



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

1. CRM-M No.12607 of 2019
Date of decision: July 30th, 2024
Kirpal Singh and othersPetitioners
Versus
State of PunjabRespondent

2. CRM-M No.11600 of 2019
Raj Kumar GuptaPetitioner
Versus
State of PunjabRespondent

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.3533 dated 28.07.2017 under Rule 27 (5) of Insecticides Rules, 1971 titled as ‘State Vs. M/s Guru Nanak Khad Store & others’, summoning order dated 30.10.2018 (Annexure P-2) and all consequential proceedings arising therefrom qua the petitioners.

2. The allegations as levelled in the complaint (Annexure P-1), can be summed up as follows:-

On 28.05.2014, Insecticides Inspector Jupinder Singh (hereinafter referred to as ‘Inspector’) visited the premises of M/s Guru Nanak Khad Store (hereinafter referred to as ‘the firm’) and took samples of Glyphosate 41% SL Batch No.97, manufactured in March, 2014, with

an expiry in February, 2016, allegedly manufactured by M/s. Thakar Chemicals Limited, New Delhi (hereinafter referred to as 'manufacturing company') through its depot in Bathinda. The Inspector drew three samples as per the provisions of The Insecticides Act, 1968 (hereinafter referred to as 'the Act'). One of these samples was sent to the Senior Public Analyst, State Insecticide Testing Laboratory, Ludhiana. The test report received on 30.06.2014, indicated the sample was misbranded as one active ingredient was only 36.95%, against the required I.S. specification of 41%. The reference sample was then sent to Central Insecticide Laboratory, Faridabad (hereinafter referred to as 'Faridabad Laboratory'), which confirmed the misbranding. After completing necessary formalities, including obtaining consent from the competent authority, a complaint was filed on 28.07.2017, before learned CJM, Patiala, under Rule 27 (5) of the Insecticide Rules, 1971. Subsequently, vide order dated 30.10.2018, the concerned Court summoned all the accused including Raj Kumar Gupta (Managing Director of the manufacturing company), Kirpal Singh, partner of the firm, M/s. Guru Nanak Khad Store (through Kirpal Singh), and Gurpreet Singh (partner of the firm) to face trial.

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3. Learned counsel for the petitioner has argued that the trial Court erroneously summoned petitioners Raj Kumar Gupta (Managing Director of the manufacturing company), despite the ingredients of the offences alleged not being made out against him. While placing reliance upon *State of N.C.T. of Delhi Versus Rajiv Khurana, 2010 (3) RCR (Crl.) 912*, learned counsel emphasised the necessity for specific

the business under Section 33 of the Act. Learned counsel has submitted that the petitioner Raj Kumar Gupta was not involved in the quality control of the company's products, as is also evident by an affidavit (Annexure P-4), wherein it is clearly indicated that Ranjit Singh was the designated manager for quality control, fulfilling the company's compliance with Section 33 of the Act. While further relying upon *Cheminova India Ltd. Versus State of Punjab 2021 SCC Online SC 541*, it was argued that once a responsible person is designated for quality control, other office bearers could not be prosecuted. Learned counsel thus, argued that continuation of proceedings against petitioner-Raj Kumar Gupta, who was admittedly not involved in quality control and even as per the allegations levelled in the complaint in question, there was absence of any specific averments regarding his role, would be an abuse of the process of law.

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4. Learned counsel for the petitioners has argued petitioners-Kirpal Singh and Gurpreet Singh, partners of the dealership firm, were erroneously summoned, despite not being responsible for the manufacture or quality control of the misbranded insecticides as per Section 3J of the Act. The petitioners, being mere retailers, could not have known that insecticide was misbranded as it was received in a sealed and intact condition. Learned counsel has placed reliance on *M/s. Kisan Beej Bhandar, Abohar Versus Chief Agricultural Officers, Ferozepur and another 1990 (SUPP) SCC 11*, by arguing that under Sections 18, 29 and 33 of the Act, the petitioners could not be held liable for offences relating to misbranding since they were not the manufacturers or importers of the product. Furthermore, it was asserted

that Section 30(3) of the Act provided protection against prosecution for retailers in such circumstances.

