

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Reserved on: 13.05.2024
Pronounced on: 31.05.2024

CRMC No. 543/2018

1. Sunil Kumar Aged 36 yrs.Appellant(s)/Petitioner(s)
(Quality Control Incharge)
2. Sachin Sharma Aged 35 yrs.
(Unit In-charge)
-Both being employees at Godrej
Consumer Products Ltd. Chak
Partap Singh, National Highway,
Hatli Mohr, Kathua

Through: Mr. Karman Singh Johal, Advocate

Vs

..... Respondent(s)

Department of Agriculture Through
Assistant Director Law Enforcement,
Jammu.

Through: Mr. Dewakar Sharma, Dy. AG

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1. The petitioners, employees of Godrej Consumer Products Ltd, have filed the present petition for quashing the proceedings of the complaint titled, '*Department of Agriculture vs. Sunil Kumar & Anr.*' pending before the court of learned Chief Judicial Magistrate, Kathua (hereinafter to be referred as 'the trial court') and the order dated 04.04.2016 by virtue of which the learned trial court has issued the process against the petitioners.
2. The petitioners have impugned the proceedings as well as the order dated 04.04.2016 on the grounds that without arraying the company as accused, the petitioners cannot be prosecuted for commission of offences under Sections 29 (1) (a) (i), 33 of the Insecticides Act, 1968 and that there is

violation of Section 22 and Section 24 of the Insecticide Act, as a result of which indefeasible right to rebut the report of the Regional Laboratory analyst has been infringed upon by the respondent, as the employer of the petitioners herein vide communication dated 19.03.2016 in response to the show cause notice dated 09.03.2016 had informed the respondent that it wanted to adduce the evidence controverting the report but the respondent presented the complaint before the trial court without seeking report from Central Insecticide Laboratory.

3. The respondent has filed the response, stating therein that the Assistant Director Law Enforcement vested with powers of Insecticides Inspector within the jurisdiction of Jammu Division inspected the manufacturing unit of M/s Godrej Consumer Product Ltd. at Chak Partap Singh, National Highway, Hatli Morh, Kathua on 08.07.2015. The officer had drawn two samples of insecticide from M/s Godrej Consumer Products Ltd. for chemical analysis to ascertain the quality and parameter control of the sampled batches. The prescribed form No. XII was filled up by giving the detailed account of samples drawn in presence of the Quality Control In-charge and took receipt on duplicate form No. XII of Insecticide Act, 1968. All the samples were divided separately into three equal parts as per the prescribed procedure and sealed in the presence of the petitioners. One part of the drawn sample and memorandum as per devised form no. XXI was dispatched to the Insecticide Analyst, C.Q.C.L. Faridabad and the second part of the sample was handed over to Mr. Sunil Kumar (Quality Control In-charge) and the third sample was retained in the office of Assistant Director Law Enforcement for reference and record. The test

results were received in the office of Assistant Director on 05.03.2016 from the concerned C.Q.C.L. Faridabad vide report dated 18.02.2016 and it revealed that Analyst, Regional Pesticides Testing Laboratory, Chandigarh on 24.11.2015, found one insecticide sample with expiry date of two years from the date of manufacturing 'misbranded'. The prosecution procedure was followed, and the sale was ordered to be stopped by virtue of show cause notice dated 09.03.2016. The details of the record pertaining to the aforesaid misbranded batch, besides, officials responsible for misbranded product were also sought from the concerned Quality Control In-charge/Unit In-charge in order to initiate the legal action. After adopting procedure strictly in accordance with Insecticides Act, 1968/Rules 1971, the accused were held responsible for manufacturing misbranded products and after obtaining the formal sanction, the complaint was filed against the petitioners.

4. Mr. Karman Singh Johal, learned counsel for the petitioners has submitted that the respondent has not followed the mandate of Section 24 of Insecticides Act, thereby depriving the valuable right to rebut the report submitted by the laboratory and without arraying the company as party, the petitioners cannot be prosecuted.
5. *Per contra*, Mr. Dewakar Sharma, learned counsel appearing for the respondent has argued that the provisions of the Act have been meticulously followed by the respondent, as such, the proceedings and the order of issuance of process against the petitioners impugned in the present petition cannot be quashed.
6. Heard learned counsel for the parties and perused the record.

