(2020) 05 P&H CK 0006

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous Petition (M) No. 12082 Of 2016 (O&M)

M/s Cheminova India Limited And Other — APPELLANT

Vs

State Of Punjab And Others — RESPONDENT

Date of Decision : 12-05-2020

Acts Referred:

Insecticides Act, 1968 — Section 3(k)(i), 17, 18, 22(6), 24(2), 24(3), 24(4), 29, 29(1)(A), 31(1), 33
Code Of Criminal Procedure, 1973 — Section 2(g), 192, 200, 202, 202(1), 203, 293
Insecticides Rules, 1971 — Rule 10, 27(5)
Companies Act, 1956 — Section 141

Citation : (2020) 05 P&H CK 0006

Hon'ble Judges : Gurvinder Singh Gill, J

Bench : Single Bench

Advocate : Pankaj Maini, Rashmi Attri

Judgement

Gurvinder Singh Gill, J

1. The petitioners have approached this Court seeking quashing of complaint No. 313 dated 19.8.2015 filed by respondent No. 2- The Quality Control Inspector, Bhikhiwind, District Tarn Taran under Section 29 read with Sections 3(k)(i), 17, 18, 29 and 33 of the Insecticides Act, 1968 and Rules 10 and 27(5) of the Insecticides Rules, 1971.

2. The facts, as extracted from complaint(Annexure P-1), are that on 31.12.2013 Shri Gurdeep Singh, Quality Control Inspector, Bhikhiwind, District Tarn Taran accompanied by Shri Partap Singh, Block Agriculture Officer, Bhikhiwind, District Tarn Taran inspected the premises of M/s Dhillon Kheti Store where Shri Nishan Singh, its sole proprietor, was present. Six boxes containing 25 packets each, of 'Piroxofop Propanyl (Clodinafop Propargyl 15% WP)', with each packet weighng 160 grams, were found stocked in the premises for sale. After serving notice in terms of Form XX, one packet of insecticide was taken out of the aforesaid 150 packets, and three samples, weighing 20 grams each of 'Piroxofop Propanyl

(Clodinafop Propargyl 15% WP)' were drawn and were duly sealed. One sealed sample was handed over to Shri Nishan Singh, Proprietor of the firm while the remaining two sealed samples were handed over to Shri Kirpal Singh, Agriculture Development Officer, Enforcement, Tarn Taran on 31.12.2013 itself. One sample out of the said two samples was sent to Senior Analyst, Insecticide Testing Laboratory, Amritsar, for analysis vide letter no. 7304 dated 1.1.2014. The second sealed sample remained in custody of Shri Kirpal Singh, Agriculture Development Officer, Enforcement, Tarn Taran.

3. Upon analysis of the sample, the Senior Analyst, Insecticide Testing Laboratory, Amritsar declared the sample in question to be misbranded vide its report dated 15.01.2014, as the same was found to contain active ingredient of 'Piroxofop Propanyl (Clodinafop Propargyl 15% WP)' to the extent of 11.72% only as against the labled declaration of 15%. A copy of report of the Insecticide Testing Laboratory, Amritsar was communicated to Shri Nishan Singh, Proprietor, M/s Dhillon Kheti Store (dealer) along with show cause notice no. 8027 dated 29.1.2014.

4. In response to the show cause notice, Shri Nishan Singh (dealer) submitted his written reply, which was received in the office of the Chief Agriculture Officer, Tarn Taran on 21.2.2014. On 24.2.2014, Shri Nishan Singh (dealer) produced a copy of invoice dated 26.2.2013 indicating that he had purchased the insecticides in question from M/s Cheminova India Limited. Consequently, a copy of analysis report and show-cause notice was communicated to Managing Director of the manufacturing company i.e. M/s Cheminova India Limited, Bharuch, Gujarat, and to other responsible persons of the said company vide registered letter Nos. 9141-45 dated 27.3.2014 (Annexure P-4). In response thereof, the manufacturing company i.e petitioner no.1 submitted a written reply dated 5.4.2014(Annexure P-5) alongwith a request to Chief Agriculture Officer, Tarn Taran for re-analysis of second sample of insecticide. Upon receipt of draft of ` 500/- from the firm, the second sample which was in the custody of Shri Kirpal Singh, Agriculture Development Officer, Enforcement, Tarn Taran was sent to Central Insecticide Testing Laboratory, Faridabad for re-analysis vide forwarding letter no. 11281 dated 21.7.2014 through ASI Balkar Singh.