5. *Per contra*, learned State counsel while opposing the prayer and submissions made by the counsel opposite, has acknowledged the factum of a Quality Control Manager already in place before and at the time of the raid in question but has argued that the petitioners, as office bearers, were responsible for ensuring the quality of the insecticides. Learned State counsel has further contended that the defence raised by the petitioners could only be examined during trial when evidence is presented by either side. Moreover, the learned State counsel has argued that the dealership firm failed to comply with the provisions of the Act and the Rules while selling misbranded insecticides, making them liable despite the fact that the insecticides were found in a sealed and intact condition.

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

7. Before proceeding further, it will 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 [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 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.”

8. While emphasising the necessity of making specific averments for prosecution under Section 33 of the Act, Hon’ble the Supreme Court in *State of N.C.T. of Delhi Versus Rajiv Khurana’s case (supra)* held 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.”

9. 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 persons responsible for quality control, who were already accused, held as 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.”

10. Adverting to the instant case, a perusal of the complaint in question reveals that petitioner-Raj Kumar Gupta is being prosecuted only on the ground that he is the Managing Director of the manufacturing company. However, a perusal of the complaint (Annexure P-1) reveals that there are no specific averments against him much less as to how he was in-charge of the business of the company or was responsible for the conduct of the affairs of the company in any manner or had any role to play with respect to the quality control of the

insecticides manufactured by the manufacturing company. Furthermore in the present case, it is apparent from the complaint itself as well as affidavit (Annexure P-4) that Ranjit Singh was the person, who was stated to be the responsible person for quality control of the manufacturing company. The factum of Ranjit Singh being in-charge of the quality control of the manufacturing company has not been disputed by the learned State counsel; the aforesaid fact also finds reflected in the first page of the complaint (Annexure P-1), where the details of the parties have been given. It is also the specific case of the petitioners that it is Ranjit Singh, who was directly concerned with the quality of the products being manufactured and it is a matter of record that Ranjit Singh has already been proceeded against. In these circumstances, petitioners cannot be made vicariously liable when admittedly the said manufacturing company has already been proceeded against through the Quality Control Manager.

11. Regarding petitioners-Kirpal Singh and Gurpreet Singh, who were partners of the dealership firm, no doubt, learned State counsel has vehemently opposed the submissions made on their behalf, however, this Court does not find any merit in the submissions of the learned State counsel. The State counsel has not been able to dispute that the packet from which the alleged samples were drawn was in a sealed and intact condition. Still further, the statutory framework does not aim to prosecute individuals, who merely trade in a product over which they have no control regarding its quality and content. There is no evidence that the petitioners engaged in any activities outlined in Section 3(k) of the Act that would constitute misbranding.

Moreover, Section 17 of the Act does not apply to the petitioners since they are neither the importers nor the manufacturers of the misbranded insecticides. Additionally, the criteria of Section 18 of the Act is also not met, and there is no allegation that the petitioners sold unregistered or prohibited insecticides under Section 27 of the Act. Consequently, Section 29 of the Act, which prescribes punishment for such offences, would also be inapplicable. Since the necessary elements of these Sections are not satisfied in relation to the petitioners, they cannot be proceeded against under these provisions.

12. It would be apposite to refer to the following observations made by Hon'ble the Supreme Court in *M/s Kisan Beej Bhandar's case* (*supra*):-

“4. The High Court took the view that by enacting sub-section (1) of Section 30 of the Act, Parliament had taken out the element of mens rea from consideration and, therefore, knowledge was not at all material. Appellant's counsel has argued that protection of sub-section (3) is available not only to prosecutions but also to every contravention of the Act and cancellation of licence for contravention of the Act is also a matter covered by sub-section (3). We are inclined to accept the submission and take the view that whether it is prosecution or contravention leading to cancellation, sub-section (3) applies. In that view of the matter, on the facts found that it was a full tin in a sealed condition, the liability arising out of misbranding was not of the appellant. Unless he had any other source of information about misbranding — and it has not been established — the appellant is entitled to the protection of sub-section (3). In the facts once the appellant's contention that it was a sealed tin intact has been found, the burden that lay on him under the provisions of sub-section (3) had been satisfactorily discharged, even in the matter of considering the question of cancellation of licence and, therefore, his licence should not have been cancelled. We allow the appeal, reverse the order of the High Court and the authorities and restore the licence. The appeal is disposed of accordingly. No costs.”

13. As a sequel to the above 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.

14. 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

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No