



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

CRM-M No.42572 of 2022
Date of decision: 20th August, 2024

Inder Surekha & another
... Petitioner
Versus
State of Punjab
... Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Rakesh Verma & Mr. Manish Verma,
Advocates for the petitioner.
Mr. Navdeep Singh, Dy. Advocate General, Punjab
for the respondent/State.

MANJARI NEHRU KAUL, J. (ORAL)

1. The instant petition has been filed under Section 482 Cr.P.C. for quashing of Complaint No.27 dated 06.07.2020 (Annexure P-1) under Sections 3(k)(i), 17, 18, 29 and 33 of the Insecticides Act, 1968 (hereinafter referred to as, 'the Act') read with Rule 27(5) of the Insecticides Rules, 1971 (hereinafter referred to as, 'the Rules') titled as 'State vs. M/s Bapu Gurdial Singh Pesticides & Fertilizers & others' pending in the Court of learned SDJM, Zira, Distt. Ferozepur as well as summoning order dated 06.07.2020 (Annexure P-2) along with all consequential proceedings arising therefrom.

2. As per the complaint (Annexure P-1), Inspector Rajneesh Kumar (hereinafter referred to as, 'Inspector') on 06.07.2020 inspected the premises of M/s Bapu Gurdial Singh Pesticides & Fertilizers



(hereinafter referred to as, 'the firm') and collected a sample of the insecticide i.e. 'Chlorpyrifos 50% + Cypermethrin 5% EC bearing batch No.T-297 manufactured on 01.04.2019 with an expiry date of 31.03.2021. The insecticide was purportedly manufactured by M/s Thakar Chemicals Ltd. (hereinafter referred to as, 'the Manufacturer Company'). The sample collection followed the procedures prescribed under the Act. Of the three sealed samples taken, one was sent to the Senior Analyst at the State Insecticide Testing Laboratory in Amritsar. The test report, dated 16.08.2019 revealed that the sample was misbranded as one of the active ingredients was found to be only 43.92% + 4.06% EC, as against the specification of 50% + 5%. Subsequently, upon request, a reference sample was sent to the Central Insecticide Laboratory in Faridabad (hereinafter referred to as, 'the Faridabad Laboratory'). The report from the Faridabad Laboratory confirmed that the sample was misbranded. Following the completion of the necessary formalities, including obtaining consent from the competent authority, a complaint was lodged before the learned Sub Divisional Judicial Magistrate, Zira on 06.07.2020 (Annexure P-1) under Sections 3(k)(i), 17, 18, 29 and 33 of the Act read with Rule 25 of the Rules. On the same day, the Court issued summoning order (Annexure P-2), requiring all the accused, including the present petitioners to face trial. Hence this petition.



3. Learned counsel for the petitioners has argued that the learned trial Court had erred in summoning the petitioners solely because they were Director and Godown Incharge respectively of the Manufacturing Company, without any specific allegations or evidence implicating them in the alleged offenses. While drawing the attention of this Court to the Complaint (Annexure P-1), learned counsel has emphasized that a mere reading of the complaint reveals that the petitioners were casually named as accused without any specific assertions regarding their roles or involvement in the alleged offences. Learned counsel relied on the judgment of Hon'ble the Supreme Court in **'State of NCT of Delhi vs. Rajiv Khurana' AIR 2010 SC 2986**, which mandates that for prosecuting an individual under Section 33 of the Act, there must be specific averments in the complaint indicating the involvement of the accused in the affairs and business of the Company. In the absence of such averments, it has been asserted that the continuation of proceedings against the petitioners would amount to an abuse of the process of law.

4. Furthermore, learned counsel has contended that although the petitioners were office bearers of the Company, they were not involved in the Quality Control Section. The complaint itself stated that M/s Thakar Chemicals Ltd. had appointed Ranjit Singh as the Chief Chemist and Quality Control Manager-cum-Responsible Person, who



was solely responsible for maintaining the quality of the products as required under Section 33 of the Act. Learned counsel further argued that once a Quality Control Manager-cum-Responsible Person is appointed by the Manufacturing Unit, no other office bearer should be held liable. To support this argument, learned counsel has placed reliance upon '**M/s Cheminova India Ltd. vs. The State of Punjab**' **2021 SCC Online SC 541**, wherein the Hon'ble Supreme Court held that prosecuting other office bearers of a Company, when Responsible Person has already been appointed, 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 the appointment of a Quality Control Manager prior to the raid in question. However, learned State counsel has argued that the petitioners, along with the other accused, had prima facie committed offences punishable under Sections 3(k)(i), 17, 18, 29 and 33 of the Act, as they were responsible for the affairs of the Company, including ensuring the quality of the insecticides. The learned State counsel has further submitted that the claim of the petitioners of not being in-charge of the Company's day-to-day affairs of is a matter to be determined during the trial, where evidence from both the parties would be considered. Despite acknowledging that the Company was already being prosecuted through



its Quality Control Manager-cum-Responsible Person, Ranjit Singh, who is also an accused in the present complaint, the learned State counsel has maintained that the petitioners’ involvement in the crime in question needed to be examined during trial before the trial Court.

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

7. 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

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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. The Hon'ble Supreme Court in ‘**State of NCT of Delhi vs. Rajiv Khurana**’ (supra), emphasized the necessity of specific



averments in the complaint for prosecuting an individual under Section 33 of the Act. It was reiterated that a complainant is required to show how a Director, sought to be made an accused, was in charge of or responsible for the conduct of business of the Company. The Hon'ble Supreme Court further clarified that merely being a Director does not automatically make one responsible for the business of the Company; therefore, even more specific allegations are required in the case of non-Director officers.

9. In **M/s Cheminova India Ltd. (ibid)**, the Hon'ble Supreme Court further clarified that when a Company has nominated a specific responsible person for quality control, it is unjustified to prosecute other office bearers, including the Managing Director, based on vague allegations of overall responsibility. It would be relevant to reproduce the observations and findings of the Hon'ble Supreme Court in **M/s Cheminova India Ltd. (supra)**:

“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. Adverting to the present case, a perusal of the complaint reveals that the petitioners Inder Surekha and Parveen Gupta, are being prosecuted merely for their roles as Director and Godown In-charge without any specific averments showing their involvement in the business of the Company or quality control. The complaint itself identifies Ranjit Singh as the officer responsible for quality control, a fact that is undisputed by the learned State counsel and also corroborated by the initial details of the complaint as well as para 16 of the complaint. The learned counsel for the petitioners has thus, rightly argued that since Ranjit Singh, who was directly responsible for quality control of the products being manufactured, was already being prosecuted, the petitioners cannot be held vicariously liable. Hence, in the light of the



settled law, more so when it is a matter of record that the Quality Control Manager was in place before the raid in question, the present petition is allowed. Consequently, the complaint in question (Annexure P-1) along with all consequential proceedings arising therefrom including the summoning order (Annexure P-2) qua the petitioners Inder Surekha and Parveen Gupta are quashed.

(MANJARI NEHRU KAUL)
JUDGE

August 20, 2024
rps

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