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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: 29th January, 2025*

+ **CRL.M.C. 3153/2017 & CRL.M.A. 13011/2017**

SHRI VIVEK GAMBHIR
Managing Director,
M/s Godrej Consumer Products Limited
having its registered office at
Ahura Center, 5th Floor,
96, Mahakali Caves Road,
Andheri (East),
Mumbai 400 093

.....Petitioner

Through: Mr. Rajeev K. Virmani, Sr. Advocate
with Mr. Vaibhav Singh Bhadana &
Mr. Hrithik Sharma, Advocates.

versus

LICENSING OFFICER (INSECTICIDE)
Through Insecticide Inspector
O/o Head of Office (Plant Protection)
Government of NCT of Delhi
11th Floor, M.S.O. Building,
IP Estate, New Delhi

.....Respondent

Through: Mr. Shoaib Haider, APP for State.
Mr. Babu Ram, Inspector Insecticide.

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+ **CRL.M.C. 3273/2017 & CRL.M.A. 13438/2017**

K KUMAR
Senior Executive - Research & Development,
M/s Godrej Consumer Products Limited
having its office at



Re-Survey No. 239/3, 239/4, 249/5, 240/6
Kurumbagaram, Nedungadu Commune
Karaikal - 609 603

.....Petitioner

Through: Mr. Rajeev K. Virmani, Sr. Advocate
with Mr. Vaibhav Singh Bhadana &
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IP Estate, New Delhi

.....Respondent

Through: Mr. Shoaib Haider, APP for State.
Mr. Babu Ram, Inspector Insecticide.

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CRL.M.C. 3275/2017 & CRL.M.A. 13443/2017

V SUBRAMANIAN
Executive - Quality Control,
M/s Godrej Consumer Products Limited
having its office at
Re-Survey No. 239/3, 239/4, 249/5, 240/6
Kurumbagaram, Nedungadu Commune
Karaikal - 609 603

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Through: Mr. Shoaib Haider, APP for State.
Mr. Babu Ram, Inspector Insecticide.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

% **J U D G M E N T (oral)**

1. The aforesaid three Petitions under Section 482 Code of Criminal Procedure, 1973 (*hereinafter referred to as 'Cr.P.C.'*) have been filed by the Petitioners seeking quashing of Order dated 22.07.2017, of the learned Metropolitan Magistrate, Delhi *vide* which the Application of Petitioners for deletion of their names as accused persons in a Complaint filed under Section 3(k) read with Section 29(1)(a) of the Insecticide Act, 1968 by the Respondent, was dismissed *vide* impugned Order 22.07.2017.

2. ***Facts in brief*** are that Sh. Somvir Arya, Insecticide Inspector, Delhi, on 31.01.2014, visited the Godown/sale counter of Accused No. 1/M/s Malik Enterprises for inspection of Insecticides and Records. He purchased three packets of Prallethrin 0.05% w/w M. Coll batch No. 007 bearing the manufacturing date of October, 2013 with expiry date of two years from the date of manufacturing, *vide* Retail Invoice No. SAL1307023 dated 31.01.2014. The product was manufactured by Godrej Consumer Products Limited (*hereinafter referred to as 'GCPL'*). The samples of the Product in question, was sealed in three containers, in the presence of Mr. Janmeet Singh, Proprietor of M/s Malik Enterprises (Accused No. 1). One sealed



container was handed over to Mr. Janmeet Singh, while the second container was retained in the Office of the Respondent and the third container was sent to Insecticide Analyst.

3. The Report dated 20.02.2014 was received from Regional Pesticide Testing Laboratory (*for short* 'R.P.T.L. '), Chandigarh, which stated that "*the sample does not conform to the relevant Specification in the test conducted.*" The result of R.P.T.L., Chandigarh was communicated to the accused *vide* Memorandum dated 31.07.2014 along with a copy of the said Report. Accused No. 1 on 31.07.2014, responded through an undated Letter stating that he had no stock of the product as of that date.

4. Accused No. 2/GCPL in their Reply dated 20.08.2014, raised doubts about the inspection and the Report.

5. Mr. Janmeet Malik/Accused No. 1 later submitted another response on 08.08.2014 with a Certificate from Accused No. 2/GCPL again questioning the Report.

