
(2001) 12 P&H CK 0014

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 51337-M of 2001

Kishanchand Assanand Gursahani

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 20-12-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Insecticides Act, 1968 — Section 17, 18, 29(1), 3, 33
Negotiable Instruments Act, 1881 (NI) — Section 141, 141(1)

Citation : (2002) CriLJ 2366 : (2002) 1 RCR(Criminal) 698

Hon'ble Judges : V.M. Jain, J

Bench : Single Bench

Advocate : G.S. Sawhney, for the Appellant;

Final Decision : Dismissed

Judgement

V.M. Jain, J.—This is a petition u/s 482, Cr.P.C. filed by the accused-petitioner, seeking the quashment of, the criminal complaint dated 19-3-1997, under the Insecticides Act, 1968 and the Rules framed thereunder, copy Annexure P-Z, the summoning order dated 19-3-1997, copy Annexure P-5 and the subsequent proceedings taken thereon and pending the Court of the Chief Judicial Magistrate, Amritsar.

2. Annexure P-2 is the copy of the criminal complaint filed by the State through the Insecticide Inspector against various accused, including accused-petitioner Kishan Chand Assanand Gursahani (who is accused No. 4 in the said complaint). In the complaint, it was alleged that the Insecticide in question which was found to be misbranded, was manufactured by M/s. Konkan Pesticides of which accused-petitioner Kishan Chand Assanand Gursahani was a Director. It was further alleged that accused-petitioner Kishan Chand Assanand Gursahani, was the Director and the person responsible for the conduct of the business of manufacturing firm M/s. Konkan Pesticides by marketing, selling and distributing the misbranded pesticides as well as the accused Dr. Purushottam Pandurang

Dalvi, Quality Control (accused No. 5), on whose neglect the misbranded insecticide was manufactured, sold and distributed as well as the firm M/s. Konkan Pesticides Ltd. had committed the offence punishable u/s 29(1)(a) read with Section 3(k)(i), 17 and 18 of the Insecticides Act and were liable for action u/s 33 of the said Act.

3. It has been submitted before me by the learned counsel for the accused-petitioner that u/s 33(1) of the said Act only those persons, who at the time when the offence was committed were incharge of or were responsible to the company for the conduct of the business of the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished, whenever an offence under the said Act has been committed by a company, It has further been submitted that in the present case, there is no allegation against the accused-petitioner in this regard. It has further been submitted that u/s 33(2) of the said Act, a Director, Manager, Secretary or other officer of the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly, if it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on their part. It has further been submitted that in the present case. No such allegation has been levelled against the accused-petitioner and as such the Criminal complaint, the summoning order and all subsequent proceedings taken thereon against the accused-petitioner are liable to be quashed.

4. However, I find no force in this submission of the learned counsel for the accused-petitioner.

5. As referred to above, in para 11 of the complaint, copy Annexure P-Z, it had specifically been alleged that accused-petitioner Kishan Chand Assanand Gursahani, was the Director and person responsible for the conduct of the business of manufacturing firm M/s. Konkan Pesticides Ltd. by marketing, selling and distributing the misbranded insecticides as well as Dr. Purushottam Pandurang Dalvi, Quality Control, on whose neglect the aforesaid misbrand insecticide was manufactured, sold and distributed as well as the firm M/s. Konkan Pesticides Ltd. had committed the various offences. The case of accused-petitioner Kishan Chand Assanand Gursahani, would be covered by the provisions of Section 33(1) of the Insecticides Act, inasmuch as in the complaint the allegations as required u/s 33(1) of the said Act, had been levelled against the accused-petitioner. So far as Section 33(2) of the said Act is concerned, the provisions of Section 33(2) of the said Act are in addition to the provisions of Section 33(1) of the Act. If the case of the petitioner is covered by Section 33(1) of the Act, it is not necessary that his case should also be covered by Section 33(2) of the said Act.

6. In "K.P.G. Nair v. Jindal Menthol India Ltd. (2000) JT (Suppl) (SC) 519, the Hon"ble Supreme Court had considered the provisions of Section 141 of the Negotiable Instruments Act, 1881, which are pari materia with the provisions of Section 33 of the Insecticides Act, 1968. It was held by the Hon"ble Supreme

Court that the words of Section 141(1) (in the present case, the provisions of Section 33(1)) need not be incorporated in a complaint but it cannot also be disputed that substance of the allegations read as a whole, should answer and fulfil the requirements of the ingredients of the said provision for being proceeded against for an offence which he is alleged to have committed. In the reported case, the allegations made in the complaint did not, either in express words or with reference to the allegations contained therein, made out a case that at the time of commission of the offence, the appellant was in charge of and was responsible to the company for the conduct of its business.

7. In the present case, as referred to above, the complaint had specifically alleged in the complaint itself that accused-petitioner Kishan Chand Assanand Gursahani was the Director and person responsible for the conduct of the business of the manufacturing firm M/s. Konkan Pesticides Ltd. by marketing, selling and distributing the misbranded insecticides as well as Dr. Purushottam Pandurang Dalvi. Quality Control, on whose neglect the aforesaid misbranded insecticide was manufactured, sold and distributed as well as the firm M/s. Kokan Pesticides Ltd., had committed the offence punishable under the various provisions of the said Act. In my opinion, from the allegations made in the complaint, it cannot be said at this stage, that the case of the accused-petitioner is not covered u/s 33(1) of the, Insecticides Act.

8. In view of the above, finding no merit in this petition, the same is hereby dismissed.