5. Upon analysis of the second sample at Central Insecticide Testing Laboratory, Faridabad, it was again reported that the sample was misbranded as the same was found to contain 10.09% of active ingredient as against 15%, as labelled on the packet. The said report was received in the office of the Chief Agriculture Officer, Tarn Taran on 14.8.2014 and a copy thereof was sent to M/s Cheminova India Limited, Bharuch vide registered letter No.11663 dated 14.8.2014. Sanction for prosecution was obtained as per provisions of Section 31(1) of the Insecticides Act, 1968 from Joint Director of Agriculture (Plant Protection), Punjab, Chandigarh, which was received vide endorsement no. 593-95 dated 13.3.2015.

6. Consequently, the complaint(Annexure P-1) was instituted on 19.8.2015 in the

Court of Judicial Magistrate First Class, Patti against Shri Nishan Singh, proprietor of M/s Dhillon Kheti Store (dealer), M/s Cheminova India Limited, Bharuch (manufacturing firm) and other responsible persons of the manufacturing firm.

7. The learned counsel for the petitioners, while assailing the complaint in question has made the following submissions:

(i) that since in the present case the show-cause notice in terms of Section 24(2) of the Insecticides Act, 1968 had not been issued to the manufacturing firm M/s Cheminova India Ltd., therefore the entire proceedings stand vitiated as issuance of such notice is mandatory and that on account of such omission the firm M/s Cheminova stood seriously prejudiced. It has further been submitted that even petitioner no.3 was not furnished with any notice in terms of section 24(2) of the Act.;

(ii) that since there has been a delay in analysing the samples, no sanctity could be attached to such reports;

(iii) that since there is no sanction for prosecuting the manufacturing firm, therefore its office bearers including the Managing Director can not be prosecuted in their individual capacity for any of the offence allegedly committed by the firm. The learned counsel, in order to hammer forth his submission places reliance upon the following judgements:

1. 2012(4) RCR(Criminal) 988 (Pb. & Hr.) Sanjay Aggarwal Vs. State of Punjab

2. 2009(4) RCR(Criminal) 981, Sant Lal Surekha Vs. State of Punjab

3. 2012(4) RCR(Criminal) 986, Amar Singh Sidhu Vs. State of Punjab (iv) that the Managing Director or other office bearers of the firm, in the absence of specific allegations against them, can not be held responsible in any manner and can not be prosecuted. The learned counsel places reliance upon the following judgements in support of his aforesaid submission:

1. 2010(3) RCR(Criminal) 912 (SC), State of NCT of Delhi Vs. Rajiv Khurana

2. Judgement dated 2.7.2015, rendered by this Court in Criminal Misc. No. M-29114 of 2014 titled M/s Cheminova India Ltd. Vs. State of Haryana.

8. Opposing the petition, the learned State counsel has submitted that in the present case a show cause notice in terms of Section 24(2) of the Insecticides Act, 1968 was initially issued to the dealer i.e. Nishan Singh, Proprietor of M/s Dhillon Kheti Store, from whose premises the sample was drawn and that pursuant to disclosure of information by the aforesaid dealer regarding the sample having been manufactured by M/s Cheminova India Limited, Bharuch, a copy of the Chemical Examiner's report along with show cause notice was communicated to the Managing Director of the manufacturing firm M/s Cheminova India Ltd. and to other responsible persons of the company. It has further been submitted that the sample in question was got analysed during its validity period which was to expire on 1.11.2014 and that even otherwise there

is no delay in getting the sample analysed so as to have prejudiced the accused-petitioners in any manner.

9. The learned State counsel has further submitted that since a proper sanction has been accorded by the Joint Director of Agriculture (Plant Protection), Punjab, Chandigarh, vide letter dated 13.3.2015, no infirmity can be found in the complaint in question or the proceedings conducted thereafter. A prayer has, thus, been made for dismissal of the petition.