6. In response to the Letter dated 01.09.2014 sent by the Respondent informing him that he could seek retest of sample from Central Insecticides Laboratory (*for short* 'CIL '), Accused No. 1, Mr. Janmeet Malik sought retest on 15.09.2014. The Sample was tested again by CIL, which by its Report dated 08.10.2014, *confirmed that the sample was misbranded.*

7. Show Cause Notice was issued on 18.11.2014 along with the Retesting Report to which the Accused No. 2/GCPL replied, but the response was not satisfactory.



8. Additionally, the Accused No. 2/GCPL submitted Affidavits during their License Renewal Application, naming Mr. K. Kumar and Mr. V. Subramanian as the persons responsible for quality control under Section 33 of the Insecticide Act, 1968.

9. After considering all the facts and circumstances, Respondent filed the Complaint No. 997/1/2015 under Section 200 CrPC dated 27.02.2015 in the Court of learned ACMM, New Delhi.

10. The *learned Metropolitan Magistrate took cognizance* on the Complaint on 16.04.2015 for offences under Section 3(k) read with Section 29(1)(a) of the Insecticide Act, 1968 and issued summons to the accused persons.

11. The Petitioners have asserted that on 05.10.2015, Mr. Sanjeev Kumar Sharma, Manager of GCPL, filed an Application under Section 305 CrPC for appointing him as an Authorised Representative of Accused Nos. 2 and 3, which was allowed and Mr. Sanjeev Kumar Sharma was allowed to represent GCPL. This Order dated 05.10.2015 was never challenged by the Complainant and has attained finality.

12. Subsequently, another Application was filed on 05.10.2015 itself on behalf of the GCPL for deletion of name of Accused No. 2/ GPCL through Mr. Vivek Gambhir, Managing Director and Accused No. 3/GCPL, through Mr. K. Kumar and Mr. V. Subramanian, from the array of accused. This Application was rejected by the learned Metropolitan Magistrate, on 22.07.2017 and the Petitioners were directed to appear in person.



13. Aggrieved, the present Petitions have been filed by the Petitioners for quashing of the impugned Order.

14. ***It is submitted on behalf of the Petitioners in the Petition, and also reiterated the assertions in the Written Synopsis*** that the Memo of Parties, reveals that the Complaint was filed only against M/s Malik Enterprises and the Company GCPL; but it has been summoned as Accused No. 2 through Mr. Vivek Gambhir, the Managing Director and also as Accused No.3 through Mr. K. Kumar and Mr. V. Subramanian, as the Authorised Representatives of GCPL. It is asserted that from the Memo of Parties, it is evident that the names of MD/Authorized Representatives has been mentioned in compliance of Section 63 CrPC, which requires that the summons on a Company have to be effected through its Secretary or Local Manager or any other Principal Officer or Chief Officer.

15. Further, perusal of the contents of the Complaint reveals that the Accused Nos. 2 and 3 are both GCPL i.e. the same Company and that the Petitioner, Mr. Vivek Gambhir as well as Mr. K. Kumar and Mr. V. Subramanian, are not the named accused in the Complaint.

16. While acknowledging that the Accused Nos. 2 and 3 were both GCPL, learned Metropolitan Magistrate had allowed Accused GPCPL (at serial number Nos. 2 and 3), to be represented through its Authorised Representative, Mr. Sanjeev Kumar Sharma, *vide* Order dated 05.10.2015 under Section 305 CrPC. Once the Company was allowed to be represented through an Authorised Representative, the question of treating the



Petitioners, Mr. Vivek Gambhir and Mr. K. Kumar and Mr. V. Subramanian as Accused No.2 and 3 respectively, does not arise.

17. However, despite the identity of GCPL, (Accused Nos. 2 and 3) being settled by the learned Metropolitan Magistrate in its Order dated 05.10.2015, learned Metropolitan Magistrate subsequently in an arbitrary and a complete contradictory manner, went ahead and directed Mr. Vivek Gambhir/ and Mr. K. Kumar and Mr. V. Subramanian, Petitioners in respective Petitions to appear before the Court on 21.08.2017, on a wholly erroneous and baseless assumption that the Petitioner was an accused in his personal capacity, which is not correct.

