

2025:PHHC:023627



132.

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

CRM-M-23159-2023

Date of decision: 17.02.2025

Uday Raj Anand and another

.... Petitioners

Versus

State of Punjab

.... Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Rakesh Verma, Advocate, for the petitioners.

Mr. H.S.Deol, Senior DAG, Punjab.

MANJARI NEHRU KAUL, J. (ORAL)

The present petition has been filed under Section 482 of Cr.P.C. seeking quashing of complaint dated 27.02.2023 (Annexure P-1) filed under Sections 3(k)(i), 17, 18 & 33 of the Insecticides Act, 1968 (hereafter referred to as the Act) and Rule 10(4) of the Insecticides Rules, 1971, punishable under Section 29 of the Act; and the summoning order dated 27.02.2023 (Annexure P-2) passed by learned Chief Judicial Magistrate, Mansa.

The allegations, as set out in the complaint, may be summarized as follows:

On 19.01.2022, Insecticides Inspector, Sahil Kumar (hereinafter referred to as the Inspector) inspected the premises of M/s Atla Kheti Sewa Centre, Joga Bhikhi, District Mansa (hereinafter referred to as

the firm). During the inspection, he collected a sample of insecticide, namely, Clodinafop-Propargyl 15% WP, bearing Batch No.LLS-200902, manufacturing date 02.09.2020, expiry dated 01.09.2022, allegedly manufactured by M/s Leeds Lifescience Private Limited, VPO Fatehgarh, Tehsil Naaingarh, District Ambala (hereinafter referred to as the manufacturing Company) and supplied by M/s Parijat Industries Private Limited, Bathinda (hereinafter referred to as the supplier Company).

The sample was drawn in accordance with the prescribed procedure under the Act and was sent for analysis to the Senior Analyst, Insecticide Quality Control Laboratory, Amritsar (hereinafter referred to as the Amritsar Laboratory). The test report received on 10.02.2022, declared the sample to be misbranded.

Upon obtaining the necessary sanction from the competent authority, the complaint was filed before the learned Chief Judicial Magistrate, Mansa. Vide order dated 27.02.2023, all accused, including the present petitioners, were summoned to face trial.

SUBMISSIONS OF THE PETITIONERS

Learned counsel for the petitioners contends that the summoning order is legally unsustainable as the complaint itself fails to make out any prima facie case against them. It is argued that:

- (i) the petitioners were neither the manufacturers nor the importers of the alleged misbranded insecticides. Being

merely retailers, they had no role in the manufacturing or quality control of the product;

- (ii) the insecticide sample was drawn from a sealed and intact container, and there are no allegations of tampering. In the absence of any knowledge or means to ascertain misbranding, the petitioners cannot be held liable under the Act;
- (iii) reliance has been placed upon *M/S Kisan Beej Bhandar, Abohar Versus Chief Agricultural Officer, Ferozpur, 1990 (Supp) SCC 11*, wherein the Hon'ble Supreme Court held that a dealer cannot be held liable under the Act when the product is received in a sealed condition, unless it is shown that he had knowledge of its misbranding;
- (iv) further reliance has been placed upon *State of NCT of Delhi Vs. Rajiv Khurana, 2010(3) RCR (Criminal) 912*, to argue that in the absence of specific allegations attributing a direct role to the accused in the commission of the offence, mechanical summoning order cannot be sustained.

SUBMISSIONS OF THE STATE

Per contra, learned State counsel opposes the prayer and submissions by arguing that:

- (i) the petitioners were actively engaged in the sale of a misbranded insecticide and, therefore, cannot feign ignorance;
- (ii) the Act imposes strict liability, and compliance with the provisions governing the sale of insecticides is mandatory. The petitioners failed in their duty by dealing in a misbranded insecticide, thereby attracting penal consequences;
- (iii) the defences raised by the petitioners are factual in nature and should be examined during trial, rather than at the present stage under Section 482 of Cr.P.C.;
- (iv) however, learned State counsel, on instructions does not dispute that the insecticide was found in a sealed and intact condition when the sample was drawn.

I have carefully considered the submissions advanced by learned counsel for the parties and perused the material on record.

The primary issue before this Court is whether a retailer or supplier, such as the petitioners, can be held liable under the Act for the sale of an insecticide that was later found to be misbranded, despite it being in a sealed and intact condition at the time of purchase and sale.

At the outset, it is imperative to examine the relevant provisions of the Act. Section 3(k)(i) of the Act is reproduced as under:-

“3 (k) “misbranded”—an insecticide shall be deemed to be misbranded—

(1) 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;

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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, 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 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 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 tc" (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 tc" (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 tc" (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 tc" (d) sells or distributes an insecticide, in contravention of section 27; or" (e) causes an insecticide, the use of which has been prohibited under section 27, to be used by any worker; or tc"

(e) causes an insecticide, 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, tc" (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; tc" (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.] tc" (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 26 [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]. tc "(2) Whoever uses an insecticide in contravention of any provision of this act or any rule made thereunder shall be punishable with fine 1[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— tc "(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], tc" (i) for the first offence, with imprisonment for a term which may extend to 2[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]. tc" (ii) for the second and a subsequent offence, with imprisonment for a term which may extend to 3[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. to

"(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."

Adverting to the case in hand, a bare perusal of the complaint reveals that the petitioners are neither the manufacturers nor the importers

of the alleged misbranded insecticides, ruling out the applicability of Section 17 of the Act. Further, there are no specific allegations that the petitioners sold unregistered or prohibited insecticides under Section 18 of the Act. Rather, as not disputed by the State also, the sample was drawn by a sealed and intact package, and there are no allegations of tampering.

In *M/s Kisan Beej Bhandar (supra)*, the Hon'ble Supreme Court held that if an insecticide is received and sold in a sealed condition, the liability for misbranding cannot be fastened upon the dealer in the absence of evidence indicting knowledge of misbranding. The reliance placed is as follows:

“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.”

Likewise, in ***Rajesh Khurana (supra)***, the Hon'ble Supreme Court emphasized that the complainant must state with specificity how the accused was incharge of the affairs of the Company and responsible for the alleged contravention. The mere designation of an individual as a Director or officer is insufficient to sustain prosecution.

Applying the aforesaid principles to the present case, it is evident that the complaint lacks specific allegations against the petitioners regarding any direct role in misbranding. The mere fact that they supplied a product in a sealed condition, without any allegation of knowledge or complicity in misbranding, does not suffice to establish their culpability under the Act.

In view of above analysis and the settled legal position, the prosecution of the petitioners is not sustained. Consequently, the present petition is allowed. The complaint dated 27.02.2023 (Annexure P-1) and all consequential proceedings, including summoning order dated 27.02.2023 (Annexure P-2), are hereby quashed qua the petitioners.

(MANJARI NEHRU KAUL)
JUDGE

February 17, 2025
sanjeev

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