

*Before Vinod S. Bhardwaj, J.*

**M/S RALLIS INDIA LIMITED AND OTHERS—Petitioner**

*versus*

**STATE OF PUNJAB THRO INSECTICIDE INSPECTOR—**

*Respondents*

**CRM-M No. 20338 of 2017**

April 20, 2022

*Code Of Criminal Procedure, 1973— S. 482—Insecticides Act, 1968 — Ss.3(k)(i), 17, 18, 24(2), 29, 33— Insecticides Rules, 1971 — RL.27(5) — Petition filed by marketing firm for quashing complaint and summoning order—Marketing agency/licensed dealer of insecticides cannot be held responsible under Insecticides Act, 1968— Contents of samples —Not disputed — Seal of sample intact at the time of sampling— Merely dealing with product and not responsible for quality— No vicarious liability for misbranding— Petition allowed.*

*Held*, that it is evident from a perusal of the petition as well as documents appended along with the same that the undisputed case of the respondent-State is that the petitioners were a marketing agent of the insecticides. It has been repeatedly so affirmed by the respondent in various paragraphs of the complaint instituted through Insecticide Inspector and already extracted above. It is also not a subject matter of dispute that the sample was drawn from a sealed packet and it is nowhere alleged that the sample had not been stored in accordance with the provisions contained under the Insecticides Act and Rules framed thereunder. There is also no allegation that the petitioners were responsible for the quality of the product as also for ensuring the labelled ingredients of the same. The petitioners are not nominated as the authorised/responsible officers in terms of Section 33 of the Insecticides Act. The statutory mandate intends to penalize a person who has committed an offence. It does not intend to prosecute the people who are merely dealing with the said product and for which they have no control as regards its quality and content. The petitioners cannot be held vicariously liable and to be penalized for misbranding of a product where they were not involved in the manufacturing process at all merely for having traded in the same. Section 3(k)(i) defines misbranding. The same relates to the label of products and its contents. It is not the case that any of the activities referred to under section 3 (k)

attracting misbranding was undertaken by the petitioners. Further, Section 17 of the Act is also not attracted against the petitioners inasmuch as the petitioners are neither the importer of the misbranded insecticides, nor manufacturer thereof. Further, the ingredients of Section 18 of the Act are also not satisfied and there is no allegation that the petitioners had indulged in the sale of the insecticides, which was either not registered under the Act or was prohibited under Section 27. Similarly, Section 29 also would not be applicable against the petitioners inasmuch as the same contemplates punishment for offences as stated above. Once the necessary ingredients of the said Sections are not satisfied against the petitioners, they cannot be penalized for the same.

(Para 22)

Sunil Chadha, Sr. Advocate with Swati Verma, Advocate,  
*for the petitioners.*

A.K. Khurana, DAG Punjab.

**VINOD S. BHARDWAJ, J.**

(1) The question which arises for consideration in the instant petition is as to whether a marketing agency/licensed dealer can be held responsible under the Insecticides Act, 1968, for the contents of the samples when it is not disputed that the seal of the sample was intact at the time of sampling?

(2) The present petition has been filed under section 482 CrPC seeking quashing of criminal complaint No.18 of 11.07.2016 (Annexure P-1) titled as 'State Versus M/s Goyal Sales Corporation and Others' pending in the Court of Judicial Magistrate First Class, Sri Muktsar Sahib for offences under Sections 3(k)(i), 17, 18, 29 and 33 of the Insecticides Act, 1968 read with Section 27(5) of the Insecticides Rules, 1971 as well as the subsequent proceedings including the order of summoning dated 11.07.2016 (Annexure P-2).

**FACTS**

(3) Complaint No.18 dated 11.07.2016 titled as 'State Versus M/s Goyal Sales Corporation and Others' was filed by the State against various persons, who were claimed to be the dealer, supplier, distributor and manufacturer under the provisions of the Insecticides Act, 1968. The petitioners in the instant petition happen to be accused No.5 and 6 in the said complaint.

