



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

CRM-M No.24836 of 2022 (O&M)

Date of decision: 30th July, 2024

Rajesh Aggarwal

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Manish Verma & Mr. Rakesh Verma, Advocates
for the petitioners.

Mr. Amit Rana, Sr. Dy. Advocate General, Punjab
for the respondent/State.

MANJARI NEHRU KAUL, J.

1. The instant petition has been filed under Section 482 Cr.P.C. for quashing of Complaint No.30 dated 22.04.2021 (Annexure P-1) under Sections 3(k)(i), 17, 18 and 33 of the Insecticides Act, 1968 (hereinafter referred to as, 'the Act') punishable under Section 29(1) of the Act read with Rule 27 of the Insecticides Rules, 1971 (hereinafter referred to as, 'the Rules') titled as 'State vs. M/s Jain Khad Bhandar & others' pending in the Court of learned Chief Judicial Magistrate, Fazilka as well as summoning order dated 30.04.2022 (Annexure P-2) along with all consequential proceedings arising therefrom.

2. The allegations, as leveled in the complaint filed on 02.02.2021 (Annexure P-1) may be summed up as thus:

On 13.10.2020, Insecticides Inspector Amar Singh
(hereinafter referred to as, 'Inspector') visited the premises



of the dealer M/s Jain Khad Bhandar, located on Cinema Hall, and collected samples of the insecticide, Lambda Cyhalothrin 5% (EC), batch No.U-0325, with a manufacturing date of 12.06.2019, and an expiry date of 11.06.2021. This insecticide was allegedly manufactured by M/s Insecticides (India) Ltd. (hereinafter referred to as, 'the Manufacturing Company') through its depot in Ludhiana. Following the procedure prescribed under the Act, three samples were drawn. One of these three samples was sent to the Public Analyst at the State Insecticide Testing Laboratory, Bathinda. The test report received on 04.11.2020 indicated that the sample was misbranded, containing 10.50% EC of the active ingredient instead of the required ISI specification of 5% EC. Upon request, a reference sample was sent to the Central Insecticide Laboratory, Faridabad. (Hereinafter referred to as, 'the Faridabad Laboratory'). The report from the Faridabad Laboratory received on 27.01.2021 also found the sample to be misbranded, albeit with a minor variation. After completing the requisite formalities and obtaining the necessary consent from the competent authority, the complaint in question was filed before the learned Chief Judicial Magistrate, Fazilka under Sections 3(k)(i), 17, 18



and 33 of the Act punishable under Section 29(1) of the Act read with Rule 27 of the Rules on 22.04.2021 (Annexure P-1). The concerned Court, vide its order dated 30.04.2022 (Annexure P-2), summoned the accused, including the present petitioner Rajesh Aggarwal (Managing Director of the Manufacturing Company), to face trial. Hence the instant petition.

3. Learned counsel for the petitioner contends that the learned trial Court, vide impugned order, erroneously summoned the petitioner, who is the Managing Director of the Manufacturing Company, despite there being no specific allegations or averments made against him in the complaint so as to invite the mischief of ingredients of the offences alleged. While drawing the attention of this Court to the complaint (Annexure P-1), it was argued by the learned counsel that the complaint clearly lacks any reference to invoices linking the Manufacturing Company to the dealer, from whose premises the sample was taken, thereby failing to establish a chain of evidence connecting the sampled material to the Manufacturing Company or its office bearers, rendering the prosecution against the petitioner, unsustainable.

4. Learned counsel has further argued that the complaint in question does not contain specific averments regarding the role of the petitioner in the alleged offence. While relying on the '**State of NCT of Delhi vs. Rajiv Khurana**' AIR 2010 SC 2986, learned counsel has



submitted that Section 33 of the Act mandates specific averments in the complaint regarding the responsibility of the accused for the conduct of the business of the Company. In the absence of any such averments, the complaint against the petitioner is not maintainable, and continuing the proceedings would constitute an abuse of the process of law. Furthermore, it has been argued that the petitioner, while being a Director of the Manufacturing Company, was not involved with the Quality Control Section. As per the complaint itself, the Company had appointed Uday Kumar as its Quality Control Manager-cum-Responsible Person, responsible for maintaining product quality in compliance with Section 33 of the Act. Once a Manufacturing Unit had appointed a Quality Control Manager-cum-Responsible Person, no other office bearer could be liable as an accused. In support, learned counsel has placed reliance upon '**M/s Cheminova India Ltd. vs. The State of Punjab**' 2021 SCC Online 541 and has argued that since the Company is already being proceeded against through its Quality Control Manager-cum-Responsible Person, prosecuting the petitioner who is not involved in quality control, would be an abuse of the process of law.

5. Per contra, learned State counsel while opposing the prayer and submissions made by the counsel opposite, has not disputed that a Quality Control Manager was indeed in place before the raid in question. However, it has been argued that the petitioner and the other



accused, prima facie committed offences punishable under Sections 3(k)(i), 17, 18, 29 and 33 of the Act, as the petitioner, being a Director, was responsible for ensuring the quality of the insecticides. Learned State counsel further submitted that the claim of the petitioner of not being in-charge of the Company’s day-to-day affairs or responsible for its business conduct, is his defence that should be raised during trial. However, it has not been disputed by the learned State counsel that the Company is already being proceeded against through its Quality Control Manager-cum-Responsible Person, Uday Kumar, who is also an accused in the present complaint.

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

7. Before proceeding further, it would be apposite to reproduce relevant Sections of the Act, which read thus:

“3. Definitions -

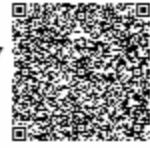
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(k) “misbranded”—an insecticide shall be deemed to be misbranded—

(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.”

8. Emphasizing the need for specific averments in the complaint for prosecution under Section 33 of the Act, Hon'ble the Supreme Court in **'State of NCT of Delhi vs. Rajiv Khurana'** (**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. In **M/s Cheminova India Ltd. (ibid)**, Hon'ble the Supreme Court held that the complaint must specify how a Director or other officers were in-charge of or responsible for the conduct of the Company's business. Hon'ble the Supreme clarified that a Director cannot be prosecuted on vague allegations, if the Company had already appointed a responsible person for quality control. It would be relevant to reproduce the observations of the Hon'ble Supreme Court in the said regard.



“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.”

10. In the present case, the complaint seeks to prosecute the petitioner solely because he is the Managing Director of the Manufacturing Company. However, a perusal of the complaint (Annexure P-1) reveals that no specific averments have been made to show as to how he was in-charge of the business of the Company or responsible for its conduct, particularly regarding quality control of the insecticides. The complaint itself and the undisputed affidavit (Annexure P-4) confirm that Uday Kumar was the responsible officer for quality control.



11. Given that a Quality Control Manager was already in place and the Manufacturing Company is being proceeded against through him, as per the settled law, the petitioner cannot be made vicariously liable.

12. Furthermore, learned State counsel was unable to dispute that the complaint in question lacked chain evidence linking the sampled insecticides to the Manufacturing Company.

13. As a sequel to the above and in the light of settled law, the instant petition is allowed and the complaint in question (Annexure P-1) along with all consequential proceedings arising therefrom including the summoning order (Annexure P-2) qua the petitioner Rajesh Aggarwal are quashed.

(MANJARI NEHRU KAUL)
JUDGE

July 30, 2024
rps

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