



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

203**CRM-M-14682-2021 (O&M)****Date of decision: 20.08.2024****M/S JAI CHEMICALS AND OTHERS**

....Petitioners

V/s

STATE OF PUNJAB

....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

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

Mr.Amit Rana, Sr.DAG, Punjab.

MANJARI NEHRU KAUL, J. (ORAL)

1. The instant petition is for quashing of Complaint Case No.39 dated 11.12.2017 under Sections 3(k)(i), 17, 18 and 33, punishable under Section 29 of the Insecticides Act, 1968 (hereinafter referred to as 'the Act') and Rule 27(5) of Insecticides Rules, 1971 (hereinafter referred to as 'the Rules') titled as "State vs. M/s Asija Fertilizer & Pesticides & others (Annexure P-1), Summoning order dated 11.12.2017 (Annexure P-2) and all consequential proceedings arising out of the same qua the petitioners.

2. According to the allegations in the complaint annexed as Annexure P-1, on 08.07.2015, Insecticide Inspector-Sarwan Kumar (hereinafter referred to as 'the Inspector) visited the premises of the dealer, M/s Asija Fertilizers & Pesticides, Mandi Ladhuka, Block Jalalabad (W),



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District Fazilka (hereinafter referred to as 'the firm') and collected the sample of the insecticide, namely, Monocrotophos 36% SL with batch No.JC-363, manufacturing date 24.07.2014 and expiry date as 23.01.2016. This insecticide was allegedly manufactured by M/s Jai Chemicals, Faridabad (hereinafter referred to as 'the manufacturing company'). The Inspector, following the procedure outlined in the Insecticides Act, divided the sample into three portions, each measuring 250 ml., and sealed them accordingly. One of these samples was then sent to the Senior Analyst at the Insecticide Testing Laboratory in Bathinda. The lab report received on 21.08.2015, indicating that the sample was misbranded as one of the active ingredient content was only 30.19% compared to the required IS specification of 36%. Upon the request of the firm, another sample was sent to the Central Insecticide Laboratory, Faridabad (hereinafter referred to as 'the Faridabad laboratory') for re-testing, which also confirmed the sample was misbranded. After completing the necessary formalities, including obtaining the requisite consent from the competent authority, the present complaint was filed before the Court of learned SDJM Jalalabad (West), District Fazilka under Sections 3 (k) (i), 17, 18 and 33 punishable under Section 29 of the Insecticides Act, 1968 on 11.12.2017. Consequently, the Court, vide its order dated 11.12.2017 (Annexure P-2) summoned all the accused, including the present petitioners i.e. M/s. Jai Chemicals, (represented through its Manager V.K. Katara), K.D. Pathak (Director of M/S Jai Chemicals) and Jasvir Ram (Godown Incharge of M/s



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Jai Chemicals) all proprietors of the manufacturing company to face trial. Hence, the instant petition has been filed.

3. Learned counsel for the petitioners argues that the learned trial Court, vide the impugned order, has erroneously summoned the petitioners-K.D. Pathak and Jasvir Ram, solely based on their roles as the Director and Godown Incharge respectively of the manufacturing company despite the fact that the allegations do not attract the mischief of the alleged offences against them. While drawing the attention of this Court to the complaint annexed as Annexure P-1, learned counsel submits that a plain reading of the complaint reveals that the petitioners have been casually implicated without any specific allegations about the involvement in the alleged offences. While relying upon the judgement in the *State of NCT of Delhi versus Rajiv Khurana (SC)* : Law Finder Doc Id # 213609, learned counsel emphasises that Section 33 of the Act mandates that the complaint must contain specific allegations regarding the responsibility of the accused in the day-to-day operations of the company. In the absence of such allegations in the complaint, the proceedings against the petitioners are not legally sustainable, and would thus amount to an abuse of the process of law.

