

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.25868 of 2017

Arising Out of PS. Case No.-1 Year-2014 Thana- MUZFFARPUR COMPLAINT CASE
District- Muzaffarpur

Atul Churiwal, S/o Late Pramod Churiwal, Managing Director, M/s Krishi Rashayan Export Pvt. Ltd. House No.4, National Library Avenue, P.S.-Kolkata, District-Kolkata (West Bengal).

... .. Petitioner

Versus

1. State of Bihar
2. Sri Devnath Prasad, the Insecticide Inspector-cum-Junior Plant Protection Officer, Muzaffarpur @ present resident of combined building 34B, Muzaffarpur, Agriculture Department, P.S.-Town, District-Muzaffarpur.

... .. Opposite Parties

Appearance :

For the Petitioner/s	:	Mr. N.K. Agrawal, Senior Advocate Mr. Dhananjaya Nath Tiwari, Advocate Ms. Diksha Kumari, Advocate
For the Opposite Party/s	:	Ms. Madhuri Lata, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 27-06-2024

Heard learned counsel appearing for the parties.

2. This application has been filed for quashing the order dated 18.02.2014 passed in Compliant Case No. C 01/2014 by learned S.D.J.M., East, Muzaffarpur whereby the learned Jurisdictional Magistrate has taken cognizance for the offence punishable under section 29 of the Insecticides Act, 1968 against the petitioner and further for quashing the order dated 11.07.2014 passed in Cr. Rev. No.94 of 2014 whereby the learned Sessions



Judge, Muzaffarpur has rejected the revision application filed by the petitioner and affirmed the order taking cognizance.

3. The prosecution case as set out in the complaint *inter alia* is as follows:-

“ The complainant, namely, Insecticides Inspector-cum-Junior Plant Protection Officer, Muzaffarpur took a sample of Harbicide “Kapiq” (Paraquat Dicholoride 24% S.L.) was taken on 24.11.2012 from the shop of M/s Electric Corner Proprietor Brij Mohan Banka, accused no.3. The sample on analysis was found miss-branded. Accordingly, from the Controller, a written consent for prosecution was sought for by letter dated 04.05.2013 by the opposite party no.2, which was accorded on 29.01.2014 by the competent authority and accordingly, the present complaint was filed.”

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 Electric Corner of which Sri Brij Mohan Banka,



was the proprietor, whereupon information as received from third party, it came to the knowledge of the complainant that the insecticides, in issue, was manufactured in the company of the petitioner namely M/s Kirshi Rashayan Export 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 insecticides 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 circumstances, it is virtually impossible as to ascertain the vicarious liability of the petitioner *qua* company in 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 07.10.2023 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 submissions, as the company i.e., M/s Krishi Rashayan Export 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 sanction 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 taking cognizance dated 18.02.2014 passed in Compliant Case No. C 01/2014 by



learned S.D.J.M., East, Muzaffarpur and also the order dated 11.07.2014 as passed in Cr. Rev. No.94 of 2014 with all its consequential proceedings, *qua* petitioner named above, arising thereof are, hereby, quashed and set aside.

13. Hence, this application stands allowed.

14. Let a copy of the judgment be sent to learned trial court forthwith.

(Chandra Shekhar Jha, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.06.2024
Transmission Date	29.06.2024

