

(1998) 07 RAJ CK 0007

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 669 of 1995

Rallis India Company and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 14-07-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Insecticides Act, 1968 — Section 29(1), 31(1), 33

Citation : (1998) CriLJ 4767

Hon'ble Judges : G.P. Mittal, J

Bench : Single Bench

Advocate : G.K. Vyas and Mukesh Vyas, for the Appellant; J.P.S. Choudhary, Public Prosecutor, for the Respondent

Judgement

S.L. Mital, J.—The petitioners have challenged their prosecution u/s 29(1)(a) of the Insecticides Act, 1968 (hereinafter referred in short "the Act") by Dy. Director Agriculture (Extension) Pesticides Inspector and Registration Authority, Sirohi through this petition u/s 482 Cr.P.C. by invoking the inherent jurisdiction of this Court.

2. Petitioner No. 2 is Chairman and petitioner No. 3 is Vice Chairman of M/s Rallis India Company, Bombay-petitioner No. 1. Petitioners No. 4 to 7 F.A. Mehta, Y. N. Mafat Lal, B. N. Nadkarni and S. Parthsharthi are Directors of the said Company. Petitioner No. 8 R. S. Kankarwal is Area Manager, Bani Park, Jaipur. The complaint was filed against the petitioners and other four dealers at Sirohi and petitioner No. 1 M/s Rallis India Ltd., Bombay.

3. Since the learned counsel for the petitioners has raised a legal point, it is not necessary to narrate the facts of the case. The learned counsel for the petitioners has contended that the. peti-tioners Nos 2 to 8 were not incharge or responsible to the company for the conducoot the business of the company and therefore they are not liable to be prosecuted against for the offence committed by the company. It is further contended that the alleged offence was committed without

their knowledge also. It is not also averred in the complaint that the alleged offence was committed with the consent or connivance of petitioners Nos. 2 to 8 nor it is attributable to any neglect on their part. Therefore, the complaint is not maintainable against the petitioners in view of the provision of Section 33 of the Act. The learned Public Prosecutor submitted that the petitioners are Chairman, Vice Chairman, Directors and Area Manager respectively and therefore they are incharge of the affairs of the company and must be treated as directly responsible for the conduct of the business of the company. According to him, the petitioners should be deemed to be incharge and responsible for the business of the company by virtue of the designation and post held by them.

4. I have seriously considered the rival submissions and have also gone through the decision relied on behalf of the petitioners 1997 (1) WLC (Raj) 657 M/s. Bharat Insecticides Ltd. v. State of Rajasthan. Section 33 of the Act clearly envisages that if an offence is committed by a company under the said Act, every person who is incharge of or is responsible to the company for the conduct of the business of the company at the time of the commission of the offence shall be liable to be prosecuted against and punished accordingly. It is further laid down in Sub-section (2) of Section 53 that if offence has been committed with the consent and connivance or is attributable to any neglect on behalf of any Director, Manager, Secretary or other officer of the company then such persons shall also be deemed to be guilty of the offence. I am inclined to agree with the learned counsel for the petitioners that the complainant must state in the complaint that who were incharge of or responsible for the conduct of the business of the company at the time of the commission of the offence to fulfil the requirement of Section 33 of the Act. It should be shown clearly in the complaint that the persons arrayed as accused were incharge of or responsible for the business of the company at the time of the alleged commission of the offence because only such Directors or Manager or any other official are liable to be prosecuted against for the offence and not all the Directors or Managers for merely holding the post in the company. I find that no such averment has been made in the complaint. In para 18 of the complaint all the petitioners have been named with their post/designation and it has been stated that all of them have jointly committed the offence. Such an averment does not fulfil the requirement of Section 33 of the Act. It has been mentioned in para 11 that sanction has been accorded by the State Government u/s 31(1) to prosecute dealers, manufacturing company and the persons responsible for the business of the company. However, steps have not been taken to find out that who are the persons incharge or responsible for the business of the company. In the absence of such averment and disclose of the fact about the responsibility of the petitioners Nos. 2 to 8, they are not liable to be prosecuted against u/s 33 of the Act. The petitioners' contention finds full support by the decision of Bharat Insecticides v. State of Rajasthan (supra).

5. In view of the foregoing discussion, I am of the view that the complaint filed against the petitioners and the proceedings deserve to be quashed. The

impugned order dated 22-10-94 qua the petitioners is hereby set aside and the criminal proceedings against the petitioners pending in the court of Judicial Magistrate, Shivganj in Complaint Case No. 408/94 (State v. Rallis India Co.) is quashed. However, the proceeding against the remaining accused shall continue and the complainant will be competent to file complaint according to law against persons who are incharge or responsible for the conduct of the business of the company i.e. petitioner No. 1.