(1994) 03 P&H CK 0050

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 9800-M of 1993

R.C.Gupta, Accountant, M/s.Pesto Chem.India Ltd. — APPELLANT

Vs

State of Haryana — RESPONDENT

Date of Decision : 15-03-1994

Acts Referred:

Citation : (1994) 2 RCR(Criminal) 418

Hon'ble Judges : Harmohinder Kaur Sandhu, J

Advocate : P. S. Sullar, S. M. S. Pasricha, Advocates for appearing Parties

Judgement

Harmohinder Kaur Sandhu, J.

1. The present petition under Section 482 Cr.P.C. has been filed by R. C. Gupta, Accountant, M/s. Pesto Chemicals India Limited for quashing the complaint Annexure P/1 and all subsequent proceedings arising therefrom pending against the petitioner and others in the Court of Chief Judicial Magistrate, Sonepat.

2. The brief facts of the case relevant for the disposal of this petition are that on 15.1.1988 Shri Jagdish Chander Sharma, Ex.Sub Divisional Agriculture Officer, Sonepat inspected the premises of M/s. Dutta Brothers, Murthal Mandi, District Sonepat, along with Shri Mahavir Singh Dahiya, Circle Agriculture Officer and drew three samples of BHC 10% in the prescribed manner. One sealed sample was sent to Senior Analyst of Karnal Insecticides Laboratory for analysis and the Senior Analytical Chemist vide his report informed that the sample did not conform to the active ingredients and Sieve Test requirement. A complaint was, thus, filed for the offences under Sections 3K and 18(1) and (c) of the Insecticides Act, 1960, (for short ''the Act'') against Shri Sudhir Dutt and the present petitioner.

3. The petitioner alleged that he was working as an accountant with M/s. Pesto Chemicals India Limited, New Delhi, and was looking after the financial matters of the company. He had nothing to do with manufacturing of quality control of the products manufactured by the company. Initiation of criminal proceedings

against him by institution of complaint Annexure P/1 was an abuse of the process of the Court. He further averred that M/s. Pesto Chemicals India had not supplied any material to M/s. Dutta Brothers, Murthal. Whatever material was supplied by the company was sent to the office of Locust Control and Plant Protection Officer, Department of Agriculture, Haryana, at Chandigarh, vide an invoice dated 28.4.1987 and it was not known as to how M/s. Dutta Brothers Murthal got the material of BHS 10% of Batch No. 656 when the supply was made by the company to the Government Department. Moreover, he was neither in charge of nor responsible to the company for the conduct of its business and no proceedings could be initiated against him. Under Section 33 of the Act he or any other employee could not be prosecuted unless the proceedings were launched against the company also. The liability of an employee could arise only when the master was found guilty. The complaint could not proceed against him in the absence of the principal offender i.e. the company.

4. In the reply submitted by the respondent it was maintained that Shri R. C. Gupta was the Sales Manager of M/s. Pesto Chemicals India Limited and he was responsible for the conduct of its business. Proceedings were rightly initiated against him.

5. I have heard the counsel for the parties and have perused the record.

6. The only contention of the learned counsel for the petitioner was that the petitioner was not responsible to the Company for the conduct of the business of the Company nor he was in charge of the business and he could not be held responsible for the contravention of any provision of law. He was simply an accountant dealing with financial matters of the Company. Moreover, there were absolutely no averments in the complaint that the BHC 10% of which sample was seized was manufactured by M/s. Pesto Chemicals India Limited or that the petitioner was in charge of and responsible for the conduct of business of that Company. The Company was not arrayed as an accused. This contention of the learned counsel appears to be valid. Section 33 of the Insecticides Act, 1968 deals with the offences by the Companies, which reads as under :

"(1) Whenever an offence under this Act has been committed by a company, every person who at the time of 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 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.

(2) Notwithstanding anything contained in subsection (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 shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation : For the purpose of this section

(a) ''company'' means any body corporate and includes a firm or other association of individuals, and

(b) ''director'' in relation to a firm, means a partner in the firm."

7. A perusal of the above referred section shows that the company has been made principal accused and since the Company acts through its officials, the official directly involved in the manufacture, sale, or distribution and is answerable to the company has also been made liable. The provisions of Section 10 of the Essential Commodities Act. 1955 with regard to the offences by the companies and similar to the provisions in this Act and in a case under the Essential Commodities Act i.e. Sham Sunder Bassi v. The State of Punjab, 1992 Volume 12 Punjab Legal Reports and Statutes 505 it was held :

"Where the breach of order was committed by a Company and Company was not arrayed as launched against the employee alone as liability of the employee would arise only if company was arrayed as accused."

The proceedings against the employee were, thus, quashed.

8. In the instant case in the complaint Annexure P/1 it was nowhere mentioned that BHC 10% of which sample was taken was manufactured by M/s. Pesto Chemicals India Limited nor it was anywhere alleged that the petitioner was incharge of and was responsible to the company for the conduct of the business of the company. The company was not arrayed as accused. So, the petitioner could not be made liable for contravention of any provisions of the Act. The liability of the petitioner would arise only if it is held that M/s. Pesto Chemicals India Limited violated the provisions of the Act and the petitioner was in charge of and responsible to the conduct of business of that company. Without arraigning the company as an accused person there would hardly be any finding regarding the liability of the company and this flaw in the prosecution of the petitioner would prove fatal to the case of the complainant. Moreover, in the absence of any averment in the complaint as to how the petitioner was prima facie liable for the commission of any offence, the complaint against him cannot proceed.

As a result, I allow this petition and quash the complaint Annexure P/1 and all subsequent proceedings arising therefrom qua the petitioner.