18. It is submitted that where Company has been made an Accused, through its Managing Director or Director or any other Officer, it does not mean that the Managing Director or Director or an Officer is an Accused in its personal capacity. A Corporation or Company can be represented through any Authorised Representative of its choice and there is no requirement in law that the Company can be represented only through its Managing Director. The learned Metropolitan Magistrate has completely ignored and disregarded that every person against whom the Complainant wishes to initiate prosecution, must be shown as an accused individually in the Complaint. The Order dated 05.10.2015 of learned Metropolitan Magistrate was not subject to any review, as has been done *vide* the impugned Order dated 22.07.2017.

19. Once the cognizance was taken on the Complaint, the only procedure available in law to bring in any person as an Accused (other than the



Accused named in the Complaint), is by taking recourse to Section 319 CrPC, which too can be done only after completion of trial or enquiry, as the case may be. In the instant case, cognizance was taken only against the GCPL and not against the Petitioners in their individual capacity. Section 319 of CrPC could not have been invoked in the present case as trial has not even commenced. Furthermore, there are no specific allegations in the Complaint against the Petitioners or having played any role alleged to have been committed by the GCPL.

20. The Petitioners, therefore, could not have been summoned as Accused in their individual capacity.

21. It is, therefore, submitted that the Order dated 22.07.2017 summoning the Petitioners respectively, is bad in law and be set-aside.

22. Reliance has been placed on M/s Pepsi Foods Ltd. & Anr. vs. Special Judicial Magistrate and Ors., (1998) 5 SCC 749 wherein it was observed that the Order of the Magistrate summoning the accused, must reflect application of mind to the facts of the case and the law applicable thereto.

23. Reliance has also been placed on Monsanto India Ltd. vs. State of U.P. and Anr., Order dated 17.01.2013 in CrI. Appeal No. 770/2007; Anil Ambani and Anr. vs. The State of Bihar and Anr., 2006 SCC Online Pat 781; Lokesh Kumar Singh vs. Lalit Mohan and Anr., 2011 SCC OnLine Raj 956 and Sanjay Gambhir vs. State & Anr., 2017 SCC OnLine Del 8331.

24. It is further contended that Section 31 of the Insecticide Act mandates that no prosecution under the Act can be instituted without written consent of the State Government or the person so authorised by the State



Government. The Consent Order dated 27.02.2015 which authorises institution of the Complaint against the M/s Malik Enterprises and GCPL, nowhere consented to the prosecution of the Petitioners. Section 31(1) of the Act prohibits institution of the prosecution except on fulfilment of one or the other of the two conditions, none of which have been complied in the present case as so far as the Petitioner is concerned.

25. In this regard, the Petitioner has placed reliance on A K Roy & Anr. vs. State of Punjab & Ors., (1986) 4 SCC 326; Consumer Action Group vs. Cadbury India Ltd. and Anr., (2000) 9 SCC 56, Para 5; Sanjay Aggarwal vs. State of Punjab, 2012 SCC OnLine P&H 17049 and Yogesh Dutt and Anr. vs. State of Punjab, 2019 SCC OnLine P&H 5970.

26. It is, therefore, asserted that no allegations have been made against the Petitioner in the Complaint and no role has been assigned to him. It is further contended that *vide* Order dated 16.04.2015, cognizance had been taken only against M/s Malik Enterprises and GCPL (Accused Nos. 2 and 3) but no cognizance was ever taken against the Petitioner. Therefore, the impugned Order is bad in law. In this regard, reliance has been placed on Managing Director, Castrol India Ltd. vs. State of Karnataka and Anr., (2018) 17 SCC 275.

27. Furthermore, *vide* Order dated 05.10.2015, learned Metropolitan Magistrate had allowed the Application of GCPL, to be represented through Mr. Sanjeev Kumar Sharma as its Authorised Representative. Despite this Order, learned Metropolitan Magistrate *vide* its impugned Order dated 27.07.2015 has reviewed its earlier Order, which is not permissible in law.



Reliance has been placed on Adalat Prasad vs. Roopla Jindal & Ors., (2004) 7 SCC 338 and Sanjay Gambhir vs. State & Anr., 2017 SCC OnLine Del 8331.