(4) It is alleged that on 29<sup>th</sup> July 2013 at about 12:45 p.m., the complainant-Insecticide Inspector inspected the shop M/s Goyal Sales Corporation, Mandi Bariwala, Sri Muktsar Sahib and checked the stock register of the firm and found 40x5 kg cartap hydrochloride 4% G (brand name cartox 4G) in the stock of the firm. The complainant checked the licence of the firm and selected one pack weighing 5 KG bearing Batch No.1305049 with a manufacturing date May 2013 and expiry date April 2015, which was manufactured by M/s Agrimas Chemical Limited Skindrabad and marketed by M/s Rallis India Limited Mumbai. The relevant extract of para four is reproduced as under:-

(1) That in exercising the Powers conferred upon me vide above referred Govt. Notification, I Gurpreet Singh Insecticide Inspector, Sri Muktsar Sahib in performance of my official duties inspect the Shop M/S Goyal Sales Corporation, Mandi Bariwala, Si Muktsar Sahib on dated 29/07/2013 at about, 12:45 p.m. along, with Sh. Mukhtiar Singh, Agriculture Development Officer (DW), (Sri Muktsar Sahib).I, introduced myself as Insecticide Inspector Sri Muktsar Sahib to Sh. Vijay Kumar S/O Sh. Kewal Krishan, Proprietor and Responsible Person of the firm M/S Goyal Sales Corporation, Mandi Bariwala, Sri Muktsar Sahib who was present at the shop on the time of inspection. I checked the stock register of the firm and found 40x5kg cartap hydrochloride 4% G (brand name cartox 4G) in the stock of the firm (Annexure-D). I checked the License of the firm and selected One Pack weighing 5kg bearing Batch No. 1305049 manufacturing date May-2013 and expiry date April-2015, which was manufactured by M/S Agrimas Chemical Ltd. Skindrabad and marketed by M/s Rallis India Ltd, Mumbai.

(5) Out of the pack selected for sampling, 750 grams material was drawn and divided into three portions having approximately 250 grams each and samples were then sealed in accordance with the procedure prescribed under the Insecticides Act 1968 and the Rules of 1971. The consent of the dealer was taken before taking the samples and he was called upon to sign the relevant forms, to which he expressed his inability. Even the independent witnesses refused to associate themselves with the same. Resultantly, Agriculture Development Officer signed form No.XX as witness. The sample was

purchased vide bill No.86 dated 29<sup>th</sup> July, 2013 for Rs.60. The said samples were accordingly deposited in the office of Chief Agricultural Officer, Sri Muktsar Sahib along with Form No.XX and Form No.XXI in intact position. One sealed sample and one sealed Form No.XXI was sent by the Chief Agricultural Officer, Sri Muktsar Sahib to the Insecticide Testing Laboratory, Bathinda vide letter No.236 dated 05.08.2013 and against proper receipt and the same was deposited in the said Laboratory by the same date itself.

(6) The test report of the sample cartap hydrochloride 4% G was received in the office of Chief Agriculture Officer, Sri Muktsar Sahib on 3<sup>rd</sup> September 2013 and the sample was declared to be misbranded with the remark that the sample does not confirm I.S. specifications with respect to active ingredients content. The active ingredients were 3.54%G instead of 4%G. The relevant para to reflect the aforesaid averment in the complaint is reproduced as under:-

8. That test report of the sample cartap hydrochloride 4% G was received in the Office of Chief Agriculture Officer, SriMuktsar Sahib on dated 03/09/2013 (Annexure-I). The sample was declared miss-branded with the remarks that sample does not confirm to I.S. Specifications with respect of its percentage active Ingredient contents, hence miss- branded. The active ingredients were 3.54% G instead of 4% G.

(7) Show Cause Notice as per provisions of Section 24(2) of the Insecticides Act, 1968 was accordingly served by the Chief Agriculture Officer, Sri Muktsar Sahib to the manufacturing firm M/s Agrimas Chemical Limited and marketing firm M/s Rallis India Limited vide letter No.3589-87 dated 09.09.2013.

