

*Before R.P. Nagrath, J*

**H.V.S. CHAUHAN** *Petitioner*

*versus*

**STATE OF PUNJAB** *Respondent*

**CRM-M-36764 of 2010**

September 23, 2013

*Code of Criminal Procedure, 1973 - S.482 - Insecticides Act, 1968 - S.33 - Petitioner Executive Vice President arrayed as manufacturer of misbranded insecticide in a complaint - Two other officials impleaded as persons responsible for conduct of business of company - Sanction order describes others as persons responsible*

(R.P. Nagrath, J.)

***for conduct of business of company - Quashing petition filed - Held, No averment in complaint showing petitioner to be person responsible for conduct of business - Allowed.***

*Held*, that a perusal of the complaint (Annexure P-1) would show that the Company of which the petitioner is Executive Vice President, has been arrayed as manufacturer of misbranded insecticide. Mr. S.N. Upadhaya, Head Quality Assurance of the manufacturing company and Shri N.S. Bawa, Deputy General Manager, both have been impleaded as persons responsible for conduct of the business of the company and there is no such assertion in respect of the petitioner.

(Para 2)

*Further held*, that Learned counsel for the petitioner also referred to sanction order (Annexure P-4) in which the respondents No. 3 and 4 i.e. S.N. Upadhaya and N. S. Bawa have been described as persons responsible for the conduct of the business of the company, whereas the petitioner only being the Executive Vice President of the company.

(Para 3)

Further held, that On the other hand, learned State counsel has not been able to show any such averment in the complaint or any other document, showing the petitioner to be a person responsible for the conduct of business of company, except the contention that the petitioner is the Executive Vice President of the company.

(Para 5)

R.S. Rangpuri, Advocate *for the petitioner.*

Shivali, AAG, Punjab, *for the State.*

**R.P. NAGRATH, J. (ORAL)**

(1) Petitioner seeks quashing of the complaint No.14-2 dated 08.01.2008(Annexure P-1) and summoning order dated 08.01.2008 (Annexure P-2) basically on the ground that he is not described as the person responsible for the conduct of the business of the company. Section 33 of the Insecticides Act, 1968, reads as under:

***“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 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.*

*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."*

(2) A perusal of the complaint (Annexure P-1) would show that the Company of which the petitioner is Executive Vice President, has been arrayed as manufacturer of misbranded insecticide. Mr. S.N. Upadhaya, Head Quality Assurance of the manufacturing company and Shri N.S. Bawa, Deputy General Manager, both have been implicated as persons responsible for conduct of the business of the company and there is no such assertion in respect of the petitioner.

(3) Learned counsel for the petitioner also referred to sanction order (Annexure P-4) in which the respondents No. 3 and 4 i.e. S.N. Upadhaya and N. S. Bawa have been described as persons responsible for the conduct of the business of the company, whereas the petitioner only being the Executive Vice President of the company.

(Ajay Kumar Mittal, J.)

(4) The contention of the petitioner is also supported from the principle laid down by the Apex Court in *State of NCT of Delhi* versus *Rajiv Khurana(SC)(1)*, and it was held as under:

*“21. The legal position which emerges from a series of judgments is clear and consistent that it imperative to specifically aver in the complaint that the accused was in charge of and was responsible for the conduct of business of the company. Unless clear averments are specifically incorporated in the complaint, the respondent cannot be compelled to face the rigmarole of a criminal trial.”*

(5) On the other hand, learned State counsel has not been able to show any such averment in the complaint or any other document, showing the petitioner to be a person responsible for the conduct of business of company, except the contention that the petitioner is the Executive Vice President of the company.

(6) The petition, is therefore allowed. The complaint as well as summoning order dated 08.01.2008 qua the petitioner only, is quashed.

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***J.S. Mehndiratta***