



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-9435-2023
Reserved on: 17.05.2024
Pronounced on: 20.05.2024

BALRAM SINGH YADAV AND ANOTHER
Vs.
STATE OF PUNJAB
..... PETITIONERS
..... RESPONDENT

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

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

Mr. Sahil R. Bakshi, AAG, Punjab.

DEEPAK GUPTA, J.

By way of this petition filed under Section 482 of the Code of Criminal Procedure, prayer is made to quash Complaint bearing No. 10, dated 06.01.2021 titled as "State of Punjab through Insecticide Inspector, Jagraon Vs M/s Ashok Kumar Tarsem Lal and others" (*Annexure P-I*) under Sections 3(k)(i), 17, 18, 29 & 33 of the Insecticides Act, 1968 (hereinafter referred as 'the Act') read with Rule 27(5) of the Insecticides Rules, 1971 (hereinafter referred as 'the Rules'), pending in the Court of learned SDJM, Jagraon and all the consequential proceedings arising therefrom qua the petitioners.

2.1 It emerges on perusal of paper book that on 07.07.2020, Shri Jaswant Singh, the Insecticide Inspector, Jagraon inspected the premises of *M/s Ashok Kumar Tarsem Lal*, Link Road, Jagraon, dealing in the business of selling and stocking of insecticides and pesticides under a Licence issued by the Licensing Authority. After making necessary statutory compliances, he drew sample for the purpose of analysis of sealed packing of *Bispyribac*

Sodium 10% (W/V) SC (Brand name OYZOSTAR) of 100 ml capacity each, bearing Batch No.J001, manufacturing date 19.05.2020; expiry date 18.05.2022, *manufactured by M/s Godrej Agrovat Limited*, Godrej One, 3rd Floor, Pirojshanagar, Eastern Express Highway, Vikhroli, Mumbai, Maharashtra and *distributed by M/s Godrej Agrovat Ltd.*, C/o K.S. Logistics, Village – Jarkhar, Near Hindustan Petroleum Gas Agency Ludhiana.

2.2 One sealed test sample portion was got tested from the Senior Analyst, Insecticide Testing Laboratory, Amritsar on 21.07.2020. The remaining two samples were remained in the safe custody of ADO (PP) office of Chief Agriculture Officer, Ludhiana as reference sample. Vide report dated 22.07.2020 received on same day, the sample was declared as mis-branded. Copy of the analysis report alongwith show cause notices were communicated to the dealer firm M/s Ashok Kumar Tarsem Lal, the distributing firm as well as the manufacturing firm M/s Godrej Agrovat Ltd. and their respective representatives. At the request of dealer firm, for re-testing of reference sample, same was produced in the Court and as per court order, the second sample was sent to Central Insecticide Laboratory, Faridabad for re-analysis as per rules. The report dated 15.10.2020 (Annexure P4) was received, as per which sample was again declared misbranded with remarks '*the sample does not confirm to the relevant specification in the active ingredient test requirement, hence misbranded*'.

3. Consequent to above, complaint (*Annexure P-1*) was filed to prosecute the following accused under Sections 3(k)(i), 17, 18, 29 & 33 of the Act read with Rule 27(5) of the Rules.:

- M/s Ashok Kumar Tarsem Lal [**Dealer firm**];
- Kamal Kumar Gupta, qualified personnel of M/s Ashok Kumar

Tarsem Lal;

- M/s Godrej Agrovet ltd. [**Distributor firm**] c/o K.S. Logistics, Village Jarkhar;
- Arshad Ali Khan being responsible person as Godown In charge of distributor firm M/s Godrej Agrovet Ltd.,
(petitioner N: 2 herein)
- Deepak Sharma, responsible person for conduct of business of distributor firm M/s Godrej Agrovet Ltd
- M/s Godrej Agrovet Ltd., Godrej One, 3rd Floor, Pirojshanagar [**Manufacturing Company**]
- Balram Singh Yadav being responsible as Managing Director of M/s Godrej Agrovet Ltd. i.e., Manufacturing company;
(petitioner N: 1 herein)
- Ashish Gupta, responsible person for quality Control of M/s Godrej Agrovet Ltd., i.e., Manufacturing company.

4. Learned SDJM, Jagroan vide order dated 28.01.2021 (*Annexure P-2*) ordered summoning of all the accused including the petitioners under Section 3(k)(i), 17, 18, 29 & 33 of the Act read with Rule 27(5) of the Insecticides Rules, 1971 to face trial.

