

A M/S CHEMINOVA INDIA LIMITED & ANR.

v.

STATE OF PUNJAB AND ORS.

(Criminal Appeal No. 750 of 2021)

B AUGUST 4, 2021

[NAVIN SINHA AND R. SUBHASH REDDY, JJ.]

Insecticides Act, 1968: s.33 – Allegation of misbranding – Complaint against the appellant-manufacturing company and

- C *appellant-Managing Director of the company and other accused under ss.3(k)(i),17,18 and 33 – High Court dismissed the petition for quashing the complaint – In the instant appeal, plea of appellants was that they had nominated the manager to be incharge and responsible officer of the company to maintain quality of the pesticides manufactured by company and had filed the undertaking to that effect before the respondents along with the resolution of the Company's meeting – Held: Filing of the undertaking with the respondents is not disputed – The specific provision of the Act dealing with the offence by companies states that only responsible person of the company as well as the company alone shall be deemed to be guilty of offence and shall be liable to be proceeded against – In view of that, Managing Director of the company cannot be prosecuted on vague allegation that he being Managing Director was overall responsible for conduct of business of company and of quality control – As all other nominated / responsible persons of the Company are already accused in the complaint, there is no basis to proceed against the appellant-Managing Director to prosecute him for the alleged offences – However, there is no ground at this stage to quash the proceedings against the appellant-Company.*

Code of Criminal Procedure, 1973: s.202 – Plea of appellant that before taking cognizance of offence on complaint, Magistrate

- G *has not followed the procedure, contemplated under s.24(4) of the Insecticides Act and s.202 Cr.PC and that though the appellants are not residing within the jurisdiction of the Magistrate, the cognizance of offence was taken without making proper inquiry and ordering investigation – Held: The legislature in its wisdom has itself placed the public servant on a different pedestal, as is*

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evident from a perusal of proviso to s.200 of the Code – Object of holding an inquiry/investigation before taking cognizance, in cases where accused resides outside the territorial jurisdiction of such Magistrate, is to ensure that innocents are not harassed unnecessarily – By virtue of proviso to s.200 of Code, the Magistrate, while taking cognizance, need not record statement of such public servant, who has filed the complaint in discharge of his official duty – Further, by virtue of s.293 of Code, report of the Government Scientific Expert is, per se, admissible in evidence – The Code of Criminal Procedure itself provides for exemption from examination of such witnesses, when the complaint is filed by a public servant – In the instant case, the second Respondent/Public Servant, in exercise of powers under provisions of the Insecticides Act, 1968 had filed complaint enclosing several documents including reports of the Government Laboratories, therefore, it was always open for the Magistrate to issue process on such complaint which was supported by documents – In any event, there is no merit in the submissions that proceedings are to be quashed only on the ground that, the Magistrate has taken cognizance without conducting inquiry and ordering investigation – In absence of showing any prejudice caused to the appellant at this stage, the same is no ground to quash the proceedings in exercise of power under s.482 of the Code – Insecticides Act, 1968: ss.24(4). 33.

Partly allowing the appeal, the Court

HELD: 1.1 Section 33 of the Act deals with ‘offences by companies’. A reading of Section 33(1) of the Act, makes it clear that 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. In the case on hand, it is not in dispute that on behalf of the 1st Appellant – Company, 2nd Appellant-Managing Director has furnished an undertaking indicating that Shri Madhukar R. Gite, Manager of the Company, has been nominated in the resolution passed by the Company on 28.12.2012 to be in charge of and responsible to the said Company, to maintain the quality of the pesticides

- A manufactured by the said Company and he was authorized to exercise all such powers and to take all such steps, as may be necessary or expedient to prevent the commission of any offence under the Act. Filing of such undertaking with the respondent is not disputed. In view of the specific provision in the Act dealing with the offences by companies, which fixes the responsibility 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. Allowing the prosecution against 2nd Appellant-Managing Director is nothing but, abuse of the process of law. At the same time, there is no ground at this stage to quash the proceedings against the 1st Appellant – Company. [Para 9][366-G-H; 367-A-E; 368-A-B]
- D 1.2 Further, from the averments in the counter affidavit filed on behalf of Respondents 1 & 2 and other material placed on record, no case is made out to quash the proceedings at this stage, by accepting the plea of the appellants that the procedure contemplated under Section 24 (4) of the Act and Section 202 of the Code of Criminal Procedure, is not followed. With regard to the procedure under Section 24 (4) of the Act, after the 1st Appellant – Company has deposited necessary Demand Draft for sending 2nd sample to the Central Insecticide Testing Laboratory, steps were taken promptly and report was also sent by the Central Insecticide Testing Laboratory within the prescribed period of 30 days. Similarly, with regard to the procedure contemplated under Section 202 of the Code of Criminal Procedure, the same is to be viewed, keeping in mind that the complainant is a public servant who has filed the complaint in discharge of his official duty. The legislature in its wisdom has itself placed the public servant on a different pedestal, as would be evident from a perusal of proviso to Section 200 of the Code of Criminal Procedure. Object of holding an inquiry/investigation before taking cognizance, in cases where accused resides outside the territorial jurisdiction of such Magistrate, is to ensure that innocents are not harassed unnecessarily. By virtue of proviso to Section 200 of Code of Criminal Procedure, the Magistrate,