(8) A second sample was sent for retesting on the request of the dealer firm to the Central Insecticide Laboratory, Faridabad vide office letter No.234 dated 31.10.2013 and the said sample was also declared misbranded with theremark that the same does not confirm the relevant specification in the active ingredient contents. The ingredient content was 3.14%G instead of 4%G. The complaint was accordingly filed against various persons including the petitioners. The respondent himself notices that the petitioner is a marketing firm. The relevantextract of Para No.13 is reproduced herein below:-

13. xxxxxxxxxxxxxx. The marketing firm M/S Rallis India Ltd,156/157 nariman bhawan, 15<sup>th</sup> floor 227, nariman point,

Mumbai-400021 through Shri Veeramani Shankar S/o Shri Venketeswara Veeramanyer residing twin towers, opposite veer savarkamarg, prabhadevi, Mumbai 400025 (Executive Director and Responsible Officer), Shri Suresh Kamalakar Wagh S/o Shri Kamalakar Vishnu Wagh resident of 401, dinkarsmruti, 3 mount carmel road, bandra, Mumbai 400040 (Responsible Person of quality Control), Shri Dharmendra Panwar S/o Late Shri Bhopal Singh R/o single complex, malout road, Bathinda (Responsible Person for Conduct of Business), and Shri Pardeep Rastogi S/o Shri SP Rastogi r/o 440, kamla Nehru colony, Bathinda (Responsible Person for Godown Incharge), responsible for M/s Rallis India Ltd., have also committed offence under Section 3(k) (i), 17, 18, 29 and 33 of the Insecticide Act, 1968 by manufacturing/formulating and supplying/ Marketing for sale of Mis-branded Insecticide.

(9) A perusal of the same shows that the petitioners being a marketing firm and office bearer thereof were sought to be prosecuted for commission of offences under section 3(k)(i), 17, 18, 29 and 33 of the Insecticides Act. All the accused persons were summoned by the Judicial Magistrate First Class, Sri Muktsar Sahib vide order dated 11.07.2016. Aggrieved thereof instant petition has been filed.

### **ARGUMENTS OF THE PETITIONERS:**

(10) Learned Senior counsel appearing on behalf of the petitioners has vehemently argued that the offences under the Insecticide Act are not made out qua the petitioners, who are undisputedly, only the marketing agents and not the manufacturers of the insecticide. He has further drawn attention to the relevant provisions of the Insecticides Act under which the petitioners are being sought to be prosecuted and the same read thus:-

#### **Section 3 (k)(i)**

“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
- ii. if it is an imitation of, or is sold under the name

of, another insecticide; or

iii. if its label does not contain a warning or caution which may be necessary and sufficient, if complied with to prevent risk to human beings or animals; or

iv. if any word, statement or other information required by or under this Act to appear on the label is not displayed thereon in such conspicuous manner as the other words, statements, designs or graphic matter have been displayed on the label and in such terms as to render it likely to be read and understood by any ordinary individual under customary conditions of purchase and use; or

v. if it is not packed or labelled as required by or under this Act; or

vi. if it is not registered in the manner required by or under this Act; or

vii. if the label contains any reference to registration other than the registration number; or

viii. if the insecticide has a toxicity which is higher than the level prescribed or is mixed or packed with any substance so as to alter its nature or quality or contains any substance which is not included in the registration;

### **Section 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 14 [under any of the provisions] 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.

### **Section 18**

Prohibition of sale, etc., of certain insecticides.—

No person shall, himself or by any person on his behalf, sell, stock or exhibit for sale, distribute, 15 [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 16 [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 17 [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.

### **Section 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 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, 25 [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 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].

(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],



(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].

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.

### **Section 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.

(11) By making a reference to the aforesaid provisions, it is submitted that as per the affirmative case of the prosecution the samples in question were drawn from a packed material and the manufacturer of the said material is M/s Agrimas Chemical Limited, whereas, the petitioners are the marketing agency and the officebearers thereof. As a Marketing agent, they cannot be held responsible for the alleged deficiency in the active ingredients of a sample or be held accountable for a case of misbranding. There is no allegation that any interpolation or interjection had been carried out in the packet of insecticide at the hands of such a marketing agent. He has placed reliance upon the judgement of this Court passed in the matter of *Lochen Khети Sewa Centre versus State of Punjab*<sup>1</sup>.

(12) It is also argued on behalf of the petitioners that by granting sanction under Section 31(1) of the Act, the sanctioning authority i.e. Joint Director Agriculture failed to take stock of the aforesaid facts as well as the position in law and the said sanction has been granted in a mechanical manner and by an evident non-application of mind. The said sanction letter attached as Annexure P-3 itself shows that the petitioners are marketing agents.