Learned counsel further contends that while the petitioners do hold official positions within the company, they have no connection with the quality control operations of the company. The complaint itself states that the manufacturing company, had already appointed V.K. Katara, as the Quality Control Manager-cum-responsible person, who is responsible for



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maintaining the quality of the products, in compliance with Section 33 of the Act. Once manufacturing company/unit has designated a Quality Control Manager-cum-responsible person as per the Act, no other person holding an official position within the company can be held liable for the same. Furthermore, the learned counsel contends that because the company is already being prosecuted through its Quality Control Manager-cum-responsible person, the vicarious liability of the petitioners, which had no involvement in the quality control would constitute an abuse of the process of law. In support, learned counsel has placed reliance upon *M/s Cheminova India Limited and another versus State of Punjab and another (SC)* : Law Finder Doc Id # 1863699.

Regarding petitioner No. 2, V.K. Katara, learned counsel for the petitioners argues that although he is the Quality Control Manager of the company, the present case against him is flawed due to the non-compliance of the provisions of Section 22 of the Act. Specifically, learned counsel asserts that the Inspector is required to send the drawn samples promptly to the Insecticide Analyst for testing as mandated by Section 22 of the Act. However, in this case, the sample which was drawn and collected on 08.07.2015 was only sent to the Insecticide Analyst on 17.07.2015, i.e. nine days after it was drawn. The learned counsel submits that since the sample remained in the custody of the Chief Agricultural Officer for more than nine days, the possibility of tampering cannot be ruled out. In support, learned counsel has placed reliance upon *Sohan Singh Vs. State of Punjab, CRM-M-12926-2018*. Learned counsel thus

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submits that in these circumstances, the prosecution of even the Quality Control Manager i.e. petitioner No.2 V.K. Katara would serve no useful purpose.

4. Per contra learned State counsel, while opposing the prayer and submissions of the petitioners, does not dispute the fact that a Quality Control Manager was already in place before the raid in question was conducted. However, learned State counsel submits that the petitioners, along with the other accused including the Quality Control Manager, V.K. Katara, have *prima facie* committed offences punishable under Section 29 of the Act. Learned State counsel argues that as officials of the company, the petitioners were responsible for the affairs of the company, particularly in ensuring the quality of the insecticides. Learned State counsel still further contends that the claim of the petitioners that they were not in-charge of the day-to-day operations of the company, nor responsible for the conduct of the business, is merely a defence that can be addressed during the trial when evidence is led by both the parties. However, learned State counsel acknowledges that the company is already being prosecuted through its Quality Control Manager-cum-responsible person V.K.Katara, who is also an accused and one of the petitioners before this Court.

Learned State counsel has not disputed and has conceded that there was a delay of nine days in sending the sample to the Analyst. However, learned State counsel argues that this delay does not weaken the case of the prosecution as the sample was collected by following proper procedure outlined in Section 22 of the Act, and it was received at the



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insecticide lab in an intact condition, with no signs of tampering. While drawing the attention of this Court to the insecticide analysis report annexed as Annexure R1/T, the learned State counsel emphasises that the report confirms that the sample was received in a sealed, unbroken form and was found to be fit for analysis. Therefore, the mere delay in sending the sample to the analyst cannot be a ground to set aside the proceedings against the petitioners and quash the complaint in question.

Moreover, learned State counsel underscores that the sample was analysed on two separate occasions by two different laboratories, and on both occasions, it was found to be misbranded. The sample was re-analysed at the Faridabad laboratory where it was again confirmed to be misbranded. Learned State counsel argues that petitioner-V.K. Katara, as the Quality Control Manager, cannot evade responsibility simply due to an insignificant delay of just nine days in sending the sample to the insecticide laboratory. Learned State counsel further submits that the Government routinely collects multiple samples from various locations within its jurisdiction, which can sometimes result in insignificant delays in sending samples to the laboratory. Nevertheless, this delay does not benefit the petitioners in any manner whatsoever, as the sample in question was found to be fit for analysis.

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

6. Before delving further, it would be pertinent to reproduce Sections 3(k)(i), 17, 18, 29 & 33 of the Act.



“3 (k) “misbranded”— an insecticide shall be deemed to be misbranded— (1) 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;

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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 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 subclause (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, 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 or 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 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.

