
(1995) 03 P&H CK 0103

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 3213-M of 1994

B.B. Nagpal

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 10-03-1995

Acts Referred:

Insecticides Act, 1968 — Section 33, 33(1), 33(2)

Citation : (1995) 83 CompCas 596 : (1995) 2 RCR(Criminal) 291

Hon'ble Judges : V.S. Aggarwal, J

Bench : Single Bench

Advocate : L.K. Sud, for the Appellant; S.S. Gill, Assistant A.G., for the Respondent

Final Decision : Allowed

Judgement

V.S. Aggarwal, J.—The petitioner, B. B. Nagpal, is the ex-company secretary of Montari Industries Ltd. (hereinafter described as "the company"). The company is registered under the Companies Act, 1956, and manufactures insecticides and pesticides. Shri Brahm Singh Doohan, Insecticides Inspector, Kurukshetra, checked the premises of Farm Chemicals on June 18, 1988. Farm Chemicals was holding a licence issued by the Chief Agricultural Officer, Kurukshetra, for selling/stocking and exhibiting for sale insecticides. A sample was taken of phorate 10 G of batch No. 210 alleged to have been manufactured by the company. One part of the sample was got tested from the Quality Control Laboratory, Karnal. The report was submitted by the senior analyst. The sample was found to be misbranded. It did not conform to the ISI specifications in respect of its percentage of active ingredients. A complaint was made before the Judicial Magistrate.

2. As per the petitioner, he was working as the secretary of the company and was responsible for secretarial functions of the company. He was not involved in the process of production. The petitioner seeks quashing of the complaint and the proceedings taken thereto.

3. Notice of the petition had been issued to the State of Haryana. Needless to say it contested the said petition. Section 33 of the Insecticides Act, 1968, deals with the eventualities where offences are committed by companies. The same runs as under :

" (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 of the company shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. "

4. It is obvious from the aforesaid that when an offence has been allegedly committed by a company, then every person at the time the offence was committed, is responsible and deemed to be guilty of the offence provided he was in charge of or was responsible to the company for the conduct of the business of the company as such. Exhibit P-1 has been appended as the copy of the complaint filed and therein there is no allegation made that the petitioner was in charge or was responsible to the company. It has simply been asserted that the petitioner was the secretary of the company and is responsible for this offence. It is a conspicuously vague assertion and consequently it becomes difficult to attract Sub-section (1) to Section 33 of the Insecticides Act, 1968.

5. Learned counsel appearing for the State of Haryana in that event, urged that the petitioner is a responsible officer and under Sub-section (2) of Section 33 of the Act, must be deemed to be guilty of the offence. However, on a closer scrutiny, the said argument must be held to be devoid of any merit. The reasons are not far to fetch. 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 the production and distribution and sale of the products of the company. It was

prayed that the name of Shri R. K. Mathur may be substituted in the place of the petitioner. Reply was filed by the Quality Control Inspector on November 28, 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.

6. These facts clearly show that the State is not aware and, therefore, is not ready to assert that the offence was committed by the petitioner or with his 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.

7. For these reasons, I accept this petition and quash the complaint and proceedings qua the petitioner B. B. Nagpal.