(13) It is further argued by learned Senior counsel that the petitioners are not responsible or incharge for conduct of the business of the manufacturing company and are not responsible to maintain the product quality at the behest of the manufacturer, for the activity undertaken by the said manufacturer, and hence, without prejudice to the substantive arguments raised, the institution of the complaint and the subsequent proceedings against the petitioners are liable to beset aside on the said score as well.

#### **ARGUMENTS BY RESPONDENT-STATE:**

(14) While advancing arguments on behalf of the respondent, learned State counsel has reiterated the allegations levelled in the complaint and as contained in the reply filed by way of affidavit of Agriculture Development Officer PP, Block Kotkapura, District Faridkot. It is vehemently argued that it is an established case of misbranding and that the active ingredients were much less than the contents as described in the label. She further makes a reference to the

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<sup>1</sup> 2008(2) RCR (CrI.) 22

averment contained in Para 4(i)(iv) of the reply on merits to contend that the petitioners are liable to be prosecuted because the branded article was sold and distributed with their knowledge, consent and connivance. The said paragraphs are reproduced herein below:-

4. xxxxx

i) That the contents of sub para i) of para No.4 of the petition are correct to the extent that petitioner No.1 is marketing agency. However, it is wrong that petitioner cannot be prosecuted for offences especially when no interjection of insecticide sample of which has been found to be misbranded. The petitioners have committed an offence under Section 3(K)(i), 18 of the Insecticides Act 1968, which is punishable offence under Section 29 of the Act, 1968 selling, stocking and exhibiting misbranded insecticide having active ingredients 3.14% as against 4% as labelled on the container which was distributed by the petitioner No. 1 has also committed an offence by distributing the above said misbranded insecticides, which is punishable under section 29 for violations the provision of section 3K (1), 17 and 18 of Insecticide Act 1968 and they are liable for the action under section 33 of the said Act. The misbranded insecticide was manufactured sold and distributed with their knowledge, consent and connivance and are liable for action under section 33 of the said Act because the misbranded insecticide was manufactured sold and distributed with their knowledge, consent and connivance and are liable for action under section 33 of the said Act.

iv) That the contents of sub para (iv) of para No.4 of the petition are wrong and hence denied. Petitioner No.2,3 and 5 have been rightly arrayed as accused in complaint as petitioner No.2 is Director of company, and petitioner No.3 is quality controller of the product manufacturer by company petitioner No.5 is 'Godown Incharge' of marketing company and all these persons are equally responsible if any sample is found to be misbranded as per law, Insecticide Act 1968 and Rule and Regulations of Insecticide Rules, 1971.

(15) She has also referred to the results of the analysis report to supplement her submissions. No other point was argued or any

judgment cited by the learned State counsel.

(16) I have heard learned counsel appearing for the parties and have gone through the documents appended along with the petition as well as judgements cited by the petitioners in support of their contention.

### **CONSIDERATION AND ANALYSIS: LEGAL POSITION**

(17) It would be pertinent to make a reference to the relevant judicial pronouncements to appreciate the obligation and responsibility of a marketing agent and also his liability to be criminally prosecuted in the event that the sample in question is drawn out of a sealed container, that was intact at the time of sampling, is found to be misbranded after analysis. This court in the matter of *Lochen Kheti Sewa Centre versus State of Punjab*<sup>2</sup> observed as under:-

3. Learned counsel appearing for the respondent/State has very fairly stated that the petitioner is not the manufacturer. The sample was drawn from sealed packets and there is no material to indicate that it was properly stored. Under the circumstances the petitioner cannot be held liable for misbranding of the insecticide. Only the manufacturer, who is being proceeded against would be responsible.

