



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

1.

CRM-M No.37187 of 2021 (O&M)
Date of decision: July 30th, 2024

S.B.V.R. Prasad

.....Petitioner

Versus

State of Punjab

.....Respondent
2.

CRM-M No.38534 of 2021 (O&M)

Bhupesh Sharma

.....Petitioner

Versus

State of Punjab

.....Respondent
3.

CRM-M No.38535 of 2021 (O&M)

Om Parkash and another

.....Petitioners

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

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

Mr. Amit Rana, Senior Deputy Advocate General, Punjab.

MANJARI NEHRU KAUL, J.

This order shall dispose of the above-mentioned petitions filed under Section 482 of the Code of Criminal Procedure, 1973, as prayer in these petitions is for quashing of complaint No.89 dated 14.12.2020 under Sections 3(k)(i), 17, 18, 29 and 33 of The Insecticides Act, 1968 (hereinafter referred to as ‘the Act’), with Rule 27 (5) of Insecticides Rules, 1971 titled as ‘State Vs. M/s Zimidara Pesticides & others’, summoning order dated 14.12.2020 (Annexure P-2) and all consequential proceedings arising therefrom qua the petitioners.

2. The allegations as levelled in the complaint (Annexure P-1), can be summarized as follows:-

On 07.07.2020, Insecticides Inspector Vikrant (hereinafter referred to as 'Inspector') accompanied by Sarwan Kumar, Assistant Plant protection Officer and Nageen Kumar, Agriculture Development Officer, visited the premises of M/s Zimidara Pesticides, Fazilka (hereinafter referred to as 'the firm'). The Inspector collected the sample of the insecticide Propaquizafop 10% EC, Batch No.AIPR004033, with a manufacturing date of 27.02.2020 and an expiry date of 26.02.2022. This insecticide was purportedly manufactured by M/s. Adama India Pvt. Ltd. (hereinafter referred to as 'manufacturing company') through its depot in Ludhiana. The sampling was conducted according to the procedure prescribed under the Act. One of the three sealed samples was sent to the Senior Analyst, Insecticide Testing Laboratory, Amritsar. According to the test report received on 05.08.2020 from the Amritsar Laboratory, the sample was found to be misbranded, as one of the active ingredients was found to be only 2.22% instead of the required 10% EC as per the I.S.I. specification. Upon request, the reference sample was sent to the Central Insecticides Laboratory, Faridabad (hereinafter referred to as 'Faridabad Laboratory'). The Faridabad Laboratory also found the sample to be misbranded. After completing the necessary formalities, including obtaining consent from the competent authority, the complaint in question was filed before the learned Sub Divisional Judicial Magistrate, Abohar, under Sections 3(k) (i), 17, 18, 29 and 33, punishable under Section 29 of the Act with Rule 27(5) of Insecticides Rules, 1971. The Court vide order dated

14.12.2020 (Annexure P-2) summoned all the accused, including the present petitioners-Bhupesh Sharma (Godown Incharge of manufacturing company), Om Parkash, proprietor of the firm, M/s. Zimidara Pesticides (through Om Prakash) and S.B.V.R. Prasad (Managing Director of manufacturing company), two face trial. Hence, the instant petition.

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3. Learned counsel for the petitioners contends that the trial Court erroneously summoned petitioner-S.B.V.R. Prasad and Bhupesh Sharma, despite the ingredients of the alleged offences not being made out against them. While drawing the attention of this Court to the complaint (Annexure P-1), learned counsel argued that the complaint only contains vague and bald allegations that the insecticide was manufactured by the company, wherein the petitioners were serving as Managing Director and Godown Incharge, without specifying their responsibility for the conduct of the manufacturing company's business. By citing *State of N.C.T. of Delhi Versus Rajiv Khurana, 2010 (3) RCR (Crl.) 912*, learned counsel asserted that Section 33 of the Act mandates that the complaint must include specific averments regarding the accused being in-charge of or responsible for the conduct of the company's business. In the absence of any such averments, the complaint against the petitioners is not maintainable and continuation of the proceedings would constitute an abuse of the process of law.

4. Learned counsel has further argued that although the petitioners were office bearers of the manufacturing company, they were not involved in quality control. According to the complaint, the manufacturing company had already appointed Chandrakant Rambhai

Patel as its Manager Quality Control-cum-responsible person, who was Incharge of maintaining product quality and complying with the provisions of Section 33 of the Act. Once the manufacturing company had appointed a Manager Quality Control-cum-responsible person, no other office bearer much less the petitioners could be held liable as an accused. In support, learned counsel has placed reliance on ***Cheminova India Ltd. Versus State of Punjab 2021 SCC Online SC 541*** and argued that since the company is being proceeded against through its Quality Control Manager-cum-responsible person, prosecuting the petitioners would be an abuse of the process of law.

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5. Learned counsel for the petitioner argued that the trial Court erroneously summoned petitioner-Om Parkash along with petitioner No.2-M/s. Zimidara Pesticides (dealership firm), despite the alleged offences not being made out against the dealership firm. Referring to the complaint (Annexure P-1), learned counsel submitted that the petitioners, as retailers, were not involved in the manufacture or import of the 'misbranded' insecticide as per Section 3(j) of the Act. The petitioners were not responsible for the quality of the insecticide, which was manufactured and packed by an authorised and registered company. As per the complaint itself, the pack from which the samples were drawn was in a sealed and intact condition, with no allegations of tampering by the petitioners. While referring to the ***M/s. Kisan Beej Bhandar, Abohar Versus Chief Agricultural Officers, Ferozepur and another 1990 (SUPP) SCC 11***, learned counsel contended that the alleged offences under Sections 18, 29 and 33 of the Act were not made

out against the petitioner, particularly in light of the protection against prosecution, provided under Section 30 (3) of the Act.

