
(2004) 03 P&H CK 0032

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 22515-M of 2002

Abhey Yograj

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision : 05-03-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 204, 227
Insecticides Act, 1968 — Section 33

Citation : (2004) CriLJ 2443 : (2004) 2 ILR (P&H) 513 : (2004) 2 RCR(Criminal) 437

Hon'ble Judges : Satish Kumar Mittal, J

Bench : Single Bench

Advocate : R.S. Cheema and Pawan Girdhar, for the Appellant; Sunil K. Vashisht, A.A.G., for the Respondent

Final Decision : Allowed

Judgement

Satish Kumar Mittal, J.—The petitioner, who was Just a Director in M/s. Ventech Industry Limited, Khazipally (V) Jinnaram Mandal Medak (AP) (hereinafter referred to as "the accused company"), has filed this petition impugning the order dated 30-10-2001 (Annexure P-2) passed by Chief Judicial Magistrate, Sirsa, dismissing his application for recalling the summoning order and for discharging him and the order dated 3-4-2002 (Annexure P-1) passed by Sessions Judge, Sirsa, confirming the aforesaid order. The petitioner has also sought quashing of the proceedings qua him and the process issued against him in complaint u/s 29(1) of the Insecticides Act, 1968 (hereinafter referred to as "the Act") and the other consequential proceedings pending in the trial Court.

2. The brief facts of the case are that a complaint (Annexure P-3) u/s 29(1) of the Act was filed by the Insecticide Inspector, Sirsa in the Court of Chief Judicial Magistrate, Sirsa for violation of Section 3(k)(i) of the Act against the accused company, (the manufacturing company), its Business Manager, namely M. S. Chandrashekhar and the petitioner, who was Just a Director of the accused

company. In the complaint, it was alleged that on 26-9-2000, a sample of Monocrophos 36% SL bearing batch No. 001 Mfg., date June, 2000 and expiry date May, 2001 was drawn by the Insecticide Inspector from the business premises of M/s. Biyani Chambal Ka Mahabhandar, Janta Bhawan Road, Sirsa, which was found to be "misbranded" by the Senior Analyst vide his report dated 25-10-2000. In the said sample, the contents of "Gama Isomar" were found to be 33.79% against 36%. Though the permissible tolerance limits for variation was plus and minus 5%. However, the said sample, in the opinion of the Senior Analyst, was "misbranded".

3. The cognizance of the said complaint was taken by Chief Judicial Magistrate, Sirsa. When the summons were issued to the petitioner including the petitioner, he appeared in the Court and moved an application for recalling the order dated 16-2-2000 issuing the process to him, primarily on three grounds. Firstly that the petitioner was just a Director of the accused company. He was not responsible for the conduct of the business of the accused company nor he was involved in day to day running of the business and functioning of the said company. It was further contended that the petitioner was a Director in a different company at Delhi and he never participated in any decision of the accused company. He further submitted that even as per the complaint M. S. Chandrashekhar (accused No. 1) was the person responsible for conduct of the business of the accused company. In the permission sought by the complainant to proceed against the accused company, only said person was mentioned as a person responsible for the affairs of the accused company. Therefore, there was no material against the petitioner to proceed with the said complaint and his summoning in the said complaint was wholly unjustified and illegal. Secondly that the entire prosecution and the proceedings were misconceived as the complainant did not disclose any offence. Thirdly that an information of the report of the Analyst was to be given to the person accused, who has right to adduce evidence, but in the instant case the notice of the report of the Senior Analyst was not given to the petitioner, which has caused great prejudice to him, having lost his valuable right of re-examination of the sample.

4. The said application filed by the petitioner was dismissed by the trial Court vide order dated 30-10-2001 (Annexure P-2) while observing that as far as the second and third grounds taken by the petitioner are concerned, the same could not be gone into at the stage of summoning of the petitioner. However, regarding the first ground, the trial Court observed as under :--

"..... Under Section 33 of the Act, where an offence has been committed by a company, every person who at the time of 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". As per the proviso to Section 33 of the Act, if a person proves that the offence was committed without his knowledge or that he executed all due diligence to prevent

the commission of such offence, he would not be liable to any punishment in that eventuality. However, as per Sub-section (2) of Section 33, where 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 etc., shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. In the present case, the complainant has categorically mentioned in the complaint that the accused was responsible for the conduct of the business of the company and as such, he is also liable for the offence."