5.1 Challenging the complaint as well as the summoning order, it is contended by learned counsel for the petitioners that each and every company is required to nominate one of its officer as responsible person for quality control under Section 33 of the Insecticide Act, 1968, who maintains and checks the quality of the products of the manufacturing unit. By referring to Section 33 of the Act and by relying upon ***Cheminova India Limited Vs. State of Punjab 2021(3) RCR(Criminal) 750***, it is contended that if the offence is found to be committed by the company, then only the responsible person of the company and the company alone are required to be proceeded against.

5.2 It is contended by Ld. Counsel that in present case too, M/s Godrej Agrovet Ltd., i.e., Manufacturing company had already appointed Shri Ashish Gupta as its Manager-Quality Control -cum- Responsible person, for maintaining quality of products for compliance of Section 33 of the Act and therefore, no other person/office bearer is liable to be arrayed as an accused on behalf of manufacturing unit. Ld. Counsel contends that complainant – respondent has already arrayed Ashish Gupta as accused N: 8 being responsible person for quality Control of M/s Godrej Agrovet Ltd., i.e., Manufacturing company. Affidavit of said Quality Control Person is *Annexure P5*, stating that he shall be responsible for all acts of M/s Godrej Agrovet Ltd. i.e., Manufacturing company.

5.3 It is argued by Ld. Counsel that in view of above facts, present proceedings against the petitioners ought to be quashed, as simply because they are the Managing Director and Godown In charge, respectively of M/s Godrej Agrovet Ltd. , Godrej One, 3rd Floor, Pirojshanagar, Eastern Express Highway, Vikhroli, Mumbai, they cannot be fastened with any liability.

6. Learned State counsel appearing for the respondents opposed the petition by drawing attention towards the reply of Jaswant Singh, Agriculture Development Officer-cum-Notified Insecticide Inspector, Ludhiana, as per which petitioners being the Managing Director and Godown In charge, respectively, of the manufacturing company and that of distributor/marketing firm, are responsible for the affairs of the firm and that it was their moral and constitutional duty to appear before the Court to clear their position. Ld. State counsel has also drawn attention towards affidavits Annexures R1 & Annexure R2 respectively of the two petitioners, which they had submitted to

the department.

7. Having considered the submissions of learned Advocate for the petitioner and State counsel, I find merit in this petition only qua petitioner N:

1- Balram Singh Yadav, the Managing Director of manufacturing company.

8. It is not disputed that the product in question, the sample of which was taken, was manufactured by M/s Godrej Agrovat Ltd. , Godrej One, 3rd Floor, Pirojshanagar, Eastern Express Highway, Vikhroli, Mumbai. It is also not in dispute that petitioner N: 1- Balram Singh Yadav is the Managing Director of the said company.

9. 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”

10. 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.

11. Learned counsel for the petitioners has drawn attention towards an affidavit dated 02.01.2019 (Annexure P-5), as per Ashish Gupta s/o Mr. Somesh Lal Gupta, working as Executive (Quality Control) in M/s Godrej Agrovat Ltd. having its Regd. Office at Godrej One, 3rd Floor, Pirojshanagar, Eastern Express Highway, Vikhroli (East), Mumbai had been nominated/appointed by the company for compliance of Section 33 of the Insecticide Act, 1968 & Rules framed thereunder and that he being In Charge in the company for day-to-day business regarding quality of manufacturing of pesticides by the company, shall be responsible under Section 33 of the Act.

11. Learned counsel for the petitioners has drawn attention towards an affidavit dated 02.01.2019 (*Annexure P-5*), as per Ashish Gupta s/o Mr. Somesh Lal Gupta, working as Executive (Quality Control) in M/s Godrej Agrovat Ltd. having its Regd. Office at Godrej One, 3rd Floor, Pirojshanagar, Eastern Express Highway, Vikhroli (East), Mumbai had been nominated/appointed by the company for compliance of Section 33 of the Insecticide Act, 1968 & Rules framed thereunder and that he being In Charge in the company for day-to-day business regarding quality of manufacturing of pesticides by the company, shall be responsible under Section 33 of the Act.

12. On the other hand, Ld. State counsel contends that by way of affidavit (*Annexure R1*), it had been admitted by petitioner No.1-Balram Singh Yadav, Managing Director of the manufacturing company i.e. M/s Godrej Agrovat Limited that he being the Managing Director is the

responsible person for the company and had agreed to abide by the provisions of the Act. Further attention is drawn towards the affidavit (*Annexure R2*) of petitioner No.2-Arshad Ali Khan, working as Godown Incharge of M/s Godrej Agrovat Limited, the marketing/public distribution firm, whereby he had undertaken to be fully in charge of the company business under Section 33 of the Act. Ld. State counsel contends that in view of these affidavits, which were submitted by the petitioners before the Department, petitioners are now estopped from claiming any immunity from prosecution under the provisions of Insecticide Act, 1968.

