

CRM-M-42397-2017 [1]

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-42397-2017
Reserved on 09.04.2024
Date of decision: 21.05.2024

M/S SYNGENTA INDIA LTD. AND OTHERS ...Petitioners

Versus

STATE OF PUNJAB ...Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by: Mr. Rakesh Kumar, Advocate and
Mr. Manish Verma, Advocate for the petitioners.

Mr. Inderjeet Singh, DAG, Punjab.

KARAMJIT SINGH, J. (ORAL)

1. The present petition has been filed by the petitioners under Section 482 Cr.P.C. for quashing of complaint bearing No.30211/2013 dated 09.07.2010 titled as State Vs. M/s G.S. Fertilizers and Others, under Sections 3K(1), 17, 18, 29 and 33 of Insecticides Act, 1968, punishable under Section 29 (1) (a) of Insecticides Act, read with Insecticides Rules, 1971 (Annexure P-1) and summoning order dated 09.07.2010 Annexure P-2 passed by the Court of Ld. Chief Judicial Magistrate, Jalandhar along with all the consequential proceedings arising therefrom.

2. The case of the prosecution in brief is that Insecticide Inspector in the office of Agriculture Officer, Jalandhar, conducted a search at the premises of M/s G.S. Fertilizers, Mill Road, Bhogpur, Jalandhar on 11.07.2007, after disclosing his identity and intention to Kulwant Singh proprietor of the said firm, which was licenced dealer of

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Insecticides/pesticides. Insecticide Inspector inspected the stock of the firm in respect of Cartap Hydrochloride 4% GR manufactured by M/s Crop Health Products Limited, Gajraula (UP) marketed by petitioner No.1 herein. According to stock register, there were 190 bags of 5kg packing of aforesaid insecticide. The Insecticide Inspector selected two bags of 5kg each packing of Cartap Hydrochloride 4% GR bearing batch No.SCH7E078, date of manufacture 08.05.2007 and expiry date 07.05.2009. Both the bags were opened by the Insecticide Inspector and he took out 750 grams of Cartap Hydrochloride 4% GR for the purpose of sampling and converted it into 3 samples of 250 grams each by following the due procedure. One portion of the sample was given to Kulwant Singh proprietor of the said firm while two portions of the sample were kept by Insecticide Inspector and were deposited by him in the office Chief Agriculture Officer, Jalandhar on the same very day. One part of the sample was sent to testing laboratory Amritsar on 13.07.2007, for its analysis. As per the report of analysis dated 31.07.2007, the said sample did not conform the relevant I.S. specifications in respect of their active ingredient contents i.e. 3.63% GR against 4% GR and thus, sample was found as misbranded. Then show cause notices were sent to the dealer, manufacturer and marketing company of the said insecticide. On the request of dealer, the second sample was sent for retesting to Central Insecticide Laboratory, Faridabad and even the same was found to be misbranded vide report dated 21.01.2008 as active ingredient contents Cartap Hydrochloride was found 3.20% GR against 4% GR. Consequent to the aforesaid analysis report, impugned complaint (Annexure P-1) was filed and petitioners herein were summoned in the said

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complaint vide order (Annexure P-2) dated 09.07.2010.

3. The counsel for the petitioners has submitted that the sample was drawn from sealed packages by the Insecticide Inspector. That there is nothing on the record to show that the said sealed bags from which the sample was taken were tampered with in any way. It has been further contended that petitioners are the marketing agency and the office bearers thereof and are not responsible to maintain the quality control of the product manufactured by M/s Crop Health Products Limited. It has been further argued that as a marketing agent, the petitioners cannot be held responsible for the alleged deficiency in the active ingredients of a sample which was found to be misbranded. It has been further contended that there is nothing on the record to *prima facie* establish that the misbranded insecticide was manufactured, sold and distributed with the consent and connivance of the petitioners, or they were fully aware about the deficiency of its contents. The counsel for the petitioners has further argued that the petitioners cannot be held vicariously liable for action under Section 33 of the Insecticides Act. In support of his contentions, the counsel for the petitioners have placed reliance upon the decisions of this Court in CRM-M-21496-2019 titled as **Anil Kapoor Vs. State of Punjab**, decided on 07.05.2022, CRM-M-38650-2017 titled as **B.S. Gill and Another Vs. State of Punjab**, decided on 14.02.2022 and CRM-M-37453-2019 titled as **Ramandeep Singh and Another Vs. State of Punjab**, decided on 15.01.2024.