while taking cognizance, need not record statement of such public servant, who has filed the complaint in discharge of his official duty. Further, by virtue of Section 293 of Code of Criminal Procedure, report of the Government Scientific Expert is, *per se*, admissible in evidence. The Code of Criminal Procedure itself provides for exemption from examination of such witnesses, when the complaint is filed by a public servant. In the present case, 2nd Respondent/Public Servant, in exercise of powers under provisions of the Insecticides Act, 1968, has filed complaint, enclosing several documents including reports of the Government Laboratories, it is always open for the Magistrate to issue process on such complaint which is supported by documents. The proceedings should not be quashed only on the ground that, the Magistrate has taken cognizance without conducting inquiry and ordering investigation. In absence of showing any prejudice caused to the appellant at this stage, the same is no ground to quash the proceedings in exercise of power under Section 482 of the Code of Criminal Procedure. As all other nominated/responsible persons of the Company are already accused in the Complaint, there is no basis to proceed against the 2nd Appellant-Managing Director to prosecute him for the alleged offences. [Paras 10, 11][368-B-H; 369-A-C]

Managing Director, Castrol India Limited v. State of Karnataka & Anr. (2018) 17 SCC 275; *Shiv Kumar Jatia v. State of NCT of Delhi* (2019) 17 SCC 193 : [2019] 11 SCR 210 – referred to.

Re: Expeditious Trial of Cases under Section 138 of N.I. Act, 1881 (Suo Motu Writ Petition (Crl.) No.2 of 2020) (2021) SCC ONLINE SC 325 – distinguished.

Case Law Reference

(2018) 17 SCC 275	referred to	Para 6(a)	
[2019] 11 SCR 210	referred to	Para 6(a)	G

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No.750 of 2021.

From the Judgment and Order dated 12.05.2020 of the High Court of Punjab and Haryana at Chandigarh in CRM-M No.12082 of 2016.

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- A Guru Krishnakumar, Sidharth Luthra, Sr. Advs., S. Hariharan, Nitin Thatai, Ms. Jaikriti S. Jadeja, Ms. Sneha Ravi Iyer, Advs. for the Appellants.
- Ms. Jaspreet Gogia, Ms. Mandakini Singh, Karanvir Gogia, Ms. Shivangi Singhal, Ms. Ashima Mandla, Advs. for the Respondents.
- B The Judgment of the Court was delivered by
- R. SUBHASH REDDY, J.**
1. Leave granted.
 2. This Criminal Appeal is filed by the Petitioners / Accused nos.
- C 3 and 4 in CRM-M-12082-2016 (O & M) before the High Court of Punjab & Haryana at Chandigarh, aggrieved by the Order dated 12.05.2020. By the aforesaid order, the Petitioners' application of quashing of Complaint No. 313 dated 19.08.2015, filed by the Respondent No.2 – The Quality Control Inspector, Bhikhiwind, District Tarn Taran, Punjab
- D for offences under Sections 3(k)(i), 17, 18 and 33, punishable under Section 29 of the Insecticides Act, 1968 (for short, "the Act"), was dismissed. The petition was allowed by the High Court for other accused, who was working as Godown Incharge, and quashed the proceedings.
- E 3. The 1st Appellant is a Company, having its office in Mumbai, which is engaged in manufacturing of insecticides. The 2nd Appellant was the Ex-Managing Director of the Company. On 31.12.2013, Quality Control Inspector, Bhikhiwind, District Tarn Taran, Punjab inspected the premises of M/s. Dhillon Kheti Store in the presence of its sole Proprietor, Shri Nishan Singh. The said Nishan Singh was the authorised dealer for 1st Appellant – Company, to sell its insecticides. At the time of inspection,
- F the inspecting officer found six boxes containing 25 packets each, of *Piroxofop Propanyl (Clodinafop Propargyl 15% WP)*, with each packet weighing 160 grams, stocked in the premises. From the abovesaid stock, samples were drawn and one of the samples was sent to Senior Analyst, Insecticide Testing Laboratory, Amritsar. When the report dated
- G 15.01.2014 was received, active ingredient of Piroxofop Propanyl was found only to the extent of 11.72% as against the labelled declaration of 15%. A copy of the report was sent to the dealer at Amritsar along with a Show Cause Notice. On production of copy of the invoice by the dealer, indicating that he had purchased the insecticides in question from the 1st Appellant – Company, Show Cause Notice was also issued to the
- H 1st Appellant – Company, which is having its manufacturing unit in

