



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.28283 of 2022 (O&M)
Date of decision: 30th July, 2024

Uday Raj Anand
... 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.3 dated 02.02.2021 (Annexure P-1) under Sections 3(k)(i), 17, 18 and 33 of the Insecticides Act, 1968 (hereinafter referred to as, ‘the Act’) read with Rule 10(4)(iii) of the Insecticides Rules, 1971 (hereinafter referred to as, ‘the Rules’) which are punishable under Section 29 of the Act titled as ‘State vs. M/s Chhina Agriculture Centre & others’ pending in the Court of learned Judicial Magistrate 1st Class, Ajnala as well as summoning order dated 02.02.2021 (Annexure P-2) along with all consequential proceedings arising therefrom.
2. As per the allegations leveled in the complaint filed on 02.02.2021 (Annexure P-1), Insecticides Inspector Bhupinder Singh



(hereinafter referred to as, 'Inspector') visited the premises of dealer M/s Chhina Agriculture Centre. During this visit, the Inspector drew a sample of the insecticide, Fipronil 0.3% GR, batch No.PR-2319, with a manufacturing date of 18.05.2019, and an expiry date of 17.05.2021. This product was allegedly supplied by M/s SDS Ramcides Crop Science Pvt. Ltd. and manufactured by M/s Parijat Industries (India) Pvt. Ltd. (hereinafter referred to as, 'the Manufacturing Company'). The Inspector collected three samples as per the procedure prescribed under the Act, each weighing 333 grams. One of these samples was sent to the Senior Analyst at Insecticide Testing Laboratory, Bathinda. The test report received on 02.09.2019 from the Laboratory, indicated that the sample was misbranded, as the active ingredient content was only 0.26 % against the required ISI specification of 0.3%. Upon request, the reference sample was sent to the Central Insecticide Laboratory, Faridabad, which also confirmed the sample to be misbranded. Following all the necessary formalities, including obtaining consent from the competent authority, the complaint in question was lodged before the learned Sub Divisional Judicial Magistrate, Ajnala, District Amritsar under Sections 3(k)(i), 17, 18 and 33 of the Act read with Rule 10(4)(iii) of the Rules which are punishable under Section 29 of the Act on 02.02.2021 (Annexure P-1). The concerned Court, vide its order dated 02.02.2021 (Annexure P-2), summoned the accused, including the present petitioner Uday Raj



Anand (Director of M/s Parijat Industries), 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 solely on account of he being the Director of the Manufacturing Company, without the essential ingredients of the alleged offenses being made out against him. Learned counsel, while drawing the attention of this Court to the Complaint (Annexure P-1), has further argued that there is an absence of any reference of the invoices from the Manufacturing Company to the Marketing Company, or from the Marketing Company to the dealer, from whom the sample was drawn. Consequently, in the absence of chain evidence, the sampled material cannot be conclusively linked to the Manufacturing Company or its office bearers, rendering prosecution against the petitioner, unsustainable.

4. Furthermore, learned counsel has argued that a perusal of the complaint clearly shows that there are no specific averments regarding the role of the petitioner. Relying on the '**State of NCT of Delhi vs. Rajiv Khurana**' AIR 2010 SC 2986, learned counsel has asserted that it was held by the Hon'ble Supreme Court that under Section 33 of the Act, it is mandatory for the complaint to state that the accused was the in-charge of or responsible to the Company for the conduct of its business. The absence of such averments, thus, makes the



complaint against the petitioner untenable, and continuation of the proceedings would constitute to be an abuse of the process of law.

5. Learned counsel has also submitted that the petitioner, being merely a Director, had no involvement with the Quality Control Section of the Company. As stated in the complaint, the Company had already appointed Sarvind Kumar as its Quality Control Manager-cum-Responsible Person, who was to ensure the quality of the products in compliance of the Section 33 of the Act. Once a Manufacturing Unit had appointed a Manager, a Quality Control Manager-cum-Responsible Person, no other office bearer could be held liable. To support this, learned counsel has placed reliance upon '**M/s Cheminova India Ltd. vs. The State of Punjab**' 2021 SCC Online 541. It has been argued that since the Quality Control Manager-cum-Responsible Person is already being prosecuted, it would be a grave injustice to prosecute the petitioner vicariously.

6. Per contra, learned State counsel while opposing the prayer and submissions made by the counsel opposite, does not dispute that a Quality Control Manager was in place before the raid in question. However, learned State counsel contends that the petitioner along with the other accused, prima facie committed offences punishable under Sections 3(k)(i), 17, 18, 29 and 33 of the Act. The petitioner, as a Director, is responsible for the affairs of the Company, and particularly the quality of the insecticides as well. The learned State counsel has



further submitted that the petitioner’s claim that he was not in-charge of the day-to-day affairs or the conduct of business of the Company, is a defence that can only be examined during trial when both parties present their evidence.

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

8. Before proceeding further, it would be pertinent to reproduce the relevant Sections of the 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

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, 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 Hon'ble Supreme Court in '**State of NCT of Delhi vs. Rajiv Khurana**' (*supra*), emphasized the necessity of specific averments in the complaint under Section 33 of the Act, by holding 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.”

10. In **M/s Cheminova India Ltd. (ibid)**, the Hon'ble Supreme Court clarified the liability of the Managing Director when the Company had nominated other responsible persons by holding as follows:

“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 1 st 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.”

11. Applying the above ratio of law to the present case, the complaint in question lacks specific averments showing how the petitioner, as a Director, was in charge of or responsible for the business of the company or had any role in quality control. The complaint itself, and as also not disputed by the learned State Counsel, indicates that Sarvind Kumar, the Quality Control Manager, was responsible for quality control, and had already furnished an affidavit to that effect.



12. Given that a Quality Control Manager was already in place before the raid, and in the light of the settled law, the petitioner cannot be held vicariously liable, in the present case when the Company is already being prosecuted through its Quality Control Manager.

13. As a sequel to the above and in view of the 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 Uday Raj Anand are quashed.

(MANJARI NEHRU KAUL)
JUDGE

July 30, 2024
rps

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