28. It is, therefore, submitted that the impugned Order is liable to be set-aside.

29. *The Respondent in its Reply* has submitted that the present Petition is not maintainable in law as all the relevant facts were considered along with the Reports from the Government Laboratories, which conclusively established the offences committed by the accused persons. The Order taking cognizance against the Petitioner, is in accordance with law and the Petition is liable to be dismissed.

30. *Learned counsel on behalf of the Respondent* has contended that there is no infirmity in the impugned Order and the Petition is liable to be dismissed.

31. *The Petitioner in his Rejoinder* took preliminary objection that no case is made out against the Petitioner from the allegations contained in the Complaint and therefore, it is liable to be quashed. In response to merits, all the averments made in the Reply, are denied and the contents of the Petition, are reiterated.

32. **Submissions heard and the record perused.**

33. The *main contention* of the Petitioners is that they were not the accused persons in their personal capacity and also were not summoned; rather it was the Company, GCPL which had been named as an accused by the Licensing Officer (Insecticide).



34. The basic contents of the Complaint dated 27.02.2015 under Section 200 CrPC were that on an inspection conducted in the premises of M/s Malik Enterprises on 31.01.2014, the Licensing Officer (Insecticide) purchased Prallethrin 0.05% w/w M. Coil batch No. 007 for Rs.75/- which found positive for misbranding.

35. The only averment made in the Complaint is that the product was being sold at the premises of M/s Malik Enterprises and the product was manufactured by GCPL. It is, therefore, evident from the entire Complaint that the allegations against GCPL were it being the Company which manufactured the product and no individual role *per se* had been assigned to these three persons namely, Mr. Vivek Gambhir, Managing Director or Mr. K. Kumar and Mr. V. Subramanian, Representatives of GCPL.

36. It is evident that GCPL by way of abundant caution had been summoned through its Managing Director as well as through its representatives, Mr. K. Kumar and Mr. V. Subramanian. In this context, it is pertinent to refer to **Section 63 Cr.P.C.**, which provides that the service of the summons may be effected on a Corporation by serving it on the Secretary, Local Manager or other Principal Officer of the Corporation or by letter sent through registered post, in which case the service shall be deemed to have been effected when the Letter would arrive in ordinary course of post.

37. **Section 63** merely provides the manner in which the summons may be served upon a corporate body. It does not define which officers of the Company can be arrayed as accused. In the present case as well, the service



of summons has been duly effected on the Accused Nos.2 & 3 i.e. GCPL Company in accordance with Section 63 of CrPC and the factum of service has not been challenged. However, merely because GCPL has been served through the three Petitioners, would not in any way make them the accused, as defined under Section 33 of Insecticides Act.

38. Here, reference is made to Anil D. Ambani & Anr. (supra) wherein it was observed that merely because the summons were served on the Company through the Petitioners, it would not make them accused in their individual capacity.

39. In this context, it would be pertinent to refer to **Section 33 Insecticides Act** which defines **offences by Companies**. It states that whenever an offence is committed by a Company, every person who at the time that offence was committed *was in charge or was responsible to the Company for the conduct of the business 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.*

40. Pertinently in the present case, it is the Company which has been proceeded against and there are no specific averments made about either, Vivek Gambhir, K. Kumar or V. Subramanian, in their individual capacity. There is not a single averment about them being responsible for the conduct of the business of the Company. The allegations are purely confined against GCPL, the Company.

41. In this context, reference may also be made to Managing Director, Castrol India Ltd vs. State of Karnataka and Anr., (2018) 17 SCC 275



wherein it was observed that where the Managing Director was made vicariously liable as he was the Managing Director at the relevant point of time; with there being no statement of he being responsible or in charge of conduct of the business of the Company, the vicarious liability cannot be fastened on him. There must be *clear and categorical statement in the Complaint against the Managing Director to make him liable for the offence for which the Complaint is filed.*

42. This aspect is fortified by the ***Written Consent under Section 31 of the Insecticides Act.*** It provides for ***cognizance and trial of offences*** and mandates that no prosecution for any offence under the Act can be instituted except with the **written consent** of the State Government or a person authorised in this regard by the State Government.