5. The revision filed by the petitioner against the said order was also dismissed by Sessions Judge, Sirsa, vide his order dated 3-4-2002 (Annexure P-1), while observing as under :--

"The crux of the observations in the aforesaid Judgments is that the vicarious liability of a person for being prosecuted for an offence committed under the Act by a company arises if at the material time he was in charge of and was also responsible to the company for the conduct of its business. Simply, because a person is a Director of the company it does not necessarily mean that he fulfils both the above requirements so as to make him liable. Conversely, without being a Director a person can be incharge of and responsible to the company for the conduct of its business. Possibly, no one can dispute about the aforesaid observations, but to my mind, the same would not come to the rescue of the present petitioner, at this premature stage because it is not disputed that petitioner Abhey Yograj is the Director of the manufacturing company. It has been specifically averred in the complaint that petitioner along with other accused has also violated Section 17(1)(a) and (c) of the Act and they are responsible persons for the conduct of business of the manufacturing firm.

Thus it would be seen that the co-joint reading of these provisions would reveal that the petitioner at a subsequent stage can prove that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence and these questions would be gone into by the learned trial Magistrate after the evidence is led by the parties in this respect. But, in any case, to me, petitioner cannot possibly be Heard to say that the offence was committed by the Company, without his knowledge at this preliminary stage. It has been settled by Hon"ble Apex Court in Anil Hada Vs. Indian Acrylic Limited, that the Director of the company and every other person, who was incharge of the company and was responsible for the business of the company can be prosecuted. An identical question arose before Hon"ble Punjab and Haryana High Court in case titled as Kishanchand Assanand Gursahani Vs. State of Punjab, and in judgment dated 18th December, 2001 rendered in Criminal Misc. No. 48120-M of 2001 in case titled as Devkinandan Khatore and another v. State of Haryana. Having interpreted the relevant provisions of the Act, it has been authoritatively held that provisions of Section 33(2) are in addition to the provisions of Section 33(1) of the Act and if there are special allegations made in the complaint that the accused was responsible for conduct

of business of the company, then under such circumstances, criminal proceedings cannot be quashed at this preliminary stage. These judgments are the complete answer to the problem in hand."

6. Through this petition, the petitioner has challenged the aforesaid two orders, praying for quashing of the proceedings.

7. Pursuant to the notice issued, the respondent-State has filed reply to this petition.

8. I have heard the arguments of learned counsel for the parties and have gone through the impugned orders as well as the contents of the complaint (Annexure P-3).

9. Shri R. S. Cheema, learned senior counsel, has pressed this petition only on the first ground that the petitioner, being Just a Director of the accused company, was not responsible for the conduct of its business, therefore, he is not liable to be proceeded against and punished for the alleged offence committed by the accused company. In this regard, he submitted that in the instant case, the offence is alleged to have been committed by the accused company. Section 33(1) of the Act provides that whenever an offence under this Act has been committed by a company, every person who at the time of the offence was committed was incharge 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. He further submitted that proviso to the aforesaid Section further provides that nothing contained in this subsection 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. Sub-section (2) of Section 33 of the Act further, provides that 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 shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. Learned senior counsel for the petitioner further submitted that the petitioner could not be said to be a person, who at the time of the commission of the alleged offence, was in charge of or responsible to the company for the conduct of its business nor he can be deemed to be guilty of the alleged offence on the ground that the offence was committed with his consent or connivance or can be attributed to the neglect on his part as Director of the company. At the time of summoning of an accused, on a complaint, this fact has to be ascertained on the basis of the averments made in the complaint and the documents annexed therewith. While referring to the contents of the complaint, learned senior counsel pointed out that in the heading of the complaint itself, petitioner has not been named as a person responsible for the conduct of the business of the accused company. In the said heading,

