



CRM-M-22648-2022

-1-

203 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Decided on : 30.07.2024

CRM-M-22648-2022

SBVR Prasad Petitioner

Versus

State of Punjab Respondent

CRM-M-23574-2022

Rajinder Kumar and another Petitioners

Versus

State of Punjab Respondent

CRM-M-23589-2022

Bhupesh Sharma Petitioner

Versus

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)

This order shall dispose of above-said three petitions as
all of them have arisen out of same have arisen out of same

**CRM-M-22648-2022****-2-**

complaint. Brief facts of the case are taken from CRM-M-22648-2022.

2. This is the petition filed by the petitioner(s) under Section 482 Cr.PC for quashing the Complaint No.14471 dated 18.10.2021 (Annexure P-1) under Sections 3(k)(i), 17, 18, 29 and 33 of the Insecticides Act, 1968 r/w Rule 27(5) of the Insecticides Rules, 1971 titled as State vs. M/s Mittal Agro Service Centre and others as well as Summoning Order dated 15.11.2021 (Annexure P-2), and all the consequential proceedings arising therefrom.

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

On 30.06.2020, Insecticide Inspector Harinder Singh (hereinafter referred to as 'Inspector') visited the premises of M/s Mittal Agro Service Centre, (hereinafter referred to as 'firm') located at Cinema Road, Mullanpur, District Ludhiana and collected the sample of insecticide namely Bispyribac Sodium 10% SC (Brand Name – Narkis) bearing Batch No.AIBS908024 with manufacturing dated 30.08.2019 and expiry date 29.08.2021. This product was allegedly manufactured by M/s Adama India Pvt. Ltd. (hereinafter referred to as 'the manufacturing company') through its depot in Ludhiana. Following the procedures prescribed under the Insecticides Act, 1968 (hereinafter referred to as 'the Act'), three samples were collected. One of the sealed samples was sent to the

**CRM-M-22648-2022****-3-**

Senior Analyst, Insecticide Testing Laboratory, Bathinda. The test report from the Bathinda Laboratory received on 15.07.2020 indicated that the sample was misbranded as one of the active ingredient contents was only 8.65%, against the required I.S.I. specification of 10% SC. Upon request, the reference sample was sent to the Central Insecticide Laboratory, Faridabad (hereinafter referred to as 'Faridabad Laboratory'). The report from Faridabad Laboratory received on 01.10.2020 also confirms the sample to be misbranded. Following the completion of necessary formalities, including obtaining the requisite consent from the competent authority, the complaint was filed before the learned CJM, Ludhiana, under Sections 3(k)(i), 17, 18, 29 and 33 of the Act on 18.10.2021 (Annexure P-1). Consequently, vide order dated 15.11.2021 (Annexure P-2) the Court concerned summoned all the accused, including the petitioners S.B.V.R. Prasad (Director of manufacturing company), Rajinder Kumar (proprietor of M/s Mittal Agro Service Centre), M/s Mittal Agro Service Centre and Bhupesh Sharma (Godown Incharge of the manufacturing company) to face trial. Hence, the present petition(s) has been filed.

Submissions on behalf of the petitioner(s) in CRM-M-22648-2022 and CRM-M-23589-2022

4. Learned counsel for the petitioner(s) contends that the trial Court erroneously summoned petitioner(s) SBVR Prasad and Bhupesh Sharma, who are Director and Godown Incharge of the

**CRM-M-22648-2022****-4-**

manufacturing company respectively, despite the allegations not meeting the mischief of the offences alleged against them. While drawing the attention of this Court to complaint in question (Annexure P-1), learned counsel has argued that the complaint lacks specific allegations and averments detailing how the petitioners were responsible for the conduct of the business of the manufacturing company. Citing the decision of Hon'ble Supreme Court in ***State of NCT of Delhi vs Rajiv Khurana, 2010(3) RCR(Criminal) 912***, learned counsel has emphasised that Section 33 of the Act, mandates specific averments about the accused being incharge of or responsible for the business of the company. In the absence of such averments, the complaint against the petitioners is unsustainable, and amounts to an abuse of process of law.

5. It has still further been submitted by the learned counsel for the petitioner(s) that although the petitioners were office bearers of the manufacturing company, they were not involved in the quality control section. As per the complaint, the manufacturing company had appointed Chandrakant Rambhai Patel as its Manager Quality Control-cum-responsible person, in compliance of Section 33 of the Act. Therefore, once the Manager Quality Control-cum-responsible person had been appointed and was in place, no other office bearer would be liable as an accused. In support, reliance has been placed upon the decision of Hon'ble Supreme Court in ***M/s. Cheminova India Ltd. & Anr. vs. State of Punjab and another, 2021 SCC Online SC 54***. It

**CRM-M-22648-2022****-5-**

has also been argued that since the company is being prosecuted through its Quality Control Manager, prosecuting the petitioners would amount to an abuse of the process of law.

