



CRM-M-20870-2022

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRM-M-20870-2022
Reserved on : 04.03.2025
Pronounced on: 07.03.2025**

M/s FMC India Private Ltd. and another ... Petitioners

Versus

State of Haryana .. Respondent

CORAM : HON'BLE MR. JUSTICE H.S.GREWAL

Present:- Mr. Nitin Thatai, Advocate for the petitioners.

Mr. Aditya Pal Singla, AAG, Haryana.

H.S. Grewal, J.

This petition has been filed under Section 482 of the Code of Criminal Procedure for quashing of the complaint bearing No.100 dated 25.09.2020 titled as 'State of Haryana versus Sh.Mukesh Kumar and others', registered under Sections 3(K)(i), 17(i)(a) and 33(i) of the Insecticides Act, 1968 (hereinafter referred as 'the Act') and summoning order dated 25.09.2020 (Annexure P-6) passed by the learned Chief Judicial Magistrate, Kurukshetra along with consequential proceedings arising out of the complaint qua the petitioners.

2. Learned counsel for the petitioners submits that the petitioners have sought quashing the aforesaid complaint and subsequent proceedings arising therefrom on the ground that the offence under the Insecticides Act cannot be made out against the petitioner-Company as it is merely a distributor/marketing company and not the manufacturer of Chlorantraniliprole 18.5% w/w SC which is being manufactured by M/s E.I. Dupont India Pvt. Ltd.



It is further contended that the complainant-Quality Control Inspector, Kurukshetra-cum-Insecticide Inspector had specifically mentioned in Para 10 of the complaint (Annexure P-5) that the misbranded insecticide was marketed by the petitioner-Company and therefore, the petitioners are neither responsible for conduct of the business of the manufacturing company nor responsible to maintain the product quality at the behest of the manufacturer.

3. It is further contended by the counsel for the petitioners that the summoning order dated 25.09.2020 (Annexure P-6) has been passed in a mechanical manner and by an evident non-application of mind as itself shows that the petitioner-Company is the marketing agent. He has further drawn attention to the relevant provisions of the Insecticides Act under which the petitioners are being sought to be prosecuted and the same reads as under:-

“Section 3 (k)(i)

“Misbranded”- an insecticide shall be deemed to be misbranded

- i. if its label contains any statement, design or graphic representation relating thereto which is false or misleading in any material particular, or if its package is otherwise deceptive in respect of its contents; or*
- ii. if it is an imitation of, or is sold under the name of, another insecticide; or*
- iii. if its label does not contain a warning or caution which may be necessary and sufficient, if complied with to prevent risk to human beings or animals; or*
- iv. if any word, statement or other information required by or under this Act to appear on the label is not displayed thereon in such conspicuous manner as the other words, statements, designs or graphic matter have been displayed on the label and in such terms as to render it likely to be read and understood by any ordinary individual under customary conditions of purchase and use; or*



- v. *if it is not packed or labelled as required by or under this Act; or*
- vi. *if it is not registered in the manner required by or under this Act; or*
- vii. *if the label contains any reference to registration other than the registration number; or*
- viii. *if the insecticide has a toxicity which is higher than the level prescribed or is mixed or packed with any substance so as to alter its nature or quality or contains any substance which is not included in the registration;*

Section 17

Prohibition of import and manufacture of certain insecticides:-

(1) No person shall, himself or by any person on his behalf, import or manufacture—

- (a) any misbranded insecticide;*
- (b) any insecticide the sale, distribution or use of which is for the time being prohibited under section 27;*
- (c) any insecticide except in accordance with the conditions on which it was registered;*
- (d) any insecticide in contravention of any other provision of this Act or of any rule made thereunder:*

Provided that any person who has applied for registration of an insecticide 14 [under any of the provisos] to sub-section (1) of section 9 may continue to import or manufacture any such insecticide and such insecticide shall not be deemed to be a misbranded insecticide within the meaning of sub-clause (vi) or sub-clause (vii) or sub-clause (viii) of clause (k) of section 3, until he has been informed by the Registration Committee of its decision to refuse to register the said insecticide.

(2) No person shall, himself or by any person on his behalf, manufacture any insecticide except under, and in accordance with the conditions of, a licence issued for such purpose under this Act.

Section 33

Offences by companies.—

(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 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 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 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.”