6. *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 already in place before the raid in question. The State counsel has, however, argued that the petitioners along with the other accused, have *prima facie* committed offences punishable under Sections 3(k)(i), 17, 18, 29 and 33 of the Act, as they were responsible for ensuring the quality of the insecticides. The State counsel has further submitted that defence of the petitioners that they were not in-charge of quality control is a matter to be raised during trial when both the sides present their evidence. Additionally, learned State counsel has argued that petitioner-Om Prakash, as a dealer, was responsible for complying with the Act and the Rules and could not feign ignorance of the misbranded contents of the insecticide. However, learned State counsel does not dispute that insecticide was found in a sealed and intact condition when the samples were drawn by the inspector.

7. Having heard the arguments and other relevant material on record, it would be first pertinent to reproduce the relevant provisions of the Act, which are as under:-

“3. Definitions.—In this Act, unless the context otherwise requires,—
(a) to (j) XXXX XXXX XXXX
(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;

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 1 [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.

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, 1 [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.

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:— (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.”

8. Hon’ble the Supreme Court in *State of N.C.T. of Delhi Versus Rajiv Khurana’s case (supra)* emphasised the necessity of making specific averments for prosecution under Section 33 of the Act by observing 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. Further, Hon’ble the Supreme Court in *Cheminova India Ltd.’s case (supra)* while dealing with the liability of the Managing Director, in case where the company had nominated persons responsible for quality control, and who were already accused, held as thus:-

“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. Though, the Managing Director is overall incharge of the affairs of the company, whether such officer is to be prosecuted or not, depends on the facts and circumstances of each case and the relevant provisions of law. Having regard to specific provision under Section 33 of the Act, and the undertaking filed in the present case, respondent cannot prosecute the 2nd Appellant herein. Thus, we find force in the contention of Mr. Sidharth Luthra, learned Senior Counsel, that allowing the prosecution against 2nd Appellant – Managing Director is nothing but, abuse of the process of law. At the same time, we do not find any ground at this stage to quash the proceedings against the 1st Appellant – Company.”

10. Adverting to the present case and on perusal of the allegations levelled in the complaint, it stands revealed that there are no specific averments made against petitioners-S.B.V.R. Prasad and Bhupesh Sharma. While S.B.V.R. Prasad was the Managing Director, Bhupesh Sharma was the Godown Incharge of the manufacturing company. Petitioner-Om Parkash is sought to be prosecuted being the proprietor of the dealership firm. Without there being any specific averments made in the entire complaint qua the involvement of the petitioners either in the manufacturing process or quality control, it would be against the settled law to continue prosecution against the petitioners. Still further, in the present case, it is apparent from the complaint itself that Chandrakant Rambhai Patel was the person, who was stated to be the responsible officer for quality control of the manufacturing company. The said fact has not been disputed by the learned State counsel, rather, it finds reflected in the first page of the complaint itself, where the details of the parties have been given. Besides this, even in paragraph 16 of the complaint, the factum of Chandrakant Rambhai Patel being the responsible person for quality control of the manufacturing company finds mentioned. In the circumstances, the petitioners cannot be made vicariously liable, when admittedly the manufacturing company has already been proceeded against through its Quality Control Manager.

11. Coming to the contentions raised by the learned counsel for petitioner-Om Prakash, proprietor of the firm, no doubt, learned State counsel has vehemently opposed the submissions made by the learned counsel for the petitioner that the dealership firm would be liable under

the Act, however, this Court does not find any merit in the in the same as the learned State counsel has not been able to dispute that the packet from which the alleged samples were drawn was in a sealed and intact condition. Still further, the statutory framework does not aim to prosecute individuals, who merely trade in a product over which they have no control regarding its quality and content, and, therefore, the petitioner cannot be held liable for misbranding a product he did not manufacture, simply because he was trading in it. There is no evidence that the petitioners engaged in any activities outlined in Section 3(k) that would constitute 'misbranding'. Moreover, Section 17 of the Act does not apply to the petitioners since they are neither the importers nor the manufacturers of the misbranded insecticides. Additionally, the criteria of Section 18 of the Act are also not met, and there is no allegation that the petitioners sold unregistered or prohibited insecticides under Section 27 of the Act. Consequently, Section 29 of the Act, which prescribes punishment for such offences is also inapplicable qua the petitioners. Since the necessary elements of these Sections are not satisfied in relation to the petitioners, they cannot be penalised under these provisions.

12. It would be opposite to refer to the following observations made by Supreme Court in *M/s Kisan Beej Bhandar's case (supra)*:-

"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 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.”

13. Consequently, in the above-mentioned facts and circumstances, the instant petitions are allowed and the complaint in question along with all consequences proceedings arising therefrom including the summoning order are quashed qua the petitioners.

14. In the light of the decision of the petitions, all pending applications stand disposed of.

July 30th, 2024
Puneet

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : Yes