7. The following two issues arise for consideration of this Court:-
- (1) Whether in absence of the company, the proceedings in the complaint can continue against the petitioners?
- (2) Whether the respondent has not followed the provisions of Section 22 and 24 of the Act ?
8. Before this court proceeds ahead to determine the abovementioned issues, it needs to be observed that if issue No.1 is decided in favour of the petitioners, then there is no necessity of determining the other issue.

Issue No. 1

9. Whether in absence of the company, the proceedings in the complaint can continue against the petitioners?

In order to adjudicate this issue, it is apt to extract Section 33 of the Insecticides Act, which is reproduced as under:-

“(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 sub-section 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.

10. In the prayer part of the complaint, the respondent has prayed that the petitioners have committed an offence under Section 3K(1), 29(1) (a) (i) and Section 33 of the Insecticide Act. A perusal of the complaint further

reveals that the samples of the insecticides were lifted from M/s Godrej Consumer Product Ltd. Chak Partap Singh, National Highway, Hatli Morh, Kathua and in Para '7' of the complaint, it has been specifically mentioned that "Good Night Prallethrin" manufactured by M/s Godrej Consumer Product Ltd., Chak Partap Singh, National Highway Hatli Morh, Kathua has been found to be misbranded as per the report furnished by Insecticide Analyst, Faridabad, Haryana and admittedly, M/s Godrej Consumer Product Ltd. has not been arrayed as accused in the complaint. In terms of Section '33' of the Insecticide Act, when an offence under the Act has been committed by a company, every person who at the time of offence was committed, was In-charge of, or responsible to the company for conduct of the business of the company, as well the company are deemed to be guilty of offence and are to be liable to be proceeded and punished accordingly. In reply to show-cause notice dated 09.03.2016, it was stated by the authorized signatory of M/S Godrej Consumer Products Ltd. that the petitioners were the authorized persons of the factory at Kathua. Despite being aware that the company was the offender, M/S Godrej Consumer Products Ltd. was not arrayed as accused in the complaint.

11. Once the company has not been arrayed as accused, the petitioners who are employees of the company cannot be prosecuted for the commission of offence which has been committed by the company. Reliance is placed upon the judgment of the Hon'ble Supreme Court of India in **Himanshu v. B. Shivamurthy, (2019) 3 SCC 797**, where in its has been held as under:

7. The first submission on behalf of the appellant is no longer res integra. A decision of a three-Judge Bench of this Court in *Aneeta Hada v. Godfather Travels & Tours (P) Ltd.* [*Aneeta Hada v. Godfather Travels & Tours (P) Ltd.*, (2012) 5 SCC 661] governs the area of dispute. **The issue which fell for consideration was whether an authorised signatory of a company would be liable for prosecution under Section 138 of the Negotiable Instruments Act, 1881 without the company being arraigned as an accused.** The three-Judge Bench held thus :

“58. Applying the doctrine of strict construction, we are of the considered opinion that commission of offence by the company is an express condition precedent to attract the vicarious liability of others. Thus, the words “as well as the company” appearing in the section make it absolutely unmistakably clear that when the company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof. One cannot be oblivious of the fact that the company is a juristic person and it has its own respectability. If a finding is recorded against it, it would create a concavity in its reputation. There can be situations when the corporate reputation is affected when a Director is indicted.”

In similar terms, the Court further held :

“59. In view of our aforesaid analysis, **we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative.** The other categories of offenders can only be brought in the drag-net on the touchstone of vicarious liability as the same has been stipulated in the provision itself.”

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13. In the absence of the company being arraigned as an accused, a complaint against the appellant was therefore not maintainable. The appellant had signed the cheque as a Director of the company and for and on its behalf. Moreover, in the absence of a notice of demand being served on the company and without compliance with the proviso to Section 138, the High Court was in error in holding that the company could now be arraigned as an accused.

(emphasis added)

12. Though the judgment pertains to vicarious liability under section 141 of the Negotiable Instruments Act, but the language employed in Section 33

of the Insecticides Act is almost identical to that of Section 141 of the Negotiable Instruments Act, as such, the ratio of the judgment (supra) is applicable in the instant case as well.

13. In view of the above, the proceedings against the petitioners in the complaint titled, '*Department of Agriculture vs. Sunil Kumar & Anr.*' pending before the court of learned Chief Judicial Magistrate, Kathua are quashed.
14. Disposed of.

(RAJNESH OSWAL)
JUDGE

Jammu
31.05.2024
Neha-II

Whether the order is speaking: Yes
Whether the order is reportable: Yes