13. Affidavit dated 02.01.2019 (*Annexure P5*) of Ashish Gupta (arrayed as accused No.8 in the complaint) reads as under:

“I, Mr. Ashish Gupta s/o Mr. Somesh Lal Gupta, residing at Tarore, Samba, Jammu, working as Executive (Quality Control) in Godrej Agrovat Ltd., a company incorporated under the Companies Act, 1956, having its Regd. Office at Godrej One, 3rd Floor, Pirojshanagar, Eastern Express Highway, Vikhroli (East), Mumbai ('the Company') do hereby solemnly affirm and declare as under: -

1. That I have been appointed/nominated by the Company for the compliance of provision of section 33 of the Insecticide Act, 1968 and the Insecticides Rules, 1971 and responsible person for the Quality Control under section 33 of the Insecticides Act, 1968 and Insecticides Rules, 1971.

2. I am fully in-charge in the Company for looking after day-to-day business regarding quality of manufacturing or Pesticides by the Company and am solely responsible for the quality of Pesticides throughout its shelf life unless tempered. I shall be fully responsible under section 33 of the Insecticides Act, 1968 and Insecticides Rules, 1971.

3. That the Company is inter alia engaged in manufacturing / stocking/ marketing of insecticides and pesticides.

4. That I shall be the Responsible Person for the Quality Control as per the scope and spirit of the section 33 of the Insecticides Act, 1968 and I shall be responsible for all the acts and omission of the Company pertaining to Quality Control and manufacturing of insecticides and pesticides by the Company at Godrej Agrovat Ltd., IGC Phase 1, Lane No. 7, Samba, Jammu and Kashmir.”

14. On the other hand, Affidavit (*Annexure R1*) of petitioner No.1-

accused Balram Singh Yadav reads as under: -

I, Balram Singh Yadav S/o Shri Chaman Singh, C/o "Godrej one", 3rd Floor, Pirojshanagar, Eastern Express Highway, Vikhroli (East), Mumbai- 400079, Maharashtra, do hereby solemnly affirm and declare as under:-

1. That I am working as the Managing Director of Godrej Agrovet Limited (said company). The said company is Manufacturing/ Formulating/ Stocking/ Marketing Insecticides and Pesticides.

2. That I hereby undertake that in case Mr. Sanjeev Kumar Singh, Senior Executive- Agri Sales, Godown Incharge, **Mr. Ashish Gupta, Executive- Quality Control, responsible for quality control** and Mr. Shashi Bhushan Singh, Factory Manager, responsible for Conduct of business under Section 33 of the Insecticides Act, 1968, **leaves the Company/ is replaced/ retires/ or is terminated from the services of the Company, the Company shall nominate and authorize an alternate person (s) for these responsible persons under Section 33 of the Insecticide Act, 1968. In case, the authorized or nominated persons do not appear, I shall endeavor to make them appear.**

3. That I hereby undertake that the company will ensure that all the conditions issued by Department of Agriculture, Punjab under the law from time to time regarding manufacturing/sale of Insecticide or Pesticides shall be complied with. The Company shall further abide by all the applicable Instructions and Guidelines of Govt. of India and will not violate any provisions of Insecticide Act, 1968, Insecticide Rules 1971. Failure to do so, by the company shall render the license liable to cancellation in terms of the law.”

15. On conjoint reading of the two affidavits as above, it becomes clear that it is Ashish Gupta, who was appointed/nominated by the manufacturing company as the person responsible for quality control of the pesticides of the manufacturing company M/s Godrej Agrovet Limited. Affidavit (*Annexure R1*) of Balram Singh Yadav-petitioner No.1 relied upon by the respondent-complainant itself would clearly indicate that he had undertaken to be responsible for conduct of business under Section 33 of the Act, only in case Sanjeev Kumar Singh, Senior Executive-Agri Sales, Godown Incharge; or Mr. Ashish Gupta, Executive Quality Control, responsible for quality control; or Shashi Bhushan Singh, Factory Manager, under Section 33 of the Act, leaves the company or is replaced or retires or

terminated etc. and that in that eventuality, company will nominate and authorized an alternate person to be responsible under Section 33 of the Act.

16. A similar issue had arisen before the 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 1st Appellant – Company.”

17. 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.

18. Similar views have also been taken by this Court in *Sh. Chetan Shah Vs. State of Punjab*, 2024(1) RCR (Criminal) 84, *Rajesh Aggarwal and another Vs. State of Punjab*, [2023 NCPHHC 104075] [CRM-M-32889-2019 decided on 09.08.2023) and *Yadwinder Singh Vs. State of Punjab and others* [CRM-M-20884-2018 decided on 05.12.2018].

