



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

CRM-M No.21392 of 2023

Date of decision: 11th November, 2024

Prayut Jamsaria

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. N.K. Manchanda, Advocate for the petitioner.

Mr. Mohit Kapoor, Addl. Advocate General, Punjab
for the respondent/State.

MANJARI NEHRU KAUL, J.

1. The petitioner is seeking quashing of criminal Complaint No.COMA 20/2022 dated 11.05.2022 titled 'State vs. M/s Singla Pesticide and others' (Annexure P-1), along with all consequential proceedings including the summoning order dated 11.05.2022 (Annexure P-2).

2. As per the complaint dated 11.05.2022 (Annexure P-1), on 01.02.2021 Agriculture Development Officer Jaskanwal Singh visited the premises of M/s Singla Pesticides, Dharamgarh, Tehsil Sunam District Sangrur (hereinafter referred to as 'the Firm') and collected a sample of the insecticides Piroxofop Propinyl 15 % WP (Saarathi) bearing Batch No. 107420003C manufactured on 05.11.2020 with an

expiry dated of 04.11.2022, allegedly manufactured by M/s Crop Growth (India) Pvt. Ltd (hereinafter referred to as 'the Manufacturing Company'). The collection of samples was carried out in accordance with the statutory procedure, and 3 sealed samples were drawn. Two samples were provided to the Chief Agriculture Officer, Sangrur, while the third was sent to the Senior Analyst at the Insecticides Testing Laboratory, Amritsar (hereinafter referred to as 'the Laboratory').

3. The report of the Laboratory found the sample 'misbranded', as content of active ingredients was found to deviate significantly from the prescribed standards, with 12.71% Piroxofop Propinyl 15 % instead of the required 15% which was not as per the ISI specifications. Upon the request of the dealer firm, the sample was sent for reanalysis to CFSL Faridabad. Yet again the sample was found to be misbranded as content to the active ingredient Piroxofop Propinyl was again found to be only 13.41%. After completing the requisite formalities and obtaining approval from the competent authority, a complaint was filed against the accused including the present petitioner, Prayut Jamsaria (Director), under Sections 3(k)(i), 17, 18, 33 of the Act before the JMIC Sunam on 11.05.2022 (Annexure P-1). Subsequently, the Court concerned summoned all the accused to face trial vide order dated 11.05.2022 (Annexure P-2).

4. Learned counsel for the petitioner contends that the learned Trial Court has erred in summoning the petitioner despite the requisite ingredients of the alleged offences being absent against him. It

is argued that the complaint is based solely on general and vague allegations that the Company manufactured the insecticides in question, without specific accusations against the petitioner individually. Relying upon '**State of NCT of Delhi Vs. Rajiv Khurana' : 2010(3) RCR (Criminal) 912**, learned counsel submits that under Section 33 of the Act, mandates explicit averments for proving that an accused was incharge of or responsible for the conduct of the business of the Company, failing which the complaint cannot be sustained and would be nothing but an abuse of the process of law.

5. Learned counsel further argues that although the petitioner was holding a position in the Company, he was not involved in quality control of the manufactured insecticides. The complaint in Para 25 itself identifies Vivek Jain as the designated Manager, Quality Control-cum- Responsible Person, tasked for maintaining quality as per Section 33 of the Act. In support, learned counsel has drawn the attention of this Court to the affidavit of Vivek Jain dated 12.01.2019 submitted to the Department of Agriculture Punjab, annexed as Annexure P-7. It has been vehemently asserted that once a Company appoints a Quality Control Manager, no other official could be held liable for quality related issues. Learned counsel has relied upon the law laid down by the Hon'ble Supreme Court in '**M/s Cheminova India Ltd. vs. The State of Punjab' 2021 SCC Online SC 541**, wherein it was held that prosecuting other officials would lead to a miscarriage of justice if they were not directly involved in quality

control. In support, learned counsel has also relied upon '**Rajesh Aggarwal & another vs. State of Punjab**' CRM- M-5137-2022 decided by this Court on 30.07.2024.

6. Per contra, learned State counsel has opposed the prayer made by the learned counsel for the petitioner, by contending that while a Quality Control Manager was indeed in place, the petitioner, being responsible for the Company's overall affairs, could not evade accountability for ensuring the quality of the products being manufactured by it. Learned State counsel has asserted that the submissions of the petitioner not being responsible for the day-to-day affairs or quality control, is a matter of trial and cannot be delved into and evaluated at this stage.

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 relevant Sections of the Act which are reproduced herein below : 3(k)(i), 17,18,29,33 of the Insecticides Act.

"3. Definitions -

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(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; or

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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 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.

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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

(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,

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 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 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 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.

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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.”

9. The above reproduced Sections of the Act underscore the responsibilities imposed upon persons incharge of the business of the Company, particularly in ensuring compliance with the quality of the products manufactured by it.

10. Hon'ble the Supreme Court in **Rajiv Khurana's case (supra)**, has emphasized that for officials of a Company to be held liable under such Statutes, the complaint must specifically outline the role of an accused and his responsibility with respect to the affairs of the Company. Hon'ble the Supreme Court in **Rajiv Khurana's case (supra)**, held as under:

“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.”

11. Similarly, in **M/s Cheminova India Ltd. (ibid)**, the Hon'ble Supreme Court ruled that where a Company has designated/nominated a responsible Quality Control Manager, other officials including the Managing Director, cannot be held vicariously liable for quality issues

unless specific allegations have been levelled against them with respect to the same. It would be relevant to reproduce the observations and findings of the Hon'ble Supreme Court in **M/s Cheminova India Ltd. (supra)**:

“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.”

12. In **Rajesh Aggarwal & another (supra)**, this Court, relying upon the principles laid down in **M/s Cheminova India Ltd. (supra)**, quashed proceedings against the Company officials when the complaint

failed to make specific averments regarding their accountability in quality control matters. In **Rajesh Aggarwal & another (supra)**, it was observed as under:

“9. Upon a perusal of the allegations levelled in the complaint in question, it is clear that it lacks any specific averments showing how the petitioners were incharge of or responsible for the conduct of the business of the company, particularly regarding quality control. The complaint *explicitly mentions that Mahesh Kumar was the responsible officer for quality control, and he has already been proceeded against. In the light of the case law cited, particularly M/s Cheminova India Limited's case (supra), the petitioners cannot be held vicariously liable when a quality control manager has already been identified and proceeded against.*”

13. Upon a perusal of the allegations levelled in the present complaint, it is apparent that there is an absence of specific allegations regarding the petitioner being incharge of or being responsible for the business of the Company, especially concerning quality control. The complaint explicitly designates Vivek Jain as the person responsible for quality control, who has already been subjected to proceedings. In light of the settled law, particularly **M/s Cheminova India Limited's case (supra)**, the petitioner cannot be held vicariously liable when a Quality Control Manager has already been appointed and proceeded against.

14. Accordingly, in the light of the settled law, the instant petition is allowed and the complaint (Annexure P-1) along with all

consequential proceedings arising therefrom, including the summoning order (Annexure P-2), stands quashed against the petitioner.

(MANJARI NEHRU KAUL)
JUDGE

November 11, 2024

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