



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

1.

CRM-M No.379 of 2019
Date of decision: July 30th, 2024

Raj Kumar Gupta

.....Petitioner

Versus

State of Punjab

.....Respondent
2.

CRM-M No.20507 of 2022

Inder Surekha and another

.....Petitioners

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Rakesh Verma and Mr. Manish Verma, Advocates
for the petitioners.

Mr. Amit Rana, Senior Deputy Advocate General, Punjab.

MANJARI NEHRU KAUL, J.

This order shall dispose of the above-mentioned petitions filed under Section 482 of the Code of Criminal Procedure, 1973, as prayer in both the petitions is for quashing of complaint case No.224 dated 25.05.2017 under Section 3(k)(i), 17, 18, 29 and 33 of The Insecticides Act, 1968 (hereinafter referred to as ‘the Act’), read with Rule 27(5) of Insecticides Rules, 1971, titled as State Vs. M/s Goyal Pesticides Store and others, summoning order dated 09.06.2017 (Annexure P-2) and all consequential proceedings arising therefrom qua the petitioners.

2. The allegations as levelled in the complaint, which has been annexed as Annexure P-1, may be summed up as thus:-

3. On 14.08.2014, Insecticides Inspector, Harjas Pal Sharma (hereinafter referred to as 'Inspector') conducted an inspection at M/s Goyal Pesticides Store (for short 'the firm') and collected samples of insecticide cartap hydrochloride 4% G Batch No.561, manufactured in April, 2014, expiring in March, 2016, allegedly manufactured by M/s. Thakar Chemicals Limited, New Delhi (hereinafter referred to as 'manufacturing company') via its depot in Bathinda. Three samples were collected in accordance with the Act. Two samples were submitted to the Chief Agricultural Officer, Bathinda, and one to the Senior Public Analyst at the State Insecticide Testing Laboratory, Ludhiana. On 16.09.2014, the Ludhiana Lab reported the sample as misbranded, with one inactive ingredient at 1.03% instead of the required 4%. A reference sample sent to the Central Insecticide Laboratory, Faridabad, also confirmed the misbranding on 13.03.2015. After obtaining the necessary sanction, a complaint was filed before the learned JMIC, Talwandi Sabo, under Sections 3(k)(i), 17, 18, 29 and 33 of the Act and Rule 27(5) of Insecticides Rules, 1971, on 25.05.2017. Subsequently, on 09.06.2017, the concerned Court summoned the accused, including Raj Kumar Gupta (Managing Director), Inder Surekha (Director) and Parveen Gupta (Godown Incharge) to stand trial. Hence, the instant petitions.

4. Learned counsel for the petitioners has argued that the trial Court erroneously summoned petitioners Raj Kumar Gupta, Inder Surekha and Praveen Gupta merely because of their positions in the manufacturing company, without any specific allegations levelled against them much less of their involvement in the offences in question.

Learned counsel while drawing the attention of the Court to Annexure P-1 has asserted that the complaint lacked any specific accusations against any of the petitioners. While placing reliance upon *State of N.C.T. of Delhi Versus Rajiv Khurana, 2010 (3) RCR (Crl.) 912*, the learned counsel has argued that Section 33 of the Act mandates explicit averments regarding the role of the accused and responsibility in the business and affairs of the company. It has been contended that the complaint did not satisfy this requirement, making the proceedings against the petitioners nothing but an abuse of the process of law.

5. Further, the learned counsel for the petitioners has pointed out that the petitioners, while being office bearers of the manufacturing company, had no involvement in its quality control, which was managed by Ranjit Singh, the Quality Control Manager. It has been argued that since Ranjit Singh, as per Section 33 of the Act, was the designated responsible person for quality control, no other person including the petitioners, can be held liable. Learned counsel has cited *Cheminova India Ltd. Versus State of Punjab 2021 SCC Online SC 541* to support his arguments that the vicarious prosecution of the petitioners was unjustified since the company was already being prosecuted through its Quality Control Manager.

6. *Per contra*, learned State counsel while opposing the prayer and submissions made by the counsel opposite, has maintained that the petitioners as office bearers of the company, were responsible for ensuring the quality of the insecticides. Learned State counsel, however, has acknowledged the existence of a Quality Control Manager but argued that the involvement of these petitioners in the affairs of the

counsel has contended that the defence of the petitioners regarding their lack of involvement in the day-to-day affairs of the company was a matter which could be examined only during the trial.

7. I have heard learned counsel for the parties and perused the relevant material on record.

8. Before proceeding further, it would be apposite to reproduce the relevant provisions of the Act, which are as under:-

“3. Definitions.—In this Act, unless the context otherwise requires,—

(a) to (j) XXXX XXXX XXXX
(k) “misbranded”—an insecticide shall be deemed to be misbranded— (i) if its label contains any statement, design or graphic representation relating thereto which is false or misleading in any material particular, or if its package is otherwise deceptive in respect of its contents;