10. I have considered rival submissions addressed before this Court. Each of the submissions made by learned counsel for the petitioners is being discussed individually as follows:

Submission no. (i) :

11. Since submission no. (i) of the petitioners pertains to non-compliance of Section 24(2) of the Insecticides Act, 1968, the said provisions need to be borne in mind. Section 24 of the Insecticides Act, 1968 reads as follows :-

"24. Report of Insecticide Analyst

1. The Insecticide Analyst to whom a sample of any insecticide has been submitted for test or analysis under sub-section (6) of Sec. 22, shall, within a period of sixty days, deliver to the Insecticide Inspector submitting it a signed report in duplicate in the prescribed form.

2. The Insecticide Inspector on receipt thereof shall deliver one copy of the report to the person from whom the sample was taken and shall retain the other copy for use in any prosecution in respect of the sample.

3. Any document purporting to be a report signed by an Insecticide Analyst shall be evidence of facts stated therein, and such evidence shall be conclusive unless the person from whom the sample was taken has within twenty-eight days of the receipt of a copy of the report notified in writing the Insecticide Inspector or the Court before which any proceeding in respect of the sample are pending that he intends to adduce evidence in contravention of the report.

4. Unless the sample has already been tested or analyzed in the Central Insecticides Laboratory, where a person has under sub-section (3) notified his intention of adducing evidence in contravention of the insecticide analysts report the Court may, of its own motion or its discretion at the request either of the complainant or of the accused, cause the sample of the insecticide produced before the Magistrate under sub-section (6) of Sec. 22 to be sent for test or analysis to the laboratory, which shall make the test or analysis and report in writing signed by, or under the authority of, the Director of Central Insecticides Laboratory the result thereof, and such report shall be conclusive evidence of the facts stated therein.

5. The cost of a test or analysis made by the Central Insecticides Laboratory under subsection (4) shall be paid by the complainant or the accused as the

Court shall direct."

12. Section 24(2) of the Insecticides Act 1968 mandates that a show cause notice be issued to the person from whom the sample has been drawn so as to seek his reply. After issuance of show-cause notice to dealer Nishan Singh and pursuant to his disclosing of the name of manufacturer , a copy of Analyst's report and show cause notice(Annexure P-4) was issued to the Managing Director of the firm i.e. M/s Cheminova India Limited and to other office bearers vide registered letter Nos. 9141-45 dated 27.3.2014. The manufacturing firm cannot feign ignorance of the said notice as it was pursuant to the said notice that a request(Annexure P-5) was made by the manufacturing firm i.e. petitioner No. 1 seeking re-analysis of the second sample which was accepted and the second sample was got analysed. In these circumstances, it cannot be said that petitioner no.1 has been prejudiced in any manner. The purpose of Section 24(2) of the Insecticides Act, 1968 is to make the person from whom sample is taken, aware about the Chemical Examiner's report. Although Section 24(2) of the Insecticides Act, 1968 does not itself lay down that such report is to be conveyed to the manufacturing firm or to other accused but it is expected in the interest of natural justice and fair trial that a copy of the Chemical Examiner's report be conveyed to the manufacturing firm also especially if the manufacturing firm is also to be prosecuted.

13. However, a pragmatic approach is required to be adopted so as to ensure that the purpose envisaged by the provisions of Section 24(2) of the Act is duly achieved and not that in the zest of compliance of mandate of Section 24(2) of the Act, the object intended to be achieved by the Act itself is defeated. While the object of the Act is to check sale of spurious or misbranded insecticides, Section 24(2) of the Act embodies the principle Audi Alteram Partem inasmuch as the same is in furtherance of basic principles of criminal jurisprudence that the accused must be given a proper opportunity to defend himself. Section 24(2) of the Act can not be allowed to be used as means for wrong-doers to get away with their evil designs on grounds of purported non-compliance of provisions of law. The provisions of section 24(2) of the Act do not mandate that each and every of the accused is to be afforded an individual opportunity of re-analysis. If in a given case, re- analysis has been got done at the instance of any one of the accused, then certainly there is no need for any further re-analysis. In this context, a reference may be made to a judgment of this Court reported as 2006(3) RCR (Criminal) 1002 M/s Ravi Organics Ltd. vs. State of Punjab and others, wherein it has been held as follows :-

"7. Once a sample has already been re-analysed, the law does not permit for any further analysis. It is immaterial whether the re-analysis was done at the instance of the dealer or at the instance of distributor or even at the instance of the manufacturer. Right to get re-analysis would come to an end once the re-analysis has been carried out. In the present case, the re-analysis had been carried out as per the request made by the distributor i. e. M/s. Somanil

Chemicals. The right as contained under Sections 24 (3) and 24 (4) of the Act to get the re-analysis of the sample came to an end once the same is done. After the re-analysis of the sample was done at the instance of M/s. Somanil Chemicals from whom the insecticides in question was purchased by the dealer, the manufacturer i.e., the present petitioner could not claim any further right to go in for analysis once again."

