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**203/5 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**CRM-M-28273-2019
Decided on : 30.07.2024

Raj Kumar Gupta & others

..... Petitioners

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAULPresent : Mr. Rakesh Verma, Advocate and
Mr. Manish Verma, Advocate
for the petitioners.

Mr. Amit Rana, Sr. DAG, Punjab.

Manjari Nehru Kaul, J.(Oral)

1. This is the petition filed by the petitioners under Section 482 Cr.PC for quashing the Complaint case No.282 dated 12.08.2014 (Annexure P-1) under Sections 3(k)(i), 17, 18, 29 and 33 of the Insecticides Act, 1968 punishable under Section 29(1)(a) of the Insecticides Act, 1968 and Rules, 1971 titled as State vs. M/s Rajesh Trading Co. & others as well as Summoning Order dated 08.06.2015 (Annexure P-2), order dated 18.01.2019 and all the consequential proceedings arising therefrom.

2. Learned counsel for the petitioners, at the outset, submits that he would not press the instant petition qua petitioner No.2 – R.C.Sharma and petitioner No.3 – M/s Thakar Chemicals Ltd. And



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would instead raise all pleas during the course of trial.

The present petition qua petitioner No.2 and petitioner No.3 stand dismissed as not pressed.

3. As per the allegations levelled in the complaint (Annexure P-1), on 04.07.2012, Insecticide Inspector Surjit Singh (hereinafter referred to as 'Inspector') visited the premises of M/s Rajesh Trading Company, (hereinafter referred to as 'firm') located at Old Grain Market, Kartarpur, District Jalandhar and collected the sample of insecticide namely Cartap Hydrochloride 4%G bearing Batch No.404 with manufacturing dated March, 2012 and expiry date February, 2014. This product was allegedly manufactured by M/s Thakar Chemicals Ltd., New Delhi (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 of 250 gms each were taken. One of the sealed samples was sent to Senior Public Analyst, State Insecticides Testing Laboratory, Bathinda. The test report received on 11.07.2012 indicated that the sample was misbranded, as one of the active ingredient contents was found to be 5.06%, as against the required I.S.I. specification of 4% GR. Upon request, the reference sample was sent to the Central Insecticide Laboratory, Faridabad (hereinafter referred to as 'Faridabad Laboratory'). The report from Faridabad Laboratory also confirms



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the sample to be misbranded. Following the necessary formalities, including obtaining the consent from the competent authority, the complaint was filed before the learned CJM, Jalandhar, under Sections 3(k)(i), 17, 18, 29 and 33 of the Act on 12.08.2014 (Annexure P-1). The Court concerned, vide order dated 08.06.2015 (Annexure P-2) summoned all the accused, including the present petitioners Raj Kumar Gupta (Managing Director of M/s Thakar Chemicals Ltd.), Parveen Gupta (Godown Incharge of M/s Thakar Chemicals Ltd.) and Inder Surekha (Director of M/s Thakar Chemicals Ltd.) to face trial. Consequently, the present petition has been filed.

4. Learned counsel for the petitioners contends that the trial Court has erroneously summoned petitioner No.1 – Raj Kumar Gupta, petitioner No.4 Parveen Gupta and petitioner No.5 Inder Surekha, despite the essential ingredients of the offences alleged not being made out. Learned counsel argues that the complaint (Annexure P-1) does not contain specific averments regarding the role of the petitioners in alleged offences. While placing reliance on 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 in the complaint about the accused being incharge of or responsible for the conduct of the company's business. In the absence of such



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averments the complaint against the petitioners is not maintainable, and thus, continuation of proceedings against them would constitute an abuse of process of law.

5. Learned counsel for the petitioners further argues that although the petitioners hold positions within the firm, they are not involved in the quality control section. The manufacturing company i.e. M/s Thakar Chemical Ltd., had appointed R.C.Sharma as its Quality Control Manager-cum-responsible person, who is accountable for maintaining product quality in compliance with Section 33 of the Act. Given that the firm has already designated a Quality Control Manager, no other office bearer should be liable on behalf of the manufacturing company. In support, reliance is 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 541***, learned counsel ***asserts*** that since the company is being prosecuted through its Quality Control Manager, vicariously prosecuting the petitioners, who were not involved in quality control, would amount to an abuse of process of law.

6. Per contra, learned State counsel while opposing the prayer and submissions made by the learned counsel for the petitioners has acknowledged that a quality control manager was already in place before the raid in question. However, learned State counsel argues that the petitioners along with other accused have *prima facie* committed the offences under Sections 3(k)(i), 17, 18, 29 and 33 of the Act, and were responsible for the affairs of the manufacturing



company, particularly, for ensuring the quality of the insecticides. Learned State counsel further contends that the claim of the petitioners that they were not incharge of the company’s day-to-day affairs or responsible for the conduct of its business, was just their defence, that should be addressed during trial when evidence would be presented by both the sides. However, it is undisputed that the firm is being proceeded against through its Quality Control Manager R.C.Sharma, who too is an accused in this complaint.

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

8. 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 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 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*



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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. While emphasising the necessity of making specific averments for prosecution under Section 33 of the Act Hon'ble the Supreme Court in *State of NCT of Delhi's case(supra)* held 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. In *M/s Cheminova India Ltd.'s case(supra)*, Hon'ble the Supreme Court elaborated on the liability of Managing Director when



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the company has designated another person as responsible for quality control and 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 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



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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. Adverting to the case in hand, a perusal of the complaint reveals that the petitioners Raj Kumar Gupta, Parveen Gupta and Inder Surekha are being prosecuted as the Managing Director, Godown Incharge and Director of M/s Thakar Chemicals Ltd., respectively.



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However, the complaint lacks specific averments detailing how these three individuals were incharge of the business of the company or responsible for its conduct, particularly, in relation to quality control.

12. Furthermore, the complaint itself acknowledges that co-accused R.C.Sharma was designated as the responsible officer for quality control of the manufacturing company and had furnished an affidavit to that effect. This fact, as not even disputed by the learned State counsel, is reflected in the first page of the complaint as well as its paragraph 14. It has been specifically asserted by the petitioners that R.C.Sharma, who has already been proceeded against, was the individual directly responsible for product quality. Given these facts and circumstances, the petitioners cannot be held vicariously liable when the manufacturing company is already being represented through its quality control manager.

13. As a sequel to the above, the present petition is allowed and the complaint in question along with all consequential proceedings including summoning order qua petitioners Raj Kumar Gupta, Parveen Gupta and Inder Surekha stands quashed.

14. Accordingly, the present petition stands disposed of.

30.07.2024
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(MANJARI NEHRU KAUL)
JUDGE

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