(18) Further, in the matter of *Deepak Sharma versus State of Punjab*<sup>3</sup>, this court observed as under:-

2. The sample seized, on analysis, was found to be misbranded. The plea raised on behalf of the petitioner is that a seller cannot be prosecuted. In support thereof, reliance is placed upon M/s Kisan Beej Bhandar, Abohar v. Chief Agricultural Officer, Ferozepur and another, 1990 (supp) Supreme Court Cases 11 and M/s Vimal and Co. Grain Market, Mullanpur v. State of Punjab, 2002(2) RCR (Criminal) 56. The former judicial pronouncement was rendered by the Apex Court, while the latter was rendered by this Court. Both these judicial pronouncements are fully supportive of the advocate point of view.

(19) Furthermore, this Court in the matter of *Surinder Kumar*

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<sup>2</sup> 2008 (2) RCR (CrI.) 22

<sup>3</sup> 2008 (2) RCR (CrI) 24

*versus State of Punjab*<sup>4</sup> held as under:-

2. Learned counsel for the petitioner contends that the petitioner is a licensee under Insecticide Act, 1968 to deal with various kinds of insecticides and pesticides of registered and approved manufacturers. It has further been clarified that the petitioner sells only sealed and packed insecticides/pesticides. A sample of insecticide that has been manufactured by a company approved by Government of Punjab was drawn on 25.05.2001. The sample was drawn from originally sealed and packed container. In above regards, learned counsel has referred to para No.3 of the petition which is extracted hereunder:

“3. That as per complainant version on 25.05.2001, he drew a sample of one insecticide i.e. Metalyax 8% + Mancozeb 64% EC bearing Batch No.KG-09, Mfg. November, 2000 and Expiry October, 2002 out of two 500 gms. Originally sealed and packed containers lying properly from the shop premises of the petitioner-firm as manufactured by M/s. Fungicide India Ltd. Jammu. The said manufacturing company i.e. M/s Fungicide Ltd. Jammu is the registered and authorised manufacturing company by Govt. of Punjab to sell its products in the State of Punjab”

3. *Learned counsel states that it is admitted case of the respondents that sample was drawn from sealed and packed container. In this regard, learned counsel has referred to Para No.3 of the reply on merits which reads as under:-*

3. That the contents of para No.3 of the petition are matter of record.

5. It is not in dispute that the petitioner has a licence to sell insecticides and pesticides manufactured by companies approved by Government of India and Government of Punjab. It is further not in dispute that the sample that has been drawn has been manufactured by approved manufacturer. There is no material available on the file to indicate that the insecticide was stored in violation of rules. It is also the admitted position that sample was drawn from

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<sup>4</sup> 2011(1) RCR (CrI.) 211

originally sealed and packed containers.

6. In view of the above, the only conclusion that can be drawn is that the petitioner who is merely selling the insecticide had no occasion to tamper with the contents of the container/insecticide.

7. In view of the above, I am of the considered opinion that continuance of proceedings against the petitioner would be abuse of process of law and abuse of process of Court. The petitioners being only involved in sale of insecticide, cannot be held responsible for the contents of the container from which the sample has been drawn.

(20) This Court has further in the matter of *Naresh Kumar versus State of Punjab*<sup>5</sup> held as under:-

7. It is evident from above that sample was taken from original packing.

8. Affidavit dated 06.12.2010 of S Navtej Singh, Insecticide Inspector, District Kapurthala has been filed. Para 1 of the said affidavit reads under:-

“1. Original packing as per Form XX refers to the stock in possession of accused, which at the time of sampling is in a sealed condition which is purported to be same as packed, labelled and sealed by the manufacturer. Although, it is stated in the subsequent paragraph that it is yet to be determined whether the insecticide in question (Monocrotophos 36% SL of one liter each) was in original sealed packing or as to whether the sealed packing was tampered with or not, the allegation in the complaint and Form No. XX speaks for themselves. There is no doubt left that the sample was drawn from the originally sealed and packed containers weighing one liter and packed by the registered and authorized manufacturing company. There is no allegation that in the said complaint that the said seal was tampered with or the originally packing was tampered with. There is no allegation that the said sample was not stored in the same state.

(.....)

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<sup>5</sup> 2011(2) RCR (CrI.) 202

11. In view of the foregoing discussion, the present petition is allowed. Complaint No. 79 dated 02.03.2007 under sections 3(k) (i), 17, 18, 29 and 33 of the Insecticide Act, 1968 read with rules 27 (5) of the Insecticides Rules 1971 titled as State v M/s Punjab Khad Store and others pending in the Court of learned Chief Judicial Magistrate, Kapurthala and summoning order and all consequential proceedings arising therefrom qua the petitioners are hereby quashed.

