



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

CRM-M No.41840 of 2019 (O&M)

Date of decision: 30th July, 2024

Inder Surekha & another

... Petitioners

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.1270 dated 30.04.2019 (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 Ceska Corman Ltd. & others' pending in the Court of learned Chief Judicial Magistrate, Bathinda as well as summoning order dated 04.05.2019 (Annexure P-2) along with all consequential proceedings arising therefrom.

2. As per the complaint filed on 30.04.2019 (Annexure P-1), Insecticides Inspector Jasvinder Singh (hereinafter referred to as, 'Inspector') visited the premises of M/s Ceska Corman Ltd. (hereinafter referred to as, 'the firm') and collected a sample of the insecticide i.e.



‘Cartap Hydrochloride’ with a manufacturing date 15.05.2017, and an expiry date of 14.05.2019. This sample was purportedly manufactured by M/s Thakar Chemicals Ltd. (hereinafter referred to as, ‘the Manufacturer Company’). The samples were drawn following the procedure outlined in the Act. Out of the three sealed samples obtained, one was sent to Senior Analyst at the State Insecticide Testing Laboratory, Bathinda. The test report received on 30.06.2017, from the Laboratory indicated that the sample was misbranded because one of the active ingredients was found to be only 3.06% contrary to the required ISI specification of 4% GR. Subsequently, upon a request, a reference sample was sent to the Central Insecticide Laboratory, Faridabad (hereinafter referred to as, ‘the Faridabad Laboratory’). The report from the Faridabad Laboratory also confirmed that the sample was misbranded. Following the completion of the necessary formalities, including obtaining consent from the competent authority, the complaint in question was lodged before the learned Chief Judicial Magistrate, Bathinda under Sections 3(k)(i), 17, 18, 29 and 33 of the Act read with Rule 25 of the Rules on 30.04.2019 (Annexure P-1). The Court concerned, vide its order dated 04.05.2019 (Annexure P-2), summoned all the accused persons, including the present petitioners Inder Surekha (Director of M/s Thakar Chemicals Ltd.) and Parveen Gupta (Godown In-charge), to face trial. Hence the present petition.



3. Learned counsel for the petitioners has contended that the learned trial Court had erroneously summoned the petitioners solely based on their positions as Director and Godown Incharge of M/s Thakar Chemicals Ltd., without the necessary elements of the alleged offenses being present against them. Drawing the attention of this Court to the Complaint (Annexure P-1), learned counsel has further argued that a bare reading of the same reveals that the complainant had casually included the petitioners as parties without there being any specific averments or allegations regarding their roles. While placing reliance upon the decision of Hon'ble the Supreme Court in '**State of NCT of Delhi vs. Rajiv Khurana**' AIR 2010 SC 2986, the learned counsel emphasized that Section 33 of the Act, mandates specific averments in the complaint regarding the responsibility and involvement of the accused in the affairs and business of the Company. The absence of such averments renders the complaint against the petitioners unsustainable, making the continuation of these proceedings an abuse of the process of law.

4. Furthermore, learned counsel has asserted that the petitioners, though office bearers of the Company, had no involvement in the Quality Control Section of the Company. 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, responsible for maintaining the quality of the products in



compliance with the Section 33 of the Act. Learned counsel argued that once a Manufacturing Unit has designated a Quality Control Manager-cum-Responsible Person, no other office bearer should be held liable. Learned counsel supported this argument by referring to ‘**M/s Cheminova India Ltd. vs. The State of Punjab**’ 2021 SCC Online SC 541, stating that since Company was already being prosecuted through its Quality Control Manager-cum-Responsible Person, holding the petitioners vicariously liable would constitute 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 existence of a Quality Control Manager before the raid in question. Learned State counsel has, however, argued that the petitioners along with the other accused individuals, 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, particularly ensuring the quality of the insecticides. The learned State counsel has further submitted that the submissions of the petitioners claiming that they were not in-charge of the day-to-day affairs of the Company, was a matter to be determined during the trial when both parties would present their evidence. Nevertheless, it has not been disputed that the Company was already being prosecuted through its Quality Control



Manager-cum-Responsible Person, RC Sharma, who is also an accused in the present complaint.

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

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.”

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.

“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. (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 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 Company's business or quality control. The complaint itself identifies RC Sharma as the responsible officer for quality control, supported by an affidavit. This fact is not disputed by the learned State counsel and finds reflected in the initial details of the complaint itself, as well as in para 28 of the complaint. The learned counsel for the petitioners has argued that RC Sharma, already being prosecuted, was the individual directly responsible for product quality. Hence, it is evident that a Quality Control Manager was in place before the raid in question, and the petitioners thus cannot be held vicariously liable when the Manufacturing Company is already being prosecuted through its Quality Control Manager.

11. As a sequel to the above and in the light 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 petitioners Inder Surekha and Parveen Gupta are quashed.

(MANJARI NEHRU KAUL)
JUDGE

July 30, 2024
rps

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