Submissions on behalf of the petitioner(s) in CRM-M-23574-2022

6. Learned counsel for the petitioner Rajinder Kumar argues that the learned trial court erroneously summoned the petitioner Rajinder Kumar (proprietor) and M/s Mittal Agro Service Centre (dealership firm) despite the complaint not attracting the ingredients of the alleged offences against the dealership firm. While drawing the attention of this Court to complaint (Annexure P-1), it has been submitted that although the sample was declared misbranded, the petitioner was neither involved in the manufacturing of the misbranded insecticides nor was he an importer. The petitioners were simply retailers and not responsible for the quality of the product, which was manufactured and packed by a registered company. The sample was drawn from a sealed and intact pack, and there were no allegations of any tampering. While placing reliance upon *M/S Kisan Beej Bhandar, Abohar v Chief Agricultural Officer, Ferozpur, 1990 (SUPP) SCC 11*, learned counsel has further contended that the alleged offences under Sections 18, 29 and 33 of the Act were not attracted in the case of the petitioners, especially considering the protection against prosecution, provided under Section 30(3) of the Act.



7. Per contra, learned State counsel while opposing the prayer and submissions made by the learned counsel for the petitioners has not disputed that a quality control manager was already in place and had been appointed prior to the raid in question by the manufacturing company. It has, however, been argued by the learned State counsel that being office bearer of the manufacturing company, the petitioners were responsible for the affairs of the company and had *prima facie* committed the offences punishable under Sections 3(k)(i), 17, 18, 29 and 33 of the Act. Learned State counsel has further contended that the plea of the petitioners that they were not incharge of quality control is merely their defence, which cannot be considered at this stage. Regarding petitioner Rajinder Kumar, learned State counsel has submitted that it was incumbent upon him to ensure compliance with the Act and Rules while selling insecticides. The defence of petitioner Rajinder Kumar that he was unaware of the contents of insecticides was not valid since the sample was found in a sealed and intact condition when taken by the Inspector. Learned State counsel has asserted that the jurisdiction of this Court under Section 482 Cr.PC was limited and the defences raised by the petitioners should be addressed during trial.

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



9. Before proceeding further, this Court deems it appropriate to reproduce Sections 3(k)(i), 17, 18, 29 and 33 of the Act, which are as under:-

*“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;

XXXX XXXX XXXX

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.

XXXX	XXXX	XXXX
XXXX	XXXX	XXXX

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 tc"

(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 tc" (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 tc" (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 tc" (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, tc" (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; tc" (i) for the first



CRM-M-22648-2022

-10-

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.] tc" (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 26 [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]. tc "(2) Whoever uses an insecticide in contravention of any provision of this act or any rule made thereunder shall be punishable with fine 1[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— tc "(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], tc" (i) for the first offence, with imprisonment for a term which may extend to 2[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]. tc" (ii) for the second and a subsequent offence, with imprisonment for a term which may extend to 3[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. tc "(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



CRM-M-22648-2022

-12-

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 while emphasising the necessity of making specific averments for prosecution under Section 33 of the Act in ***State of NCT of Delhi's case(supra)*** held as under:



CRM-M-22648-2022

-13-

“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 ***M/s Cheminova India Ltd.'s case(supra)*** while dealing with the liability of Managing Director, in case where the company had nominated a person responsible for quality control, who had already been made an accused, held as under:

“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

**CRM-M-22648-2022****-14-**

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

**CRM-M-22648-2022****-15-**

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.”

11. Adverting to the case in hand, Section 33 of the Act specifies that when an offence is committed by a company, every person incharge of or responsible for the conduct of the business of the company at the time of offence shall be deemed guilty. However, in this case, the complaint has failed to detail as to how the petitioners SBVR Prasad and Bhupesh Sharma were responsible for the business of the manufacturing company or quality control of the insecticides. The complaint itself indicates that Chandrakant Rambhai Patel was the designated responsible officer for quality control, which fact has not been disputed by the learned State counsel. This designation relieves other office bearers from vicarious liability when the manufacturing company is already being prosecuted through its Quality Control Manager.

12. Regarding petitioner Rajinder Kumar and its dealership firm, the Court finds merit in the argument of the learned counsel for the petitioners that retailers cannot be held liable for the quality of the



CRM-M-22648-2022

-16-

product they did not manufacture. The insecticide was drawn from a sealed container, which was found in an intact condition, indicating no tampering by the retailer. The statutory framework does not intend to prosecute the traders, who do not control the quality and contents of the product they sell. Sections 3(k)(i), 17, 18, 29 and 33 of the Act are not applicable as the petitioners are not manufacturers or importers of the misbranded insecticides.

13. As a sequel to the above and in the light of settled law, the present petition(s) is/are allowed and the complaint in question along with all consequential proceedings including summoning order qua petitioners stand quashed. The allegations do not meet necessary criteria to prosecute the petitioners under the cited Sections of the Act.

14. Accordingly, the present petition stands disposed of.

30.07.2024
sonia

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned:	Yes
Whether reportable :	Yes