(21) Further, it is pertinent to make a reference to the judgment of the Hon'ble Supreme Court in the matter of *M/s Cheminova India Limited & Anr versus State of Punjab & Ors* decided on 04.08.2021 passed in Criminal Appeal No.750 of 2021. Wherein, the Hon'ble Supreme Court held that proceedings under the Insecticides Act cannot be instituted against all and sundry persons of the company and that as per mandate of Section 33 of the Act, it is clear that responsible persons of the company alone can be deemed to be prosecuted and liable to be proceeded against. The relevant extracts are stated as under:-

'9. xxxxxxxxxxxxxxxx. In view of the specific provision in the Act dealing with the offences by companies, which fixes the responsibility SLP(CrL) No. 4144 of 2020 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. Though, the Managing Director is overall incharge of the affairs of the company, whether such officer is to be prosecuted or not, depends on the facts and circumstances of each case and the relevant provisions of law. Having regard to specific provision under Section 33 of the Act, and the undertaking filed in the present case, respondent cannot prosecute the 2nd Appellant herein. Thus, we find force in the contention of Mr. Sidharth Luthra, learned Senior Counsel, that allowing the prosecution against 2nd Appellant – Managing Director is nothing but, abuse of the process of law. At the same time, we do not find any ground at this stage to quash the proceedings against the 1st Appellant – Company.'

#### **DISCUSSION:**

(22) It is evident from a perusal of the petition as well as documents appended along with the same that the undisputed case of the respondent-State is that the petitioners were a marketing agent of the insecticides. It has been repeatedly so affirmed by the respondent in various paragraphs of the complaint instituted through Insecticide Inspector and already extracted above. It is also not a subject matter of dispute that the sample was drawn from a sealed packet and it is nowhere alleged that the sample had not been stored in accordance with the provisions contained under the Insecticides Act and Rules framed thereunder. There is also no allegation that the petitioners were responsible for the quality of the product as also for ensuring the labelled ingredients of the same. The petitioners are not nominated as the authorised/responsible officers in terms of Section 33 of the Insecticides Act. The statutory mandate intends to penalize a person who has committed an offence. It does not intend to prosecute the people who are merely dealing with the said product and for which they have no control as regards its quality and content. The petitioners cannot be held vicariously liable and to be penalized for misbranding of a product where they were not involved in the manufacturing process at all merely for having traded in the same. Section 3(k)(i) defines misbranding. The same relates to the label of products and its contents. It is not the case that any of the activities referred to under section 3 (k) attracting misbranding was undertaken by the petitioners. Further, Section 17 of the Act is also not attracted against the



petitioners inasmuch as the petitioners are neither the importer of the misbranded insecticides, nor manufacturer thereof. Further, the ingredients of Section 18 of the Act are also not satisfied and there is no allegation that the petitioners had indulged in the sale of the insecticides, which was either not registered under the Act or was prohibited under Section 27. Similarly, Section 29 also would not be applicable against the petitioners inasmuch as the same contemplates punishment for offences as stated above. Once the necessary ingredients of the said Sections are not satisfied against the petitioners, they cannot be penalized for the same.

**CONCLUSION:**

(23) Having noticed the undisputed facts, the position of law as well as statutory provisions under which the petitioners are sought to be prosecuted, I find myself in agreement with the precedent judgements of this Court referred to in the preceding paragraphs of this judgment. Considering the same along with undisputed fact, the instant petition is allowed and the complaint No.18 of 11.07.2016 (Annexure P-1) titled as 'State Versus M/s Goyal Sales Corporation and Others' pending in the Court of Judicial Magistrate First Class, Sri Muktsar Sahib for offences under Sections 3(k)(i), 17, 18, 29 and 33 of the Insecticides Act, 1968 read with Section 27(5) of the Insecticides Rules, 1971 as well as the subsequent proceedings including the order of summoning dated 11.07.2016 (Annexure P-2) are accordingly quashed qua the petitioners.

Petition is allowed.

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*Shubreet Kaur*