4. Learned counsel for the petitioners, while relying upon the aforesaid provisions, contended that as per the complaint in hand (Annexure P-5), the samples in question were drawn from a sealed packed material and the manufacturer of the said material is M/s E.I. Dupont India Private Limited, whereas, the petitioners are only distributor/marketing company and their officials cannot be held responsible for the alleged deficiency in the active ingredients of a sample or be held accountable for a case of misbranding. There is no allegation that any interpolation or interjection had been carried out in the packet of insecticide at the behest of the petitioners' marketing company. In support of his submissions, he has relied upon the judgment passed by this Court in the cases of **Lochen Kheti Sewa Centre Vs. State of Punjab, 2008(2) RCR (Criminal) 22; M/s Mahindra Shubhlabh**



Services Limited and another versus State of Punjab, 2023(1) Law Herald 885; M/s Rallis India Limited and others versus State of Punjab Thro Insecticide Inspector’, bearing CRM-M-20338-2017, decided on 20.04.2022; Ramandeep Singh and another versus State of Punjab, 2024 NCPHHC 7404, M/s Syngenta India Ltd. and others versus State of Punjab, 2024 NCPHHC 47039 and M/s Mohinder Kumar Heshane Kumar and another versus State of Punjab, 2023(2) RCR (Criminal) 537.

5. On the other hand, learned State counsel, while referring to the affidavit filed by the Quality Control Inspector, Kurukshetra, has argued that it is an established case of misbranding and that the active ingredients of the product were not in accordance with the contents as described in the label. It is also argued that the culpability of the petitioners shall be determined at the stage of the trial. He has also placed reliance on the results of the analysis report dated 26.07.2019 (Annexure P-1) to conclude his arguments.

6. I have heard learned counsel for the parties and have carefully gone through the material on record as well as the judgements cited by the petitioners in support of their contentions.

7. The disputed question of fact is as to whether a marketing company/agency can be held responsible and liable to be criminally prosecuted under the Act in the event that the sample in question is drawn out of a sealed container, which is found to be misbranded after analysis.

8. First of all, it is necessary to reproduce Section 30 of the Act for the adjudication of the matter:-

“30. Defences which may or may not be allowed in prosecutions under this Act.—



(1) & (2) XXXX

(3) A person not being an importer or a manufacturer of an insecticide or his agent for the distribution thereof, shall not be liable for a contravention of any provision of this Act, if he proves—

(a) that he acquired the insecticide from an importer or a duly licensed manufacturer, distributor or dealer thereof;

(b) that he did not know and could not, with reasonable diligence, have ascertained that the insecticide in any way contravened any provision of this Act; and

(c) that the insecticide, while in his possession, was properly stored and remained in the same state as when he acquired it.”

9. This Court in the case of ***Lochen Kheti Sewa Centre Vs. State of Punjab, (supra)***, has observed as under:-

“3. Learned counsel appearing for the respondent/State has very fairly stated that the petitioner is not the manufacturer. The sample was drawn from sealed packets and there is no material to indicate that it was properly stored. Under the circumstances the petitioner cannot be held liable for misbranding of the insecticide. Only the manufacturer, who is being proceeded against would be responsible.”

10. Furthermore, in the case of **M/s Mahindra Shubhlabh Services Limited and another versus State of Punjab** (supra), this Court has held as under:-

“Further, in the present case, the sample was drawn from the original sealed package of the concerned insecticide as is evident from seizure memo comprised of Forms XX and XXI which are part of the record of the learned trial Court. There is nothing on record to show that the said sealed package/container was not properly stored by the licensed dealer or that at the time of taking of sample, the container of the insecticide was not found to be properly sealed or the seal was found to be tampered with by the Insecticide Inspector. In view of the fact that the sample was taken from a properly sealed container/package, the liability arising out of the misbranding cannot be that of the marketing agency or its employees, in light of the provisions of Section 30(3) of the Act.”



11. This Court in the case of **M/s Rallis India Limited and others versus State of Punjab Thro Insecticide Inspector(supra)**, has also held as under:-