accused No. 1 M. S. Chandrashekhar has been described as the person responsible for the conduct of the business. The petitioner was arrayed as an accused only being Director of the accused company. He further pointed out that in paragraph 5 of the complaint, the company has been described as the main accused and the petitioner has been shown as person responsible for the conduct of the business on the basis of a letter dated 15-11-2000 conveyed by the Director of Agriculture, Haryana, Panchkula. In this regard. learned senior counsel referred to letter dated 5-7-2000 i.e. Annexure P-4 annexed with the complaint, written by the Director Agriculture, Haryana, Panchkula to the accused company. In the said letter, it has been mentioned that for the purpose of insecticides manufactured by the company and for the purpose of its quality, Mr. M. S. Chandrashekhar, its Business Manager, shall be the person responsible. He also referred to letter i.e. Annexure P-6 annexed with the complaint, vide which permission was sought by the complainant from the Director of Agriculture, Haryana, Chandigarh, to launch prosecution against the accused company. In this letter also, it was mentioned that Sh. M. S, Chandrashekhar was the person responsible for the business of the Company regarding manufacturing and quality of the insecticides. However, while issuing consent order dated 12-1-2001, the Director of Agriculture, Haryana, granted permission for initiation of proceedings, against the accused company, Sh. M. S. Chandrashekhar as well as against the petitioner. Learned senior counsel submitted that there was no material and foundation on the basis of which the aforesaid sanction for launching prosecution against the petitioner could have been granted. The reply filed by the respondent-State does not disclose any reason or material on the basis of which the aforesaid sanction was granted against the petitioner, particularly when such sanction was not even sought by the Insecticide Inspector against the petitioner. Learned senior counsel for the petitioner further submitted that merely on the basis of a word mentioned in the complaint that the petitioner was the person responsible and sanction was granted by the competent authority for launching prosecution against him, the petitioner cannot be proceeded against and punished for the offence alleged to have been committed by the accused company. In such situation, the process should not have been issued against the petitioner and his application for recalling the said process and discharge should have been allowed. Learned senior counsel, while referring to the decision of the Hon''ble Supreme Court in Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, submitted that summoning of a person as an accused in a complaint is a serious matter and while summoning the accused, the Court must apply its mind to the effect as to whether the accused was prima facie actually liable for the commission of the offence. Casually, a person cannot be summoned as an accused to face trial. In support of his contention, learned senior counsel further relied upon the judgments of the Hon''ble Apex Court in Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others, , Sham Sunder and Others Vs. State of Haryana, and State of Haryana Vs. Brij Lal Mittal and Others, , judgments of this Court in B. B. Nagpal, Ex. Company Secretary v. State of Haryana 1995 (2)

Rec Cri 291 and Artee Minerals v. State of Punjab 1997 (4) Rec Cri R 620 and a judgment of the Rajasthan High Court in Rallis India Ltd. and Others Vs. State of Rajasthan and Others, .

10. On the other hand, learned counsel for the respondent-State submitted that there is no illegality or infirmity in the impugned orders passed by the Courts below. He submitted that at the stage of summoning of an accused, the averments made in the complaint have to be seen and in the instant case in paragraph 5 of the complaint, it has been mentioned that the petitioner along with accused No, 1 was the person responsible for the business of the accused company and sanction was granted against him also for launching prosecution, therefore, summoning of the petitioner was not illegal. He further submitted that both the Courts-below, after considering the material on record, have rightly dismissed the application filed by the petitioner for recalling the summoning order and discharge. Learned counsel for the respondent-State relied upon the decision of the Hon"ble Apex Court in Anil Hada Vs. Indian Acrylic Limited, and Kishanchand Assanand Gursahani Vs. State of Punjab, .