19. In the present case, it is not the case of the respondent - complainant that services of accused No.8 Ashish Gupta as Executive Quality Control, responsible for the quality control of the company had been terminated or replaced or that he had retired. In fact, as noticed above, said Ashish Gupta has been arrayed as accused No.8. In these circumstances,

Balram Singh Yadav (*petitioner No.1*) cannot be sought to be prosecuted under Section 33 of the Act, as the company of which he is the Managing Director, had already appointed Accused No.8-Ashish Gupta as Executive Quality Control, who is responsible for the quality control of the products being manufactured by the company.

20. However, as far as Arshad Ali Khan (*petitioner No.2*) is concerned, his case is on different footing. He is not the Godown Incharge of the manufacturing company. Rather, he is the Godown Incharge of the Marketing/distributing firm. The respondent-complainant has placed on record affidavit of Arshad Ali Khan (*petitioner No.2*) as Annexure R1, submitted to the Department, which reads as under:

‘I, Arshad Ali Khan S/o Shahid Ali R/o H.no. 43, New Shimla colony, Near Shri Prem Dham, Kakowal Road, Ludhiana **working as Godown Incharge in M/s Godrej Agrovat Limited**, at M/s K.S. Logistics, Village- Jarkhar, Near Hindustan Petroleum Gas Agency, Ludhiana, Punjab do hereby solemnly affirm and declare as under:-

1. That **I have been appointed/ nominated by the Company and responsible person for Godown Incharge u/s 33 of the Insecticide Act, 1968 and Rules 1971. I am fully in-charge in company business for looking after day to day business regarding handling of pesticides at godown as received from the manufacturing Company. I shall be responsible under Section 33 of Insecticide Act, 1968 and Rules 1971.**
2. That the said firm desires to carry out the business to Sell Stock or Exhibit for Sale or Distributions of Insecticides & Pesticides in the State of Punjab.
3. That I will maintain stock register Properly as per provisions of Insecticides Act, 1968 Orders & Insecticides Rule 1971 and produce Stock Register on demand by Competent Authority.
4. That will neither Sell or Stock any insecticide or Pesticides without getting its addition/ endorsement in License to sell stock or Exhibit for sale or Distribute from the Competent Authority.
5. That I will not violate any provisions of Insecticide Act 1968/ Insecticide Rules 1971/ Order any abide by all the instructions issued

by the Department of Agriculture from time to time regarding sale of insecticide or Pesticides.

6. That our firm has sufficient space to carry out the business of Insecticides at the said premises.
7. That I will not stock or sell any other item at the place of business of Insecticides at the said premises.
8. That I will not keep eatable articles in the stock/sell premises.
9. That I will display the License at Proper place.
10. That I will submit the monthly return to the Licensing Authority on 5th of every month in the prescribed form.
11. That I have not convicted under Insecticide Act, 1968 and Rules 1971.
12. That I shall abide by all the provisions of the Insecticide Act, 1968 & Rules 1971.'

21. From the aforesaid affidavit, it is clear that petitioner No.2-Arshad Ali Khan had been nominated/appointed by the marketing company as as Godown Incharge and responsible person under Section 33 of the Act and the Rules. By way of this affidavit, he had undertaken to be fully in charge of the company business for looking after day-to-day business regarding handling of pesticides at godown as received from the manufacturing company and that he shall be responsible under Section 33 of the Act and the Rules framed thereunder.

22. In view of the contents of the affidavit (Annexure R2) of petitioner No.2-Arshad Ali Khan, he cannot escape from his liability to be prosecuted under Section 33 of the Act.

23. In view of the legal position explained by the Hon'ble Supreme Court in *Cheminova India Limited's case (supra)* and applying the same to the facts of the present case, it is held that continuing the proceedings against Balram Singh Yadav (*petitioner No.1*) in complaint case in question shall be abuse of process of law. Therefore, this petition qua Balram Singh Yadav (*petitioner No.1*) is hereby accepted. ***Complaint bearing No. 10, dated***

06.01.2021, titled as “State of Punjab through Insecticide Inspector, Jagraon vs M/s Ashok Kumar Tarsem Lal and others” (Annexure P-1) under Sections 3(k)(i), 17, 18, 29 & 33 of the Act read with Rule 27(5) of the Rules, pending in the Court of learned SDJM, Jagraon and all the consequential proceedings arising therefrom qua Balram Singh Yadav (*petitioner No.1*), are hereby quashed. However, petition qua Arshad Ali Khan (*petitioner No.2*) is hereby dismissed.

Pending application(s), if any, also stand disposed of.

20.05.2024

Vivek

(DEEPAK GUPTA)

JUDGE

<i>Whether speaking/reasoned?</i>	<i>Yes</i>
<i>Whether reportable?</i>	<i>Yes</i>