

2025:PHHC:024478



130.

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

CRM-M-43359-2022

Date of decision: 17.02.2025

Hardev Singh 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 06.07.2020 (Annexure P-1) filed under Sections 3(k)(i), 17, 18, 29 & 33, punishable under Section 29 of the Insecticides Act, 1968 (hereafter referred to as the Act) read with Rule 27(5) of the Insecticides Rules, 1971; and the summoning order dated 06.07.2020 (Annexure P-2) passed by learned Sub-Divisional Judicial Magistrate, Zira, District Ferozepur.

The case originates from an inspection conducted on 06.07.2020 by Inspector Rajneesh Kumar at the premises at M/s Bapu Gurdial Singh Pesticides and Fertilizers (hereinafter referred to as the firm). During the inspection, a sample of the insecticide, namely, Chlorpyrifos 50%+Cypermethrin 5% EC, bearing batch No.T-297, having manufacturing

date 01.04.2019 and expiry date 31.03.2021, was collected. The insecticide was purportedly manufactured by M/s Thakur Chemicals Limited (hereinafter referred to as the Manufacturer Company).

The sample collection was conducted in accordance with the law, and one of the three sealed samples was sent to the Senior Analyst at the State Insecticide Testing Laboratory, Amritsar. The test report dated 16.08.2019 declared the sample “misbranded”, as one of its active ingredients was below the prescribed specifications. A reference sample was subsequently sent to the Central Insecticide Laboratory, Faridabad, which confirmed the misbranding. Based on these reports, and after obtaining sanction from the competent authority, a complaint was lodged against the petitioners, leading to their summoning by the trial Court vide order dated 06.07.2020 (Annexure P-2).

Learned counsel for the petitioners contends that the summoning order (Annexure P-2) is legally unsustainable as the complaint does not disclose any offence against them. The petitioners are neither the manufacturers nor the importers of the insecticides in question but are merely retailers, who stocked and sold it in its original sealed packaging.

It is argued that under Section 30(3) of the Act, a dealer, who sells an insecticide in the same sealed condition as received from the manufacturer is entitled to statutory protection from liability. There are no allegations that the petitioners tampered with the product or had knowledge of its misbranding. Reliance has been placed on *M/S Kisan Beej Bhandar,*

Abohar Versus Chief Agricultural Officer, Ferozpur, 1990 (Supp) SCC

11, wherein the Hon'ble Supreme Court categorically held that a dealer cannot be held liable for misbranding if the product was received in a sealed and intact condition.

Further reliance is placed on *State of NCT of Delhi Vs. Rajiv Khurana, 2010(3) RCR (Criminal) 912*, to argue that for prosecution under Section 33 of the Act, specific averments regarding the role and responsibility of the accused must be made. It has been asserted that the present complaint (Annexure P-1) lacks such particulars.

Per contra, learned State counsel has opposed the petition by contending that the petitioners were engaged in selling misbranded insecticides, thereby violating the provisions of the Act. It is contended that ignorance of the contents of the product cannot absolve them of liability. However, the learned State counsel does not dispute the fact that the samples were drawn from sealed and intact packaging. It is further argued that the defence of the petitioners cannot be delved into at this stage, and should be examined only during the trial.

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

The primary issue for consideration is whether the petitioners, as retailers, can be held liable under the Act for selling an insecticide found to be misbranded despite it being in a sealed and intact condition.

A perusal of the complaint reveals that the petitioners are neither the manufacturers nor the importers of the misbranded insecticides.

Thus, the provisions of Section 17 of the Act, which prohibit the manufacture or import of misbranded insecticides, are inapplicable to them.

Similarly, Section 18 of the Act prohibits the sale of unregistered or prohibited insecticides. However, there is no allegation that the insecticide in question was unregistered or banned under Section 27 of the Act. The charge under Section 18 of the Act is, therefore, not sustainable.

Reliance placed by the learned State counsel on Section 29 of the Act which prescribes penalties for selling misbranded insecticides, also does not hold ground. The Hon'ble Supreme Court in *M/S Kisan Beej Bhandar (supra)* has categorically held that a dealer, who sells an insecticide in its original sealed condition cannot be held liable for misbranding. The relevant observations of the Hon'ble Supreme Court are 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.”

Furthermore, in *State of NCT of Delhi Vs. Rajiv Khurana’s case (supra)*, the Hon’ble Supreme Court held that vicarious liability under Section 33 of the Act cannot be imposed without specific allegations detailing how an accused was responsible for the conduct of the business of the Company. The complaint in the present case lacks any such particulars regarding the petitioners.

In view of the settled legal position, it is evident that the prosecution against the petitioners is unsustainable. The complaint (Annexure P-1) lacks the necessary ingredients to constitute an offence under Sections 17, 18, 29 or 33 of the Act against the petitioners.

Given that the insecticide was received in a sealed and intact condition, the petitioners are entitled to the protection provided under Section 30(3) of the Act.

Consequently, the instant petition is allowed and the complaint (Annexure P-1) along with all consequential proceedings arising therefrom including the summoning order (Annexure P-2) is quashed qua the petitioners.

(MANJARI NEHRU KAUL)
JUDGE

February 17, 2025
sanjeev

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No