11. It is true that at the time of commission of the alleged offence, the petitioner was a Director of the accused company. It is also admitted fact as per the reply that he was also the Managing Director of a different Company based at Delhi, but he was not the person incharge of or responsible to the accused company for the conduct of its business at the time of the alleged offence. M. S. Chandrashekhar, first accused, was the person responsible for the day to day conduct of the business of the accused company. This fact has been admitted by the respondent-State in its reply. It is also admitted position that vide letter dated 5-7-2000, the Director Agriculture, Haryana, granted permission to the accused company to sell insecticides and pesticides in the State of Haryana, in which it was clearly mentioned that for the purpose of insecticides manufactured by the company and for the purpose of its quality, Mr. M. S. Chandrashekhar, Business Manager, shall be the person responsible. This document has been annexed with the complaint (Annexure P-3) as Annexure P-4. Further, it is again the admitted position that the Insecticide Inspector sought sanction from the Director of Agriculture, Haryana, vide letter dated 13-11-2000, for launching prosecution only against the accused company and its Business Manager Mr. M. S. Chandrashekhar. However, there is no material on record as to on what basis the Director of Agriculture, Haryana, granted permission to launch prosecution against petitioner, when he was not the person responsible for the conduct of the business. In this petition, specific averments have been made in this regard, but no reply, explanation or reason has been given by the respondent-State. As far as the making of averment in the complaint is concerned, in the title of the complaint itself only accused No. 1, namely M. S. Chandrashekhar, has been described as the person responsible for the conduct of the business of the accused company. The petitioner has been arrayed as an accused only as a Director of the company. Merely because he was a Director of the accused company at the relevant time, he cannot be proceeded against for the alleged

offence committed by the accused company, unless and until it is case of the prosecution that he was either the person responsible to the company for the conduct of the business or the alleged offence was committed with his knowledge, consent, connivance or any negligence on his part was attributed. It is not the case of the respondent-State either in the complaint (Annexure P-3) or before the Court. Merely on the basis of one vague averment in the complaint that accused No. 1 and the petitioner had violated Section 17(1)(a) and (c) of the Act, as they were responsible persons for the conduct of the business of the accused company, as conveyed by the Director of Agriculture, Haryana, the petitioner could not have been summoned for the alleged offence committed by the company. When the petitioner subsequently moved application for discharge alleging therein that he was not the person responsible for the conduct of the business and was not liable to be summoned for the alleged offence, it was the duty of the Court to consider the plea taken by the petitioner in the light of the documents which were annexed with the complaint. With the complaint, various documents were annexed. From those documents, it clearly emerge, as discussed above, that the petitioner was not the person responsible for the conduct of the business of the accused company, and only accused No. 1 was the person responsible. It is not the sweet-will or discretion of the prescribed authority i.e. the Director of Agriculture, Haryana, to give sanction for launching prosecution against any number of persons. The launching of prosecution against a person is a serious matter and while granting sanction for launching prosecution, the prescribed authority has to proceed on the material placed before it to the effect whether the person against whom the sanction is to be granted was the person responsible to the company for the conduct of its business at the time of commission of the offence by the company or that the offence was committed with the consent, connivance and knowledge of the said person. The prescribed authority cannot grant sanction for launching prosecution under the Act against any person in spite of the fact that there is no material against him in view of Section 33 of the Act for launching prosecution against him. In the instant case, the averments made in the complaint (Annexure P-3), in my opinion, were not sufficient for disclosing any prima facie case for summoning the petitioner for the alleged offence. Before taking cognizance and issuing summons to an accused on a complaint for the commission of alleged offence, the trial Court is required to apply its mind to the contents of the complaint as well as the documents annexed therewith. In a similar circumstance, this Court in B. B. Nagpal, Ex. Company Secretary's case (1995 (2) Rec Cri 291) (supra), has quashed the complaint and the proceedings qua the petitioner B. B. Nagpal, while observing as under:--

"..... Before Sub-section (2) of Section 33 of the Insecticides Act comes into play, it has to be proved that the offence has been committed with the consent or connivance or is attributed to any neglect on the part of any such Secretary. In the present case, there is no such assertion in the complaint. One is constrained to observe that before the Court of Chief Judicial Magistrate, Kurukshetra, an

application was filed by the Managing Director of the Company and it was pointed out that the petitioner was in no way, acting or responsible for production and distribution and sale of products of the company. It was prayed that the name of Shri R. K. Mathur may be substituted in place of the petitioner. Reply was filed by the Quality Control Inspector on 18-11-1989 and it was pointed out that at the time of filing of the complaint, the name of responsible officer was not informed by the company and, therefore, the name of the petitioner who was Secretary of the company, had been included as an accused.

These facts clearly show that the State is not aware and, therefore, is not ready to assert that the offence committed by the petitioner with the consent or connivance or can be attributed to the neglect on the part of the petitioner as Secretary of the company. He has simply been arrayed as an accused because he happened to be the secretary of the company. In the absence of any material connecting the petitioner with the provisions of Sub-sections (1) and (2) of Section 33 of the Insecticides Act, 1968, it is clear that prosecution against him would be an abuse of the process of the Court. No useful purpose would be served to allow the prosecution against the petitioner."