4. On the other hand, the State counsel while supporting the impugned complaint and summoning order has reiterated the allegations

made in the complaint. It has been argued that in the instant case, sample of the insecticide was found to be misbranded as the active ingredients were much less, than the contents as described in the label. It has been further contended that petitioners i.e. marketing agents are liable to be prosecuted, as the misbranded insecticide was manufactured, sold and distributed with their knowledge, consent and connivance. That petitioners are liable for action under Section 33 of the Insecticide Act. In support of his contentions, the State counsel has referred to the analysis reports submitted by analyst of the State Insecticide Testing Laboratory and Central Insecticide Testing Laboratory, Faridabad, as per which, the samples were found not to conform to IS specifications in respect of percentage of active ingredients content. The State counsel has further contended that in the given circumstances, no ground is made out to quash the impugned complaint and summoning order.

5. I have considered the submissions made by counsel for the parties.

6. Before proceeding in the matter, it would be appropriate to examine the relevant provisions of law in this regard-

Section 29 Insecticides Act, 1968

(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 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.

Section 30 Insecticides Act, 1968

(1)Save as hereinafter provided in this section, it shall be no defence in a prosecution under this Act to prove merely that the accused was ignorant of the nature or quality of the insecticide in respect of which the offence was committed or of the risk involved in the manufacture, sale or use of such insecticide or of the circumstances of its manufacture or import.

(2)For the purposes of section 17, an insecticide shall not be deemed to be misbranded only by reason of the fact that-(a)there has been added thereto some innocuous substance or ingre-dient because the same is required for the manufacture or the preparation of the insecticide as an article of commerce in a state fit for carriage or consumption, and not to increase the bulk, weight or measure of the insecticide or to conceal its inferior quality or other defect; or(b)in the process of manufacture, preparation or conveyance some extraneous substance has unavoidably become intermixed with it.

(3)A person not being an importer or a manufacturer of an insecticide or his agent for the distribution thereof, shall not be liable for a contravention of any provision of this Act, if he proves-

(a)that he acquired the insecticide from an importer or a duly licensed manufacturer, distributor or dealer thereof;

(b)that he did not know and could not, with reasonable diligence, have ascertained that the insecticide in any way contravened any provision of this Act; and

(c)that the insecticide, while in his possession, was properly stored and remained in the same state as when he acquired it.

Section 33 Insecticides Act, 1968

(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."

7. The facts of the case are not in dispute. A complaint was filed on the ground that samples were taken from premises of M/s G.S. Fertilizers, Bhogpur, Jalandhar and were sent for analysis to insecticide testing laboratory and were found to be misbranded. The petitioners are not the manufacturer of the insecticide found to be misbranded. It is not disputed that petitioner No.1 is a marketing company and petitioners No.2 & 3 are its officers responsible for marketing of the insecticide in question which was manufactured by M/s Crop Health Products Limited. It is also apparent that the samples in question were drawn from sealed packets and thus, it cannot be said that the petitioners had any knowledge about the contents of the said sealed packages. It is settled proposition that if the samples are taken from original packing of the manufacturer and stored for sale in the same condition, the dealer/distributor and marketing agency/its officials are entitled to get protection under Sections 30(3) and 33 of Insecticides Act. The petitioners are not responsible or incharge for conduct of the business of the manufacturing company and are not responsible for quality control of the insecticide manufactured by the manufacturing company. The petitioners were only involved in marketing of insecticide in

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question and thus, cannot be held responsible for the alleged deficiency in the active ingredients of a sample and cannot be held accountable in case, the sample was found to be misbranded.

8. In light of the above, this Court is of the considered view that the case of the present petitioners is squarely covered by ratio of judgment of co-ordinate Bench of this Court in CRM-M-20338-2017 titled as *M/s Rallis India Limited and Others Vs. State of Punjab*, decided on 20.04.2022 and the decisions of this Court in *Anil Kapoor's case* (supra), *B.S. Gill's case* (supra) and *Ramandeep Singh's case* (supra) referred by counsel for the petitioners.

9. In view of the above discussion, the present petition is allowed. Impugned complaint 09.07.2010 (Annexure P-1) and summoning order dated 09.07.2010 (Annexure P-2) and all consequential proceedings arising therefrom qua the petitioners stand quashed.

21.05.2024
Yogesh

(KARAMJIT SINGH)
JUDGE

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