14. The ratio of aforesaid judgement leaves no manner of doubt that once the second sample has been got re-analysed whether at the instance of dealer or distributor or manufacturer, the object of the provisions will stand achieved and the said right of re-analysis will be said to have been duly exercised qua all the co-accused. Thereafter, there would be no question of exercise of any such right again at the instance of other accused.

15. The submission can be tested from another angle as well inasmuch as in the case of insecticides, as per the settled procedure, only 3 samples are drawn whereas in a given case the number of accused can be more than 3 as in the present case wherein 7 persons have been arrayed as accused. Resultantly, it is not possible to get the sample re-analysed individually at the instance of each of the 7 accused when in fact only 3 samples are drawn. Thus the irresistible conclusion that can be drawn is that the purpose of section 24(2) is only to have a second opinion regarding the ingredients of the sample by getting the same re-analysed from Central Insecticide Laboratory and once the second sample has been got re-analysed, be it at the instance of any one of the accused, the purpose stands duly achieved. The approach of the Courts, in any case, has to be object-oriented. Thus, submission no. (i), as raised above on behalf of petitioners, can not be accepted.

Submission no. (ii) :

16. The contention of the petitioners to the effect that there is a delay in getting the sample analysed has to be examined in light of the following relevant dates :

31.12.2013 : Sample was drawn from the dealer.

1.1.2014 : Sample was sent to Insecticide Testing Laboratory, Amritsar.

21.1.2014 : Report of analysis received from Insecticide Testing Laboratory, Amritsar.

29.1.2014 : Report along with show-cause notice was sent to dealer. 24.2.2014 : During personal hearing afforded to Dealer, he disclosed about the manaufacturer.

27.3.2014 : Copy of Analyst's report alongwith show-casuse notice(Annexure P-4) was sent to Managing Director of the manufacturing firm M/s Cheminova India Ltd. and to its other office bearers.

5.4.2014 : Vide letter dated 5.4.2014(Annexure P-5), the manufacturing firm requested for re-analysis of second sample.

24.4.2014 : Manufacturing firm was asked to deposit a demand draft for an amount of Rs.500/- towards expenses.

21.7.2014 : Pursuant to deposit of Demand Draft for an amount of Rs.500/-, the second sample was sent to Central Insecticide Testing Laboratory, Faridabad for re-analysis.

14.8.2014 : Report regarding re-analysis of second sample was received from Central Insecticide Testing Laboratory, Faridabad.

17. The aforesaid facts would show that there has been no such inordinate delay in getting the samples analysed so as to have prejudiced the accused in any manner. The sample, in any case, was to expire on 1.11.2014 i.e. much after the sample stood analysed. As such, there being no merit in submission no. (ii), the same is repelled.

Submission No. (iii) :

18. Submission No. (iii) is to the effect that the firm cannot be prosecuted in the absence of a valid sanction for prosecuting the firm. The learned counsel has pressed into service three judgements of this Court i.e. Sanjay Aggarwal's case (supra), Sant Lal Surekha's case (supra) and Amar Singh Sidhu's case (supra). A perusal of the aforesaid judgements would show that these were rendered in cases wherein sanction had been accorded for prosecuting the firm only while there was no sanction for prosecuting the Directors and office bearers of the firms who were sought to be prosecuted in their individual capacity. It was held therein that sanction for prosecuting each such accused in individual capacity was required and consequently the complaint as well as consequential proceedings against the accused against whom sanction had not been accorded were quashed. There can certainly be no dispute as regards the said proposition of law.