Bharuch, Gujarat and to other responsible officers of the Company. On receipt of the report, the 2nd Appellant herein, on behalf of the Company, also made a request to send another sample to Central Insecticide Testing Laboratory at Faridabad vide letter dated 27.03.2014 and after depositing necessary charges, another sample was sent to Central Insecticide Testing Laboratory, which has reported that the sample was misbranded as the same was found to contain 10.09% of active ingredient only as against 15%, as labelled on the packet. After obtaining necessary sanction from the competent authority, a complaint was lodged before the Judicial Magistrate to prosecute the appellants and other accused for offences under Sections 3(k)(i), 17, 18 and 33, punishable under Section 29 of the Act.

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4. The appellants and other accused approached the High Court, seeking quashing of the said complaint on various grounds. By impugned order, High Court has dismissed the petition, so far as appellants are concerned, and allowed the application for the Godown Watchman.

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5. Heard Mr. Sidharth Luthra, learned Senior Counsel, appearing for the Appellants and Ms. Jaspreet Gogia, learned Counsel appearing for the Respondents.

6. Learned Counsel for the appellants by referring to Section 33 of the Act has submitted that appellants have already filed an undertaking dated 22.01.2013 before the respondents, nominating the incharge and responsible officers of the Company to maintain quality of the pesticides manufactured by the Company along with the resolution of the Company's meeting held on 28.12.2012. Learned Counsel has submitted that by making vague and bald allegations, the appellants, who were the Company and the Managing Director, are also sought to be prosecuted.

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6(a). It is submitted that unless there is a clear and categorical averment in the complaint, indicating the role played by the appellants, there cannot be any vicarious liability on the 1st Appellant – Company and the 2nd Appellant–Managing Director for commission of the alleged offence. In support of his arguments, learned Senior Counsel has placed reliance on the judgment of this Court in the case of *Managing Director, Castrol India Limited vs. State of Karnataka & Anr.*¹, and also another judgment of this Court in the case of *Shiv Kumar Jatia vs. State of NCT of Delhi*².

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¹ 2018 (17) SCC 275

² 2019 (17) SCC 193

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- A **6(b).** It is also further contended by the learned Counsel that before taking cognizance of the offence on the complaint, learned Magistrate has not followed the procedure, contemplated under Section 24 (4) of the Act and Section 202 of the Code of Criminal Procedure. It is submitted that though, the appellants are not residing within the jurisdiction of the Magistrate, without making proper inquiry and ordering investigation, cognizance of the offence is taken. Further, it is submitted that the prosecution against the appellants, is nothing but abuse of the process of law. The High Court has not considered various grounds raised by the appellants in proper perspective and dismissed their application for quashing the complaint. In support of his argument that the Magistrate
- B has not followed the procedure under Section 202 of the Code of Criminal Procedure, learned Senior Counsel has placed reliance on the judgment of this Court in *Re: Expeditious Trial of Cases under Section 138 of N.I. Act, 1881 (Suo Motu Writ Petition (Crl.) No.2 of 2020)*³.

- 7. On the other hand, learned Counsel, appearing for the
- D Respondents, has submitted that the High Court has considered all the grounds raised by the petitioners and rejected the petition to quash the proceedings. It is submitted that the 2nd Appellant, being the Managing Director of the 1st Appellant – Company, which is the manufacturer of the product in question, was rightly prosecuted by the 2nd Respondent – Quality Control Inspector, Bhikhiwind, District Tarn Taran, Punjab.
- E Learned Counsel has submitted that there is no violation of provision under Section 24 (4) of the Act and Section 202 of the Code of Criminal Procedure and there are no grounds to interfere with the order of the High Court. It is submitted that the Appellant No. 2 was the Managing Director of the Company at the relevant point of time, as such, he is overall responsible person for quality control of the products of the Company, as such, he is also liable for prosecution.

8. Having heard the learned Counsels on both sides, we have perused the impugned Order and other material placed on record.

