



CRM-M-41821-2019

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203/9 **IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-41821-2019
Decided on : 30.07.2024

Inder Surekha & another Petitioners

Versus

State of Punjab Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : 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.613 dated 11.03.2019 (Annexure P-1) under Sections 3(k)(i), 17, 18, 29 and 33 of the Insecticides Act, 1968 r/w Rule 27(5) of the Insecticides Rules, 1971 titled as State vs. M/s Thakar Chemicals Ltd. & others as well as Summoning Order dated 15.07.2019 (Annexure P-2) 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.1 – Inder Surekha and would raise all pleas during the course of trial.

The present petition qua petitioner No.1 stands dismissed



as not pressed.

3. As per the allegations levelled in the complaint (Annexure P-1), on 28.06.2017, Insecticide Inspector Jaskaran Singh (hereinafter referred to as 'Inspector') visited the premises of M/s Thakar Chemicals Ltd., (hereinafter referred to as 'firm') and collected the sample of Cartap Hydrochloride 4%G bearing Batch No.T-717, manufacturing dated 12.06.2017 and expiry date 11.06.2019. Three samples, each weighing 250 gms, were drawn following the procedure outlined in the Insecticides Act, 1968 (hereinafter referred to as 'the Act'). One of the sealed samples was sent to Senior Public Analyst, State Insecticides Testing Laboratory, Bathinda for analysis. The test report was received on 30.06.2017 indicated that the sample was misbranded as it contained only 3.43% of the active ingredient as against the required ISI specification of 4% G Cartap Hydrochloride. At the request of the dealer, a referral sample was subsequently sent to the Central Insecticide Laboratory, Faridabad (hereinafter referred to as 'Faridabad Laboratory'), which also found the sample to be misbranded. Following the completion of necessary formalities, including obtaining the consent from the competent authority, the complaint was filed before learned CJM, Bathinda, under Sections 3(k)(i), 17, 18, 29 and 33 of the Act r/w Rules 27(5) of the Insecticides Act, 1971 on 11.03.2019. The Court vide its order dated



15.07.2019 (Annexure P-2) summoned all the accused, including the present petitioner Parveen Gupta, who was the Godown Incharge of the Firm to face trial. Hence, the present petition.

4. Learned counsel for the petitioner contends that the trial Court erroneously summoned the petitioner based on his role as the Godown incharge of the firm, despite the absence of specific allegations against him. While drawing the attention of this Court to the complaint (Annexure P-1), learned counsel has argued that the petitioner was made a party without there being any specific averment pertaining to his role. While placing reliance upon ***State of NCT of Delhi vs Rajiv Khurana, 2011(1) SCC (Crimes) 195***, learned counsel has emphasised that under Section 33 of the Act, it is mandatory for the complaint to specify how the accused was responsible for the conduct of the business of the company. The absence of such averments renders the complaint against the petitioner unsustainable, and thus, continuation of proceedings would constitute an abuse of process of law.

5. Learned counsel for the petitioner further argues that although the petitioner holds office in the company, he is not involved in quality control. The complaint itself acknowledges that petitioner No.1 Inder Surekha, Director and Ranjit Singh, who was appointed as the Quality Control Manager of the firm, were responsible for maintaining product quality in compliance of Section 33 of the Act. Therefore, once the firm has appointed a Manager for quality control, no other



functionary of the firm should be liable for prosecution on behalf of the firm. In support, reliance is placed upon ***M/s. Cheminova India Ltd. & Anr. vs. State of Punjab and another, AIR 2021 SUPREME COURT 3701*** by arguing that prosecuting the petitioner, who was not involved in quality control, would constitute an abuse of process of law.

6. Per contra, learned State counsel while opposing the prayer and submissions made by learned counsel for the petitioner, on instructions, submits that the petitioner and other accused are *prima facie* responsible for the offences under Sections 3(k)(i), 17, 18, 29 and 33 of the Act, given their roles in the firm and thus, they should be held responsible for not ensuring the quality of insecticides. Learned State counsel asserts that the defence of the petitioner of not being responsible for the day-to-day affairs of the firm can only be addressed during trial. However, learned State counsel does not dispute that the firm is already being proceeded against through its Quality Control Manager Ranjit Singh and Director Inder Surekha.

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

8. Hon'ble the Supreme Court in *State of NCT of Delhi's case(supra)* has emphasised the necessity of specific averments regarding the role and responsibility of the accused for the conduct of the business of the firm under Section 33 of the Act and 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.”

9. In *M/s Cheminova India Ltd.’s case*(supra), Hon’ble the Supreme Court 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 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 case in hand, the complaint in question lacks specific averments about the role of petitioner in the business or quality control of the firm. It is clear that Ranjit Singh, who was designated as Quality Control Manager and Inder Surekha, Director were responsible for the quality control of the firm and are already being prosecuted. Therefore, vicariously holding the petitioner liable when the firm is already represented by the quality control manager, would be unwarranted.

11. As a sequel to the above and in the light of settled law, the



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present petition qua petitioner No.2 is allowed. The complaint as well as summoning order qua petitioner No.2 Parveen Gupta stands quashed.

12. 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