19. However, in the present case, the petitioners have not been able to factually substantiate the said submission inasmuch they has not even annexed a copy of sanction order with the petition although the same is part of the complaint, so as to show that the sanction was accorded only in respect of the other accused and not in respect of the firm. The factum of according of sanction is specifically mentioned in para 13 of the complaint, the relevant extract of which reads as follows:

"..... .... as per Section 31(1) of the Insecticide Act, 1968, the written consent to institute the prosecution has been obtained from Joint Director of Agriculture (Plant Protection) Punjab, Chandgiarh which is authorized to act, for the purpose of Section 31(1) of the Act vide Punjab government notification no.15/1/93 Agri-ii(x) 1132 dated 10-02-1994 (attested copy of notification enclosed as Annexure-S). The sanction consent was granted vide endorsement No. 593-95-A.D.O.(P.P.) dated 13.3.2015 (original copy of sanction is enclosed as Annexure-T)."

20. The learned counsel for the petitioners has not able to show anything to the contrary. It was for the petitioners to have specifically pleaded this point in their petition and were expected to have annexed a copy of the sanction order in case they were really serious that the name of petitioner No. 1 is missing from the sanction order. In these circumstances, the aforesaid contention regarding there being no sanction for prosecuting petitioner no.1 cannot be accepted. Although, the counsel made some oral submissions regarding the consent being defective but the petitioners not even having chosen to annex a copy of the sanction order, the said submission can not be appreciated. In these circumstances, this Court does not find any ground for casting any doubt as regards the aspect of according of sanction for prosecution of petitioners. Submission no. (iii), as such, is repelled.

Submission no. (iv) :

21. It has been submitted by learned counsel for the petitioners that since there is no specific avernment in the complaint as regards the role and responsibility of petitioners No. 2 to 5, the said petitioners cannot be held liable in any manner and cannot be prosecuted. The learned counsel relies upon Rajiv Khurana's case (supra) and judgement dated 2.7.2015 rendered in M/s Cheminova's case (supra) to press upon his aforesaid submission.

22. In order to appreciate the aforesaid submission, it is apposite to refer to the relevant paragraph from the complaint(Annexure P-1) pertaining to the role and responsibility of petitioners No. 2 to 5. Para 15 of the complaint reads as follows:

"15. Whereas Sh. Pramod N. Karlekar s/o Sh. Narayan D. Karlekar r/o Anantashram, Road No.9, Near Sandhuwari Chembur, Mumbai- 400071 - Responsible Person & Managing Director, Sh. D.P.Sihag s/o Sh. Sardarram Sihag, r/o H.No. 238, Ist Floor, Model Town, Bathinda, - Responsible Person for conduct of business of Firm, Sh. Madhukar Gite s/o Sh. Ram Narayan Gite, r/o H.No. 13, Janakpuri Bunglow, Back J.E.B., Ankaleshwar, Distt. Bharuch Gujrat - Responsible for Quality Control, Sh. Arvind Sareen s/o Sh. Ramesh Sareen r/o H.No. 134-E, Khichlu Nagar, Ludhiana - Godown Incharge of M/s Cheminova India Ltd. Bharuch, Gujrat are responsible officer(Attested copy of Affidavits of Responsible Person as Annexure-U). By manufacturing, selling, stocking and distributing the above said misbranded 'Piroxofop Propanyl (Clodinafop Propargyl 15% WP)', the firm Cheminova India Ltd, Bharuch, Gujrat did commit an offence punishable under section 29(1)(A) read with section 3(K)(i), 17, 18 of the Act and they are liable for prosecution under Section 33 of the Act."

23. Petitioner no.2, in the present case is the Managing Director namely Sh. Pramod N. Karlekar. A Managing director need not be assigned a specific work as he, in such capacity is overall in-charge of conduct of business of the firm. Hon'ble Supreme Court in 2009(3) RCR(Criminal) 571 K.K. Ahuja Vs. V.K.Vohra, described the role and position of a Managing Director as follows :

"20. The position under section 141 of the Act can be summarised thus :

(i) If the accused is the Managing Director or a Joint Managing Director, it is not necessary to make an averment in the complaint that he is in charge of, and is responsible to the company, for the conduct of the business of the company. It is sufficient if an averment is made that the accused was the Managing Director or Joint Managing Director at the relevant time. This is because the prefix 'Managing' to the word 'Director' makes it clear that they were in charge of and are responsible to the company, for the conduct of the business of the company."