43. In the Consent Order dated 27.02.2015 annexed with the Complaint, it is specifically mentioned that M/s Malik Enterprises was found selling misbranded products manufactured by M/s. Godrej Consumer Products Ltd (GCPL) in violation of Section 29 and, therefore, the consent for institution of the case under Section 29 read with Rule 71 was granted against the following firms, its concerned officials, etc. namely:-

- (i) *M/s. Malik Enterprises through its authorised proprietor;*
- (ii) *M/s. Godrej Consumer Products Ltd through its Managing Director Vivek Gambir; and*
- (iii) *M/s. Godrej Consumer Products Ltd through its authorised persons namely Mr. K. Kumar and Mr. V. Subramaniam.*



44. In the present case, it is evident from the Complaint as well as the Consent Order, that the accused persons were the M/s Malik Enterprises (Proprietorship Firm) and GCPL, which was represented through its Managing Director Sh. Vivek Gambhir, M.D; and /authorised representatives Sh. K. Kumar and Sh. V. Subramanian, who had not been sued in their individual capacity.

45. In the case of Monsanto India Ltd vs. State of U.P. and Ors, CrI. Appeal No.770/2007 decided on 17.01.2013 by the Apex Court in a similar situation where the consent had been given under Section 31 of Insecticides Act in the name of the Company i.e. M/s. Monsanto India Ltd., concluded that no statutory Consent was granted in the individual name of the representative of the Company and thus, such Officer of the Company cannot be arrayed as an accused.

46. The facts in the present case are *pari materia* to the case of Sanjay Aggarwal, vs. State of Punjab through Insecticide Inspector, Baddowal, District Ludhiana, (2012) 4 RCR (CrI) 988 wherein it was held that launching of the prosecution should be done individually and not through the Company. If the sanction is through the Company, then it is deemed to be a sanction for initiating the proceedings against the Company which may be represented through its authorised representative.

47. It may thus, be concluded that the Complaint as well as the Consent Order is filed only against the Company, GCPL and not against the M.D or the authorised representative in their individual capacity. So, being the case, they could not have been summoned as accused in their individual capacity.



48. Pertinently, in the Complaint it was mentioned that while applying for renewal of license, GCPL had filed various documents including the Affidavits dated 16.10.2014, in which they stated that Mr. K. Kumar and Mr. V. Subramanian are the responsible persons for the quality control under Section 33 of the Insecticides Act, 1968. These Affidavits are, however, dated 16.10.2014, while the inspection of the premises was conducted on 31.01.2014 i.e. much prior to the date of execution of these Affidavits.

49. V. Subramanian and K. Kumar may have been subsequently appointed as representatives, but there is not an iota of averment that on the date of inspection they were the persons who were representing the Company. Therefore, the only inevitable conclusion is that there are no averments made against the three Petitioners namely Vivek Gambhir, K. Kumar and V. Subramanian in their individual capacity, disclosing that they were responsible for the conduct of the business of the Company.

50. The *next aspect* which is of significance is that on service of the summons for appearance of the Corporate Body, the procedure for its representation of Corporation is given under Section 305 CrPC. Clauses 2 & 3 of Section 305 provide that on receiving the summons sent to the Corporation, it may appoint any Officer to represent the Company as an accused before the Court.

51. Accordingly, on receiving the summons *vide* Order dated 16.04.2015, Application under Section 305 CrPC was filed by the GCPL seeking appointment of Sh. Sanjeev Kumar Sharma as its authorised representative, which was allowed by the learned M.M. *vide* Order dated 05.10.2015.

***Conclusion:***

52. Considering that the summons had been served on the Company i.e. GCPL and not on the individual Officers in their individual capacity and further considering that the Court had duly allowed the Application under Section 305 CrPC for the representation of GCPL through its authorised representative on 05.10.2015, the Petitioners herein could not have been directed to be served in their individual capacity.

53. In view of the aforesaid observations, it is hereby held that the three Petitioners could not be arrayed as an accused in their individual capacity but it was only GCPL i.e. the Company which is an accused, which has been permitted to be represented through its authorised representative, Sh. Sanjeev Kumar Sharma.

54. The impugned Order dated 22.07.2017 is hereby set aside with the directions that the Complaint may be proceeded against M/s Malik Enterprises through its Proprietor, and Godrej Consumer Products Ltd. through its Authorised Representative, Sh. Sanjeev Kumar Sharma.

55. Petition is accordingly disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

JANUARY 29, 2025

RS/rk