12. Similarly, in *Murli Manohar Vs. State of Punjab*, while quashing the complaint under the Act, this Court has held as under (Para 6 of Cri LJ):--

"Annexure P-1 is the copy of the complaint dated 24-10-1994, filed by Gurinder Singh, Insecticides Inspector, impleading Madhu Sudan Industries as accused No. 3, through its responsible persons, namely V. Krishna Moorthy, Murli Manohar, Ramesh Peshion and J. K. Gupta. In para 10 of the said complaint, it was alleged that the insecticide in question (which was found to be misbranded) was manufactured and supplied by Madhu Sudan Industries, with the consent, knowledge and connivance of V. Krishana Moorthy, Murli Manohar, Ramesh Peshlon and J. K. Gupta, who were responsible for the conduct of the business of the Company. There is no allegation in the complaint that they were responsible to the company for the conduct of the business of the said Company. In *Gharda Chemicals Ltd. v. State of Punjab* 1997 (2) Rec Cri 99, it was held by this Court that it was obvious from plain reading of Sub-section (1) of Section 33 of the Act that merely being the responsible person was not enough. He should be responsible to the company for the conduct of the business of the company. In the reported case, there was no assertion made anywhere that the accused was responsible to the company for the conduct of the business of the company. Under these circumstances, it was held that in the absence of any specific allegation, it was surprising that those persons had been arrayed as accused and unless specific assertions were made, they could not be asked to undergo the agony of the trial. Reliance was placed on the law laid down by this Court in *B. B. Nagpal, Ex-Company Secretary v. State of Haryana*, 1995 (2) Rec Cri 291. Similar view was taken by this Court in case reported as *Lal Chand Patni v. State of Haryana*, 1998 (4) Rec Cri 546, concerning a case under the Drugs and Cosmetics Act, 1940. Similarly, in *State of Haryana Vs. Brij Lal Mittal and Others*,

it was held by their Lordships of Supreme Court, while dealing with a case under the Drugs and Cosmetics Act, 1940, that so far as the Directors were concerned, there was not even a whisper nor a shred of evidence nor anything to show, apart from the presumption drawn by the complainant, that there was any act committed by the Directors from which a reasonable inference could be drawn that they could also be vicariously liable. The Hon''ble Supreme Court placed reliance on the law laid down by the Supreme Court in an earlier case under the Prevention of Food Adulteration Act, 1954, reported as *Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others*, , Similarly, in *U.S. Madan v. State of Punjab* 2000 (1) Rec Cri 37, it was held by this Court that it had to be shown that the person concerned, at the time when the offence was committed, was the incharge and responsible to the company for the conduct of the business of the company."

13. The judgments relied upon by learned counsel for the respondent-State are, however, not applicable to the facts and circumstances of the instant case. In the instant case, both the Courts below dismissed the application for discharge filed by the petitioner only on the ground that at this stage it was premature to consider the plea of the petitioner whether he was the person responsible, particularly when the stage of leading evidence by the petitioner has yet to come. In my opinion, if a summoned accused files an application for discharge stating therein that from the averments made in the complaint as well as the documents annexed therewith, no offence *prima facie* appears to have been committed by him, then the Court at that stage can recall the summoning order and discharge the accused. In the case in hand, as discussed above, the petitioner could not have been said to be the person responsible for the conduct of business of the accused company and in absence of any material connecting the petitioner with the provisions of Sub-sections (1) and (2) of Section 33 of the Act, his summoning to face trial is an abuse of the process of the Court.

14. In view of the aforesaid discussion, the instant petition is allowed; impugned orders dated 3-4-2002 (Annexure P-1) passed by Sessions Judge, Sirsa and dated 30-10-2001 (Annexure P-2) passed by Chief Judicial Magistrate, Sirsa, qua the petitioner, are set aside and the proceedings and process issued against the petitioner in complaint case No. 32-2 of 2001 (Annexure P-3) and consequent proceedings pending in the Court of Chief Judicial Magistrate, Sirsa, are quashed. However, the said complaint and the proceedings shall continue qua the other accused.