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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 *tc" (a) imports, manufactures, sells, stocks or exhibits for sale or distributes any insecticide deemed to be 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 insecticide, 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," [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;



(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.

30 to 32 xxxxx xxxxx xxxxx

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 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. The Hon'ble Supreme Court in **The State of NCT Delhi vs. Rajiv Khurana (supra)**, unscored the necessity of making specific averments for prosecution under Section 33 of the Act, holding :

"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."

8. In **M/s Cheminova India Limited (supra)**, the Hon'ble Supreme Court elaborated on the liability of a Managing Director, particularly where the company had already nominated other individuals as responsible persons. The Apex Court held:



“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.”

9. Adverting to the present case, a perusal of the complaint in question reveals that petitioner No.3 K.D. Pathak and petitioner No.4 Jasvir Ram, are being prosecuted as the Directors and Godown Incharge of the manufacturing company, respectively. However, there are no specific allegations in the complaint indicating how these two individuals were in-charge of the company's business, responsible for its conduct, or had any role in quality control of the insecticides manufactured by the company.

10. Moreover, it is evident from the complaint that co-accused V.K.Katara, was designated as the responsible officer for quality control of the manufacturing company and had provided an affidavit to that effect. This fact is undisputed by the learned State counsel, and is also reflected both on the first page of the complaint as well as in paragraph 18 of the complaint. It is clear that a Quality Control Manager was already appointed before the raid in question, and under these circumstances, the petitioners cannot be held vicariously liable especially since the company is already being prosecuted through the Quality Control Manager.

11. In view of the above facts, this Court finds it appropriate to quash the complaint in question and all consequential proceedings against petitioner No.3-K.D. Pathak and petitioner No.4-Jasvir Ram. Accordingly,

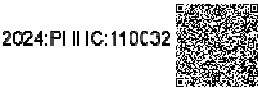


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the instant petition is allowed qua petitioner No.3-K.D. Pathak and petitioner No.4-Jasvir Ram.

12. Regarding petitioner No.2, this Court does not find merit in the arguments raised by the learned counsel for the petitioner that the delay in sending the sample to the insecticide analyst would vitiate prosecution. The report of the insecticide analyst reveals that the sample was sent to the Laboratory on 17.07.2015, with the self-life of the batch expiring in January 2016. The report further indicates that the sample was properly sealed, fastened, intact and unbroken, confirming its fitness for analysis.

While the learned counsel for the petitioner has placed reliance upon **Sohan Singh Vs. State of Punjab, CRM-M-12926-2018** where a six days delay in sending a sample was deemed fatal due to non-compliance with Section 22 (6) of the 1968 Act, in the considered opinion of this Court, the impact of such delays must be assessed based on the specific circumstances of each case. In the present case, the sample was collected on 08.07.2015, resulting in a nine days delay. Thus, learned State counsel has justified this delay by explaining that additional samples were collected on similar dates and collectively sent to the Laboratory on 14.08.2015, after a week. Given that the self-life of the sample extended until 23.01.2016, this delay cannot be said to be prejudicial to the rights of the petitioner, especially since the petitioner was given the opportunity for re-testing, which yet again corroborated the misbranding of the sample by the Central Insecticide Laboratory, Faridabad. Furthermore, while Section 22(6) of the 1968 Act requires that samples be sent “forthwith” for



analysis. A minor, well explained delay of 09 days would not compromise the right of the petitioner or rendered the sample unfit for testing.

13. In the complaint, it has been specifically contended that the petitioner V.K.Katara was directly responsible for the quality of the manufactured products. Hence, in the circumstances, V.K. Katara, being Quality Control Manager, is liable to be proceeded against for violations under the Insecticides Act.

14. Accordingly, the instant petition is dismissed qua petitioner No.2- V.K. Katara and allowed qua petitioner No.3-K.D. Pathak and petitioner No.4- Jasvir Ram. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

(MANJARI NEHRU KAUL)
JUDGE

August 20 , 2024
poonam

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No