing in accordance with the provisions of the statute and the Rules and it was found that the sample was not as per specification and had been misbranded. He has referred to the Laboratory reports to support his argument. Still further, he submits that the petitioner being incharge of the affairs of the company could not shirk his responsibility and liability under the criminal law.

5. Although, counsel for the petitioner has made numerous submissions, but any observation made on any of the arguments, except one, is likely to influence the trial, which is pending against the co-accused and, therefore, they are not being dealt with.

6. Having heard counsel for the parties, this Court is of the view that the petition deserves to succeed on the short ground of violation of the provision of Section 33 of the Act, which is reproduced as under:-

“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 subsection 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 subsection (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.”

7. After extensively discussing the case law on Section 33 of the Act, in State of *NCT of Delhi Versus Rajiv Khurana (2010) 11 SCC 469*, Supreme Court has held as under:-

“The ratio of all these cases is that the complainant is required to state in the complaint how a Director who is sought to be made an accused, was in charge of the business of the company or responsible for the conduct of company's business. Every Director need not be and is not in charge of the business of the company. If that is the position with regard to a Director, it is needless to emphasise that in case of non-Director officers, there is all the more necessary to state what were his duties and responsibilities in the conduct of business of the company and how and in what manner he is responsible or liable.”

CRM-M-50867-2019

-6-

8. The dictum of the Supreme Court has been followed by this Court in *P.D. Garg Versus State of Punjab 2014 (2) R.C.R. (Criminal) 945; K.C.S. Bhatti Versus State of Haryana, 2015 (1) R.C.R. (Criminal) 162* and *CRM-M-9276-2022 S.B.V.R. Prasad Versus State of Punjab*, decided on 31.08.2022.

9. Perusal of the impugned complaint, Annexure P-1, shows that allegations have been levelled against the present petitioner in paras 16 to 18 of the complaint and it has been alleged that the insecticide in question was manufactured by M/s Mass Crop Science Private Limited through the present petitioner, was not as per specification and was misbranded, which caused great loss to the farmers and the nation. It has been further alleged that the product was manufactured and supplied for sale to M/s Live Crop Science through the present petitioner and that the license issued to both the companies has been cancelled. The petition lacks any averment to the effect that the petitioner was incharge of or responsible for the conduct of business by the company. The complaint is, therefore, clearly hit and does not fulfill the mandatory requirement of Section 33 of the Act, which has been interpreted by the Supreme Court in *Rajiv Khurana's* case (supra).

10. From a reading of the statutory provision and its interpretation, it is evident that a responsible person of the company as well as the company are liable to be prosecuted against in a complaint under the Act, whereas a Director, against whom there are no specific allegations of his involvement in the day to day affairs of the company or in the manufacturing process, can neither be proceeded against nor held

CRM-M-50867-2019

-7-

liable for the offence under the Act. Furthermore, it cannot be disputed that an official of the manufacturing company, who was responsible for the quality control, is named. He is being prosecuted, and has been summoned as an accused accused in the complaint. Therefore, the petitioner against whom there is not even an iota of allegation, cannot be proceeded against and the proceedings against him cannot be sustained.

11. For the reasons recorded above, present petition is allowed. Complaint dated 01.08.2018, Annexure P-1, as well as the summoning order, Annexure P-2, passed on the same day, deserve to be quashed qua the petitioner.

12. As an abundant caution, it is clarified that any observation made hereinabove shall have no effect on the proceedings pending against the other accused before the Judicial Magistrate.

(SUVIR SEHGAL)
JUDGE

05.07.2023
Kamal

Whether speaking/ reasoned	Yes/ No
Whether Reportable	Yes/ No