

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL MISCELLANEOUS No.24441 of 2017

Arising Out of PS. Case No.-13 Year-2012 Thana- SITAMARHI COMPLAINT CASE
District- Sitamarhi

Gopal Bhalotia S/o Late M.L. Bhalotia, Resident of B/51/54 Industrial Area,
Phase- I, Hajipur, P.S.- Hajipur, District- Vaishali.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Sri Kanhaiya Singh the Junior Plant Protection Officer-cum- Insecticide
Inspector, Sitamarhi.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. N.K. Agarwal
Mr. Dhananjaya Nath Tiwari
Ms. Diksha Kumari
For the Opposite Party/s : Mr. Prem Kumar Jha

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 27-06-2024

Heard learned counsel appearing for the parties.

2. This is an application for quashing the order dated 22.12.2012 passed in compliant case no C2/13 of 2012 passed by learned Chief Judicial Magistrate, Sitamarhi where cognizance for the offence punishable under section 3(K) 29 and 33 of the Insecticides Act, 1968, against the petitioner.

3. The brief fact of prosecution speaks that the complainant who is Junior Plant Protection Officer-cum- Insecticides Officer, Sitamarhi took sample on 07.03.2010 of Currant (Prophenophas 50%EC) alleged to be manufactured by the petitioner company from a dealer of Insecticides namely M/s Lakshmi Khad Beej Bhandar, Runni Saidpur,



Sitamarhi of which one Dhananjay Kumar is Proprietor. The batch no. of the product was EF-03 manufactured on August 2009 by the petitioner's company and the date of expiry was January 2011. The sample was sent for analysis vide letter no. 84 dated 08.03.2010 to SPTL, Mithapur, Bihar, Patna and on 26.03.2010 report was received vide letter no. 2544P, where alleged sample was found sub-standard. Vide letter no. 131 and 134 dated 12.04.2010, the complainant, Junior Plant Protection Officer asked show cause enclosing the analysis report and thereafter a request was made by the petitioner to get the sample for re-analysis by the Central Insecticides Laboratory, Faridabad, where same was also found sub-standard in terms of report dated 12.06.2010, accordingly, the complainant informed the petitioner's company not to sale the product in question. Thereafter, from the Director Agriculture, Patna vide letter no. 4883 dated 28.09.2012 in terms of section 31(1) and (2) of Insecticides Act, 1968 sanction was granted against manufacturer M/s Plant Remedies and the seller firm M/s Lakshmi Khad Beej Bhandar and accordingly the complaint



was filed under section 3(k), 29, 33 of the Insecticides Act, 1968.

4. It is submitted by Mr. N.K. Agrawal, learned senior counsel appearing for the petitioner that admittedly the sample was recovered from third party i.e., M/s Lakshmi Khad Beej Bhandar, Runni Saidpur, Sitamarhi, whereupon information as received from third party, it came to the knowledge of the complainant that the insecticide, in issue, was manufactured in the company of the petitioner namely M/s Plant Remedies Pvt. Ltd. It is pointed out as alleged insecticide was stored with third party, there is all probability that out of storing management, the standard of insecticide as may found to be sub-standard.

5. It is pointed out by learned senior counsel that on perusal of the complaint petition, it appears that the petitioner was impleaded as an accused in capacity of managing director of the company without impleading company as an accused and in such a circumstances it is virtually impossible to ascertain the vicarious liability of the petitioner, qua, company with present criminal proceedings.



6. It is pointed out by learned senior counsel that the sanction in terms of Section 31(1) and (2) of Insecticides Act, 1968 is also only against the company and same appears not available against the petitioner being individual as Managing Director.

7. In support of aforesaid submissions, learned counsel relied upon legal reports of Hon'ble Supreme Court as reported in the matter of ***Sushil Sethi and Anr. vs. State of Arunachal Pradesh and Ors. [(2020) 3 SCC 240]***

8. It is further submitted by learned senior counsel that the company of the petitioner is a highly reputed company of its field, where the preparation was to be carried out by different qualified and expert persons having no direct involvement of petitioner to make it sub-standard as alleged.

9. Learned APP for the State opposed the prayer for quashing petition.

10. It appears from the order dated 11.10.2023 of this Court that State was to file counter affidavit by keeping in mind the judgment of the Hon'ble Supreme Court as



reported in the matter of ***State of Madras vs. C.V. Prekh and Anr.*** reported in ***[(1970)3 SCC 491]*** and further in the matter of ***Aneeta Hada vs. M/s Godfather Travels & Tours Pvt. Ltd.*** reported in ***[2012(3) PLJR 103(SC)]*** but upon perusal of the counter affidavit it appears that the State is completely silent regarding aforesaid judgments. It is almost an admitted position that the prosecution sanction was obtained only against the company and not against this petitioner.

11. It would be apposite to reproduce Para no.- 8.2 of ***Sushil Sethi Case (supra)***, which runs as under:-

"8.2. It is also required to be noted that the main allegations can be said to be against the company. The company has not been made a party. The allegations are restricted to the Managing Director and the Director of the company respectively. There are no specific allegations against the Managing Director or even the Director. There are no allegations to constitute the vicarious liability. In Maksud Saiyed v. State of Gujarat [Maksud Saiyed v. State of Gujarat, (2008) 5 SCC 668 : (2008) 2 SCC (Cri) 692] , it is observed and held by this Court that the Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the company when the accused is the company. It is further observed and



held that the vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. It is further observed that the statute indisputably must contain provision fixing such vicarious liabilities. It is further observed that even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability. In the present case, there are no such specific allegations against the appellants being Managing Director or the Director of the company respectively. Under the circumstances also, the impugned criminal proceedings are required to be quashed and set aside."

12. In view of the aforesaid factual and legal submission as the company i.e., M/s Plant Remedies Pvt. Ltd. not appears to be impleaded as an accused rather Managing Director of the company appears to be impleaded without having any involvement in the manufacturing activities of the alleged insecticides, particularly in the circumstances when the recovery of alleged sample is admittedly made from third party, coupled with the fact that, there is no separate sanctions against this petitioner in individual capacity where for all such things the State is silent through its counter affidavit, accordingly, by taking



guiding note of ***Sushil Sethi case (supra)*** the order of cognizance dated 22.12.2012 with all its consequential proceedings, *qua*, petitioner, arising thereof as passed in connection with Complaint Case No. C2/13 of 2012 pending before the learned Chief Judicial Magistrate, Sitamarhi, is hereby quashed and set aside.

13. Hence, this application stands allowed.
14. TCR (Trial Court Records), if any, be returned to learned trial court alongwith the copy of this judgment.

(Chandra Shekhar Jha, J)

Sudha/-

AFR/NAFR	NAFR
CAV DATE	NA
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