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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: 23.01.2025

1. CRM-M-38779-2011 (O&M)

Hemang Manhar Gandhi

... Petitioner

Vs.

State of Punjab and another

... Respondents

2. CRM-M-27055-2014 (O&M)

M/s Farm Friends through its sole proprietor Anil Kumar and another

... Petitioners

Vs.

State of Punjab and another

... Respondents

3. CRM-M-26982-2014 (O&M)

M/s Harish Traders through its proprietor Harish Chander and another

... Petitioner

Vs.

State of Punjab and another



... Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Padamkant Dwivedi, Advocate and
Ms. Mansi, Advocate
for the petitioner (in CRM-M-38779-2011).

Mr. G.S. Gangwar, Advocate for
Mr. R.S. Sekhon, Advocate
for the petitioner(s) (in CRM-M-27055 & 26982-2014).

Mr. Rishabh Singla, AAG Punjab.

HARPREET SINGH BRAR, J.

1. This common order shall decide all the abovementioned petitions filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') [*now Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS')*] seeking quashing of Complaint No.56/56-2 dated 27.01.2010 titled as '*State through Sh. Resham Singh, Insecticide Inspector, Ferozepur Vs. M/s Harish Traders and others*' and the summoning order dated 27.01.2010 passed by learned Chief Judicial Magistrate, Ferozepur against the petitioner(s) under Sections 3(k)(i), 17, 18 & 33 punishable under Section 29 of the Insecticides Act, 1968 (for short 'the Act').
2. The aforementioned petitions arise out of similar factual matrix, therefore, for the sake of brevity, the facts are taken from CRM-M 38779-2011.
3. Succinctly, the facts of the case are that the Insecticide Inspector

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visited M/s Harish Traders on 28.06.2007 and took the sample of Cartap Hydrochloride 4% G manufactured by M/s Coromandel Agrico. Pvt. Ltd., Sikandrabad (U.P.) bearing Batch No.0704023, manufacturing date: April 2007, expiry date: March 2009, weighing 05 kg per packing. Three samples of 250 grams each were drawn from a package Cartap Hydrochloride 4% G, in accordance with the procedure laid down in the Act. Three sealed samples each comprising of 250 grams bearing seal 'II AGR FZR' were prepared on the same day i.e. 28.06.2007, in the presence of Sh. Harish Chander, proprietor of the firm and the Agriculture Officer. Out of three sealed samples, one of the sample was handed over to Harish Chander. Thereafter, the remaining two samples were submitted in the office of Chief Agriculture Officer, Ferozepur on 29.06.2007. One of the sample was sent to Insecticide Testing Laboratory, Amritsar 03.07.2007 and the remaining sample was kept in the office of Chief Agriculture Officer, Ferozepur.

4. Learned counsel of the petitioner, *inter alia*, contends that petitioner Hemang Manhar Gandhi resigned from the Board of Directors on 03.12.2003 i.e prior to filing of the complaint (*supra*). Thus, he was not the Director at the time of alleged offence and therefore, he is not responsible for day to day affairs of business since he was not incharge of the business. Furthermore, there is nothing on record to show that the petitioner, in any way, was responsible for the conduct of the business when the alleged offence was

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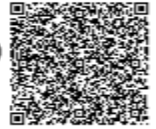


committed. Moreover, notice was never served upon the petitioner, as the address was incorrect in the complaint.

5. Learned counsel for the petitioner(s) further contends that the sample for testing was taken from the original packing, as packed by the manufacturer/marketing and there is no tampering with the packing, as the same was intact in its original form hence, the petitioner will be covered by the defence as provided under Section 30(3) of the Act. Further, there is no allegation that the petitioner(s) were selling insecticide in loose quantity or storing in an unfavourable conditions. Since the packing was done by the manufacturer, as such, there are no chances of lesser active ingredient besides adulteration. Moreover, learned counsel further submit that the petitioner(s) are not the suppliers of the insecticides on behalf of the manufacturer M/s Coromandel Agrico Pvt. Ltd.

6. *Per contra*, learned State counsel contends that as per the test report of Senior Analyst, Insecticide Testing Laboratory, Amritsar, the sample was declared misbranded and the active ingredient was also 3.51% as opposed to 4% G. Thereafter, on the request of the dealer, a second sample was sent to Central Insecticide Laboratory, Faridabad. However, the same was returned with the remarks that declared misbranded and the active ingredient was also 2.78% as opposed to 4% G.

7. Having heard learned counsel for the parties and after perusing the



record of the case with their able assistance, it transpires that in the present case, the genesis revolves around the case set up by the respondent regarding the substandard quality of the Cartap Hydrochloride 4% G (*supra*). At this stage, it would be beneficial to study Section 33 of the Act:-

“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

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firm or other association of individuals; and
(b) "director", in relation to a firm, means a partner in the
firm."