- 9. Section 33 of the Act deals with ‘offences by companies’. A reading of Section 33(1) of the Act, makes it clear that 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. In the case on hand, it is not in dispute that on behalf of the 1st Appellant – Company, 2nd Appellant – Managing Director has furnished an undertaking dated 22.01.2013, indicating that Shri Madhukar R. Gite, Manager of the Company, has been nominated in the resolution passed by the Company on 28.12.2012 to be in charge of and responsible to the said Company, to maintain the quality of the pesticides manufactured by the said Company and he was authorized to exercise all such powers and to take all such steps, as may be necessary or expedient to prevent the commission of any offence under the Act. Filing of such undertaking with the respondent is not disputed. Even, at Para 5.10 in the counter affidavit filed before this Court, it is pleaded by the Respondents that by appointing persons responsible for affairs of the Company, quality control, etc., 2nd Appellant – Managing Director cannot escape his liability from offences committed by 1st Appellant – Company. In view of the specific provision in the Act dealing with the offences by companies, which fixes the responsibility 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 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

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- A 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.
- B 10. Further, from the averments in the counter affidavit filed on behalf of Respondents 1 & 2 and other material placed on record, we are of the view that no case is made out to quash the proceedings at this stage, by accepting the plea of the appellants that the procedure contemplated under Section 24 (4) of the Act and Section 202 of the
- C Code of Criminal Procedure, is not followed. With regard to the procedure under Section 24 (4) of the Act, we are satisfied that after the 1st Appellant – Company has deposited necessary Demand Draft for sending 2nd sample to the Central Insecticide Testing Laboratory, steps were taken promptly and report was also sent by the Central Insecticide Testing Laboratory within the prescribed period of 30 days. Similarly, with regard to the
- D procedure contemplated under Section 202 of the Code of Criminal Procedure, the same is to be viewed, keeping in mind that the complainant is a public servant who has filed the complaint in discharge of his official duty. The legislature in its wisdom has itself placed the public servant on a different pedestal, as would be evident from a perusal of proviso to
- E Section 200 of the Code of Criminal Procedure. Object of holding an inquiry / investigation before taking cognizance, in cases where accused resides outside the territorial jurisdiction of such Magistrate, is to ensure that innocents are not harassed unnecessarily. By virtue of proviso to Section 200 of Code of Criminal Procedure, the Magistrate, while taking cognizance, need not record statement of such public servant, who has
- F filed the complaint in discharge of his official duty. Further, by virtue of Section 293 of Code of Criminal Procedure, report of the Government Scientific Expert is, *per se*, admissible in evidence. The Code of Criminal Procedure itself provides for exemption from examination of such witnesses, when the complaint is filed by a public servant. In the present
- G case, 2nd Respondent / Public Servant, in exercise of powers under provisions of the Insecticides Act, 1968, has filed complaint, enclosing several documents including reports of the Government Laboratories, it is always open for the Magistrate to issue process on such complaint which is supported by documents. In any event, we do not find any merit in the submissions of the learned Counsel that proceedings are to be
- H quashed only on the ground that, the Magistrate has taken cognizance

without conducting inquiry and ordering investigation. In absence of A showing any prejudice caused to the appellant at this stage, the same is no ground to quash the proceedings in exercise of power under Section 482 of the Code of Criminal Procedure.

11. As all other nominated / responsible persons of the Company B are already accused in the Complaint, we are of the view that there is no basis to proceed against the 2nd Appellant – Managing Director to prosecute him for the alleged offences. The judgment of this Court relied on by Mr. Sidharth Luthra, learned Senior Counsel, which is with reference to provisions under Negotiable Instruments Act, 1881 in *Re: Expedited Trial of Cases under Section 138 of N.I. Act, 1881 (Suo Motu Writ Petition (Crl.) No.2 of 2020)*³, is also of not much help to the Appellants at this stage, having regard to the facts and circumstances of the present case.

12. For the aforesaid reasons this Criminal Appeal is partly allowed, D so far as the Appellant No. 2 – Managing Director is concerned and the impugned Order of the High Court dated 12.05.2020, passed by the High Court of Punjab & Haryana at Chandigarh in CRM-M-12082-2016 (O & M), is set aside. Consequently, Complaint No. 313 dated 19.08.2015, filed by the 2nd Respondent – Quality Control Inspector, Bhikhiwind District Tarn Taran, Punjab, pending before the learned Judicial Magistrate First Class, Patti stands quashed *qua* the Appellant E No. 2 namely Mr. Pramod N. Karlekar / Accused No.4. Further, it is made clear that the observations and findings recorded in this order are made only for the purpose of disposal of this Appeal arising out of quash petition and it is open for the Trial Court to record its own findings, based on the evidence on record, and take such other steps, in accordance F with law.

Devika Gujral

Appeal partly allowed.