24. The judgement relied upon by learned counsel for the petitioners i.e. Rajiv Khurana's case (supra) does not pertain to Managing Director and as such the same is not of any advantage to the petitioner no.2 who happens to be the Managing Director of the firm. Although in the other judgement relied upon by the petitioners i.e. judgement dated 2.7.2015 rendered in CRM-No. M- 29114 of 2014(supra), the petitioner was Managing Director but in view of the role of a Managing Director, as explained by Supreme Court in K.K. Ahuja's case(supra), the said judgement can not be made applicable

25. It may here also be mentioned that during the course of the preliminary hearings of this case the learned counsel for the petitioners had submitted before this Court on 2.2.2017 that there are instructions of Government of Punjab to the effect that a Managing Director of a firm can be summoned only if the Quality Control Manager does not appear before the Court. Although, pursuant to said submissions, this Court had granted time to the petitioners place on record any such instructions but no such instructions were ever placed on record. Petitioner No. 2, thus, cannot escape from his liability on account of the insecticide having been found misbranded which was manufactured by the company of which he is the Managing Director.

26. As regards petitioner No. 3 namely Sh. D.P. Sihag, he, as per complaint, is stated to be the person responsible for conduct of business of the firm. The said fact is not disputed by the petitioners inasmuch as the petitioners have annexed a copy of affidavit(Annexure P-2) executed by the Managing Director(petitioner no.2) wherein Shri D.P. Sihag is stated to be responsible for conducting business of the firm in State of Punjab. In these circumstances, there can be no dispute that Shri D.P. Sihag is responsible for conduct of business on behalf of the firm in the State of Punjab i.e. the State from where the sample in question was drawn and as such even he cannot escape from his liability on account of the sample in question having been found misbranded.

27. Petitioner No. 4 namely Sh. Madhukar R. Gite, as per the complaint and as also described in the memo of parties is the person responsible for quality control of the firm. A person who is monitoring the quality of the product being manufactured by the firm is the key person who would be responsible for ensuring quality of the product being manufactured by the firm as he is the person who has to check and control the ingredients of the product being manufactured and to ensure that the same are as per the representation being made on the packaging and to ensure that there is no misbranding. In these

circumstances petitioner No. 4 is also liable to be prosecuted on account of misbranding of the insecticide in question.

28. It may here be mentioned that the complaint in question does contain the assignment of the petitioners no. 2 to 6 and there are allegations in brief to the effect that they all had knowingly and with consent and connivance manufactured, sold and distributed the misbranded insecticide. The complaint is not expected to be encyclopedic and it is only during the course of trial that the complainant can fully substantiate the averments and allegations made in the complaint as regards the role and responsibility of the petitioners and as regards misbranding of insecticide. The allegations as leveled in the complaint are sufficient to initiate prosecution against them.

29. Petitioner No. 5 namely Sh. Arvind Sareen is stated to be Godown Incharge of petitioner No. 1. The said godown in question is situated in Ludhiana. The insecticide being manufactured in the manufacturing unit of the firm in Gujarat must have been transported to different districts in different States before the same is further sent to the Distributors and thereafter to the Dealers for its sale, as per the requirement or orders received by the firm. The duty of Godown Incharge would be to ensure that articles/goods received from the manufacturing firm are kept in safe condition in the Godown and to maintain a proper inventory of all such articles and goods so received and to further pass on to the same to Distributors and Dealers as per the directions of the manufacturing firm. Since the insecticide in question, in any case is in sealed condition, therefore the Godown Incharge whose primary job is to keep the articles intact and to further pass on the same to the Distributors and Dealers and is himself not supposed to sell the same cannot be said to have committed any offence under Insecticides Act 1968 so as to have rendered himself liable for prosecution. As such, the complaint qua petitioner No. 5 deserves to be quashed. The submission no. 4 thus stands partly accepted qua petitioner No. 5 only.

30. As a sequel to the discussion made above, this Court does not find merit in the petition as far as case of petitioners nos. 1 to 4 is concerned and the same is dismissed qua petitioners nos. 1 to 4. However, the petition merits acceptance qua petitioner no.5 and the same is accepted qua petioner no. 5 only i.e. Sh. Arvind Sareen, Godown Incharge of the firm and the complaint and other consequential proceedings qua petitioner no.5 are hereby quashed.