17. Prohibition of import and manufacture of certain insecticides.—*(1) No person shall, himself or by any person on his behalf, import or manufacture— (a) any misbranded insecticide; (b) any insecticide the sale, distribution or use of which is for the time being prohibited under section 27; (c) any insecticide except in accordance with the conditions on which it was registered; (d) any insecticide in contravention of any other provision of this Act or of any rule made thereunder: Provided that any person who has applied for registration of an insecticide 1 [under any of the provisos] to sub-section (1) of section 9 may continue to import or manufacture any such insecticide and such insecticide shall not be deemed to be a misbranded insecticide within the meaning of sub-clause (vi) or sub-clause (vii) or sub-clause (viii) of clause (k) of section 3, until he has been informed by the Registration Committee of its decision to refuse to register the said insecticide. (2) No person shall, himself or by any person on his behalf, manufacture any insecticide except under, and in accordance with the conditions of, a licence issued for such purpose under this Act.*

18. Prohibition of sale, etc., of certain insecticides.—*(1) No person shall, himself or by any person on his behalf, sell,*

stock or exhibit for sale, distribute, 2 [transport, use, or cause to be used] by any worker— (a) any insecticide which is not registered under this Act; (b) any insecticide, the sale, distribution or use of which is for the time being prohibited under section 27; (c) any insecticide in contravention of any other provision of this Act or of any rule made thereunder. (2) No person shall, himself or by any person on his behalf, sell, stock or exhibit for sale or distribute 3 [for use for commercial pest control operations] any insecticide except under, and in accordance with the conditions of, a licence issued for such purpose under this Act. Explanation.—For the purposes of this section an insecticide in respect of which any person has applied for a certificate of registration 4 [under any of the provisos] to sub-section (1) of section 9, shall be deemed to be registered till the date on which the refusal to register such insecticide is notified in the Official Gazette.

29. Offences and punishment.—(1) Whoever,— (a) imports, manufactures, sells, stocks or exhibits for sale or distributes any insecticide deemed to be misbranded under sub-clause (i) or sub-clause (iii) or sub-clause (viii) of clause (k) of section 3; or (b) imports or manufactures any insecticide without a certificate of registration; or (c) manufactures, sells, stocks or exhibits for sale or distributes an insecticide without a licence; or (d) sells or distributes an insecticide, in contravention of section 27; or (e) causes an insecticides, the use of which has been prohibited under section 27, to be used by any worker; or (f) obstructs an Insecticide Inspector in the exercise of his powers or discharge of his duties under this Act or the rules made thereunder, 1 [shall be punishable— (i) for the first offence, with imprisonment for a term which may extend to two years, or with fine which shall not be less than ten thousand rupees but which may extend to fifty thousand rupees, or with both; (ii) for the second and a subsequent offence, with imprisonment for a term which may extend to three years, or with fine which shall not be less than fifteen thousand rupees but which may extend to seventy-five thousand rupees, or with both]. (2) Whoever uses an insecticide in contravention of any provision of this Act or any rule made thereunder shall be punishable with fine 2 [which shall not be less than five hundred rupees but which may extend to five thousand rupees, or imprisonment for a

term which may extend to six months, or with both]. (3) Whoever contravenes any of the other provisions of this Act or any rule made thereunder or any condition of a certificate of registration or licence granted thereunder, shall be punishable— (i) for the first offence, with imprisonment for a term which may extend to 3 [one year, or with fine which shall not be less than five thousand rupees but which may extend to twenty-five thousand rupees, or with both]; (ii) for the second and a subsequent offence, with imprisonment for a term which may extend to 4 [two years, or with fine which shall not be less than ten thousand rupees but which may extend to fifty thousand rupees, or with both]. (4) If any person convicted of an offence under this Act commits a like offence afterwards it shall be lawful for the court before which the second or subsequent conviction takes place to cause the offender's name and place of residence, the offence and the penalty imposed to be published in such newspapers or in such other manner as the court may direct.

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 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.”

9. Hon’ble the Supreme Court in ***State of N.C.T. of Delhi Versus Rajiv Khurana’s case (supra)*** has categorically held that a complaint must specifically describe how a Director or Officer is responsible for the business and day to day affairs of the company. It would be relevant to reproduce the observations of Hon’ble the Supreme Court, which are as follows:-

“18. 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 the 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.”

10. Hon’ble the Supreme Court in ***Cheminova India Ltd.’s case (supra)*** with regard to the liability of the Managing Director in case where the company had nominated some other person to look after the quality control held thus:-

“19. Section 33 of the Act deals with ‘offences by companies’. A reading of Section 33(1) of the Act, makes it clear that 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. 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 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.”

11. Adverting to the case in hand, a perusal of the complaint in question reveals that petitioners are being prosecuted for being the Managing Director, Director and Godown Incharge of the manufacturing company respectively, however, there are no specific allegations or averments in the entire complaint to demonstrate as to how the petitioners were in-charge of or responsible for the business of the company or its quality control of the insecticides being manufactured. Section 33 of the Act requires clear averments about the role and responsibilities of an accused. In the present case, the complaint itself identifies Ranjit Singh as the Quality Control Manager responsible for the quality of the product being manufactured by the manufacturing company, a fact which has not been disputed by the learned State counsel. It is also a matter of record that Ranjit Singh, who was in-charge of the quality of the products being manufactured, is already being proceeded against. Since a Quality Control Manager was already in place well before the raid in question, the petitioners cannot be held vicariously liable for the offences alleged.

12. Given the absence of any specific allegations/averments in the complaint in question regarding the petitioners, and in the light of the settled law, the instant petitions are allowed and the complaint in question along with all consequences proceedings arising therefrom including the summoning order are quashed qua the petitioners.

13. In the light of the decision of the petitions, all pending applications stand disposed of.

July 30th, 2024
Puneet

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No