8. Further, the relevant portion of Section 30 of the Act reads as below:-

"30. Defences which may or may not be allowed in prosecutions under this Act.-

3. A person not being an importer or a manufacturer of an insecticide or his agent for the distribution thereof, shall not be liable for a contravention of any provision of this Act, if he proves-

(a) that he acquired the insecticide from an importer or a duly licensed manufacturer, distributor or dealer thereof;

(b) that he did not know and could not, with reasonable diligence, have ascertained that the insecticide in any way contravened any provision of this Act; and

(c) that the insecticide, while in his possession, was properly stored and remained in the same state as when he acquired it."

9. The prime question before this Court in CRM-M-38779-2011 is whether a Director, who has resigned from such position and this fact stands recorded in the books as per the relevant rules and statutory provisions, can be held liable. Reliance in this regard can be placed on a two Judges Bench judgment of the Hon'ble Supreme Court in ***Anita Malhotra Vs. Apparel Export Promotion Council and another, 2011(4) RCR (Crl.) 835***, speaking through Justice P. Sathasivam, has held that:-

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*“In case of a Director, complaint should specifically spell out **how and in what manner the Director was in charge of or was responsible to the accused Company for conduct of its business** and mere bald statement that he or she was in charge of and was responsible to the company for conduct of its business is not sufficient. The complainant has not specified or elaborated the role of the appellant in the day to day affairs of the Company.”*

10. Further, a similar question arose before the Hon’ble Supreme Court in the case of ***Rajesh Viren Shah Vs. Redington India (Limited), 2024 (2) RCR (Criminal) 13***, speaking through Justice Sanjay Karol, in which it has been held as below:

*“The position of law as to the liability that can be fastened upon a Director is no longer res integra. Before advertng to the judicial position, we must also take note of the statutory provision that **every person who at the time of the offence was responsible for the affairs/conduct of the business of the company, shall be held liable and proceeded against with exception thereto being that such an act, if done without his knowledge or after him having taken all necessary precautions, would not be held liable.***

*Further, **the act of resignation simpliciter has not been questioned.** As such, the basis on which liability is sought to be fastened upon the instant appellant(s) is rendered questionable.”*

11. Further, a Co-ordinate Bench of this Court in the case of ***Anand Fredrick Vs. State of Punjab***, passed in ***CRM-M-22217-2011***, decided on 28.01.2013 held that once it is proved on record by documentary evidence that the petitioner was no more Managing Director of the company, he cannot be



held vicariously liable or responsible on the part of the company or person responsible for the affairs of the company.

12. In view of the judgments of the Hon'ble Supreme Court and of this Court referred to above, this Court opines that as per the record of the firm, the petitioner is not a managing partner of the business owing to his resignation. Therefore, he is not liable for the alleged offence. Furthermore, as regards the other petitioner(s), since there is no question as to tampering with the packing in the hands of the petitioner(s), therefore, no question of lesser active ingredient by the petitioner(s) arises.

13. It is pertinent to mention that the complaint (*supra*) was filed after the shelf life of the insecticide expired i.e after March 2009. Reliance in this regard can be placed on the decision of the Hon'ble Supreme Court in the case of ***M/s Gupta Chemicals Pvt. Ltd. and others Vs. State of Rajasthan and another, 2002 (4) RCR (Criminal) 762***, the relevant portion reads as follows:

“The resultant position is that due to sheer inaction, it has not been possible for the appellant to have the sample examined by the central insecticides laboratory and in the meantime, the shelf-life of the sample of insecticide seized had expired and for that reason no further step could be taken for its examination.”

14. Reliance can also be placed upon a judgment passed by a two Judges Bench of the Hon'ble Supreme Court in the case of ***Northern Mineral Ltd. Vs. Union of India and another, 2010 (7) SCC 726***, speaking through Justice C.K. Prasad, wherein the following was observed: -

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“The position therefore which emerges is that by sheer inaction the shelf life of the sample of insecticides had expired and for that reason no step was possible to be taken for its test and analysis by Central Insecticides Laboratory.”

15. As an upshot of above discussion, all these three petitions are allowed and Complaint No.56/56-2 dated 27.01.2010 titled as ‘*State through Sh. Resham Singh, Insecticide Inspector, Ferozepur Vs. M/s Harish Traders and others*’ and the summoning order dated 27.01.2010 passed by learned Chief Judicial Magistrate, Ferozepur as well as all the consequential proceedings arising out of the complainant (*supra*) are hereby quashed qua the petitioner(s).

16. All the pending miscellaneous application(s), if any, shall stand disposed of.

17. Photocopy of this order be placed on the files of connected cases.

[HARPREET SINGH BRAR]
JUDGE

23.01.2025
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No