“It is evident from a perusal of the petition as well as documents appended along with the same that the undisputed case of the respondent-State is that the petitioners were a marketing agent of the insecticides. It has been repeatedly so affirmed by the respondent in various paragraphs of the complaint instituted through Insecticide Inspector and already extracted above. It is also not a subject matter of dispute that the sample was drawn from a sealed packet and it is nowhere alleged that the sample had not been stored in accordance with the provisions contained under the Insecticides Act and Rules framed thereunder. There is also no allegation that the petitioners were responsible for the quality of the product as also for ensuring the labelled ingredients of the same. The petitioners are not nominated as the authorised/responsible officers in terms of Section 33 of the Insecticides Act. The statutory mandate intends to penalize a person who has committed an offence. It does not intend to prosecute the people who are merely dealing with the said product and for which they have no control as regards its quality and content. The petitioners cannot be held vicariously liable and to be penalized for misbranding of a product where they were not involved in the manufacturing process at all merely for having traded in the same. Section 3(k)(i) defines misbranding. The same relates to the label of products and its contents. It is not the case that any of the activities referred to under section 3 (k) attracting misbranding was undertaken by the petitioners. Further, Section 17 of the Act is also not attracted against the petitioners inasmuch as the petitioners are neither the importer of the misbranded insecticides, nor manufacturer thereof. Further, the ingredients of Section 18 of the Act are also not satisfied and there is no allegation that the petitioners had indulged in the sale of the insecticides, which was either not registered under the Act or was prohibited under Section 27. Similarly, Section 29 also would not be applicable against the petitioners inasmuch as the same contemplates punishment for offences as stated above. Once the necessary ingredients of the said Sections are not satisfied against the petitioners, they cannot be penalized for the same.”



12. Similarly, this Court in the cases of **Ramandeep Singh and another versus State of Punjab(supra)**, **M/s Syngenta India Ltd. and others versus State of Punjab(supra)** and **M/s Mohinder Kumar Heshane Kumar and another versus State of Punjab(supra)**, had adjudicated a common issue with regard to the misbranding and had held that a marketing company/agency cannot be held responsible for the quality/misbranding of a product and the manufacturer solely be responsible under Section 3(a)(i) of the Act.

13. Hon'ble the Supreme Court in the matter of **M/s Cheminova India Limited & Anr Vs. State of Punjab & Ors**, decided on 04.08.2021 passed in Criminal Appeal No.750 of 2021 has held that proceedings under the Insecticides Act cannot be instituted against all and sundry persons of the company and that as per mandate of Section 33 of the Act, it is clear that responsible persons of the company alone can be deemed to be prosecuted and liable to be proceeded against. The relevant extracts are stated as under:-

“9. xxxxxxxxxxxxxxxx. In view of the specific provision in the Act dealing with the offences by companies, which fixes the responsibility SLP(Crl.) No. 4144 of 2020 and the responsible person of the Company for conduct of its business, by making bald and vague allegations, 2nd Appellant – Managing Director cannot be prosecuted on vague allegation that he being the Managing Director of the 1st Appellant – Company, is overall responsible person for the conduct of the business of the Company and of quality control, etc. In the instant case, the Company has passed a resolution, fixing responsibility of one of the Managers namely Mr. Madhukar R. Gite by way of a resolution and the same was furnished to the respondents by the 2nd Appellant in shape of an undertaking on 22.01.2013. When furnishing of such undertaking fixing the responsibility of the quality control of the products is not in dispute, there is no reason or justification for prosecuting the 2nd Appellant – Managing Director, on the vague and spacious plea that he was the Managing Director of the Company at the



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relevant time. A reading of Section 33 of the Act also makes it clear that only responsible person of the Company, as well as the Company alone shall be deemed to be guilty of the offence and shall be liable to be proceeded against. Though, the Managing Director is overall incharge of the affairs of the company, whether such officer is to be prosecuted or not, depends on the facts and circumstances of each case and the relevant provisions of law. Having regard to specific provision under Section 33 of the Act, and the undertaking filed in the present case, respondent cannot prosecute the 2nd Appellant herein.

Thus, we find force in the contention of Mr. Sidharth Luthra, learned Senior Counsel, that allowing the prosecution against 2nd Appellant – Managing Director is nothing but, abuse of the process of law. At the same time, we do not find any ground at this stage to quash the proceedings against the 1st Appellant – Company.”

14. Admittedly, in the instant case, petitioner No.1 is the marketing company while petitioner No.2 is its DGM Sales and the samples were taken from sealed packings.

15. In view of the undisputed facts, the position of law as well as the statutory provisions, the instant petition is allowed and the complaint bearing No.100 dated 25.09.2020 titled as ‘State of Haryana versus Sh. Mukesh Kumar and others’, registered under Sections 3(K)(i), 17(i)(a) and 33(i) of the Insecticides Act, 1968 and summoning order dated 25.09.2020 (Annexure P-6) passed by the learned Chief Judicial Magistrate, Kurukshetra are accordingly quashed qua the petitioners.

(H.S.GREWAL)
JUDGE

07.03.2025
A.Kaundal

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No