



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

203-16

CRM-M-23915-2022

Date of decision: 30.07.2024

Sukhwinder Singh and another

.....Petitioners

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

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

Mr. Amit Rana, Sr. DAG, Punjab.

MANJARI NEHRU KAUL, J.

1. The petitioners are seeking quashing of Complaint Case No.32463 dated 02.12.2015 titled as 'State Vs. M/s Agriculture Development Store and others' under Sections 3(k)(i), 17, 18, 29 and 33 of the Insecticides Act, 1968 (hereinafter referred to as 'Act') (Annexure P-1) and all consequential proceedings arising therefrom including summoning order dated 22.12.2016 passed by learned Chief Judicial Magistrate, Jalandhar (Annexure P-2).

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

2A. On 23.07.2013, Insecticides Inspector Gurcharan Singh (hereinafter referred to as 'the Inspector') visited the premises of the dealer M/s Agriculture Development Store, VPO Kala Bakra, Block Bhogpur, District Jalandhar (hereinafter referred to as 'the firm'), and drew a sample of insecticide, Atrazine 50% WP, Batch No.U-0138,



CRM-M-23915-2022

with manufacturing date 24.05.2013 and an expiry date of 23.05.2015, allegedly manufactured by M/s Insecticide India Ltd., Delhi (hereinafter referred to as 'Manufacturing Company') through its depot in Ludhiana. Samples were collected following the procedure prescribed under the Insecticides Act. One of the three samples were sent to the Senior Analyst at Insecticides Testing Laboratory, Amritsar (hereinafter referred to as 'Amritsar Laboratory'). The test report received on 22.08.2013 from the Amritsar Laboratory indicated that the sample was misbranded, as one of the active ingredient contents was found to be 36.40% WP instead of the required ISI specification of 50%. Upon request, the reference sample was sent to Central Insecticides Laboratory, Faridabad (hereinafter referred to as 'Faridabad Laboratory'), which also confirmed the sample as misbranded. After completing the requisite formalities, including obtaining the necessary consent from the competent authority, the complaint was instituted before learned CJM, Ludhiana under Sections 3(k)(i), 17, 18, 29 and 33 of the Act on 02.12.2015 (Annexure P-1).

2B. The concerned Court vide order dated 22.12.2016 (Annexure P-2) summoned all the accused, including the present petitioners, namely Sukhwinder Singh (Proprietor of M/s Agriculture Development Store) and M/s Agriculture Development Store (through Sukhwinder Singh), to face trial. Hence, the instant petition.

3. Learned counsel for the petitioners contends that the learned Trial Court erroneously summoned the petitioners despite the ingredients of the alleged offences not being made out against them.



CRM-M-23915-2022

Attention has been drawn to the complaint (Annexure P-1), which reveals that although the sample was declared misbranded, the petitioners were not associated with the manufacturer of the misbranded insecticides as per Section 3(k)(i) of the Act, nor was they importers of the same. It has been asserted that the petitioners are only retailers and are not involved in the manufacturing process of the insecticide. They are not responsible for the quality of the insecticide which was manufactured and packed by an authorised and registered company. Learned counsel has emphasized that the pack from which the samples were drawn was in a sealed and intact condition, with no allegations against the petitioners regarding tampering with the sealed packing. Therefore, the petitioners could not have known, even with due diligence, whether the product supplied by the manufacturers was misbranded. Learned counsel has placed reliance on *M/S Kisan Beej Bhandar, Abohar v Chief Agricultural Officer, Ferozpur, 1990 (SUPP) SCC 11* and has argued that the alleged offences under Sections 18, 29 and 33 of the Act are not made out against the petitioners especially in light of the protection provided under Section 30(3) of the Act.

3A. It has still further been argued by the learned counsel for the petitioners that there are no specific allegations against the dealer Firm or the petitioners, apart from vague and bald allegations. In support, learned counsel has placed reliance upon the judgment of Hon'ble the Supreme Court in *State of NCT of Delhi Vs. Rajiv Khurana : 2010(3) RCR (Criminal) 912*.



CRM-M-23915-2022

4. Per contra, learned State counsel while opposing the prayer and submissions made by the counsel opposite, has reiterated the allegations levelled in the complaint. It has been argued that the petitioners were consciously engaged in selling misbranded insecticide, which clearly indicated his complicity in the crime. It has been further asserted that the petitioners also failed to comply with the provisions of the Act and the Rules while engaging the sale of insecticides, which they had evidently failed to do by dealing in misbranded insecticides. Therefore, it is not open for the petitioners to feign ignorance of the contents of the recovered insecticides. However, learned State counsel does not dispute that the insecticide was found in a sealed and intact condition when the samples were drawn by the Inspector. Learned State counsel further submits that the defence raised by the petitioners cannot be examined at this stage under Section 482 of the Cr.P.C. and should be addressed during the trial.

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

6. The core issue for the consideration of this Court is whether the petitioners as the proprietor of the dealership Firm, can be held responsible under the Act for the contents of samples drawn from a sealed package later found to be misbranded by the Laboratory. Before proceeding further, it is pertinent to reproduce the relevant provisions 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



CRM-M-23915-2022

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 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, 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.

<i>XXXX</i>	<i>XXXX</i>	<i>XXXX</i>
<i>XXXX</i>	<i>XXXX</i>	<i>XXXX</i>

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 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—



CRM-M-23915-2022

(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 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



CRM-M-23915-2022

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 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,-



CRM-M-23915-2022

(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. Adverting to the case at hand, a perusal of the complaint reveals that no specific allegations have been levelled against the petitioners regarding any activities falling within the definition of 'misbranded' as per Section 3(k)(i) of the Act, apart from general allegations that the dealer purchased 'misbranded' insecticides. It is undisputed that the petitioners are neither the manufacturers nor the importers of the insecticides, making out an offence under Section 17 of the Act clearly not applicable. Regarding Section 18 of the Act, the necessary ingredients are also lacking as there are no allegations that the petitioners sold unregistered or prohibited insecticides under Section 27 of the Act.

8. Although learned State counsel has argued that the dealership Firm is liable under Section 29 of the Act, this Court finds no merit in this argument. Learned State counsel cannot dispute that the packet from which the samples were drawn was in a sealed and intact condition. Observations made by Hon'ble the Supreme Court in ***M/s Kisan Beej Bhandar's case (supra)*** would be relevant which are as follows:-

"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



CRM-M-23915-2022

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.”

9. It would also be relevant to reproduce para 18 of **Rajiv**

Khurana's case (supra) which is 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.”

10. As a sequel to the above and in the light of the settled law, the instant petition is allowed and the complaint in question along with all consequential proceedings arising therefrom, including summoning order, are quashed qua the petitioners.

30.07.2024

Vinay

(MANJARI NEHRU KAUL)

JUDGE

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