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**IN THE HIGH COURT OF KARNATAKA,
KALABURAGI BENCH
DATED THIS THE 1ST DAY OF FEBRUARY, 2025
BEFORE
THE HON'BLE MR. JUSTICE S.VISHWAJITH SHETTY**

CRIMINAL PETITION NO. 200937 OF 2024
(482(Cr.PC)/528(BNSS))

BETWEEN:

1. DEVANAND S/O BAPUGOUDA PATIL,
AGE: 41 YEARS,
OCC: OWNER OF ANNADATA CROP CARE,
B. B. ROAD, SHAHAPUR, DIST. YADGIRI.
2. BASANAGOUDA MALI PATIL
S/O VENKATRAYAGOUDA,
AGE: 57 YEARS,
OCC: OWNER OF SRI NANDI PESTICIDES SEEDS
FERTILIZER AND PESTICIDES DEALER,
SRI NANDI COMPLEX YADGIR ROAD, SHAHAPUR,
DIST. YADGIRI.

...PETITIONERS

(BY SRI AVINASH A. UPLAONKAR, ADVOCATE)

AND:

THE STATE OF KARNATAKA
DEPARTMENT OF AGRICULTURE,
AGRICULTURE OFFICER, RAITA SAMPARKA KENDRA,
SHAHAPUR,
REPRESENTED BY ADDL SPP,
HIGH COURT OF KARNATAKA,
KALABURAGI BENCH-585107.

...RESPONDENT

(BY SRI VEERANAGOUDA MALIPATIL, HCGP)





THIS CRL.P IS FILED U/S.482 OF CR.P.C. PRAYING TO EXERCISE INHERENT POWERS U/SEC.482 OF CR.PC, EXAMINE THE RECORDS AND QUASH THE TAKING COGNIZANCE IN CC NO.688/2022 DATED 27.04.2022 (PCR NO.60/2022) FOR THE OFFENCES U/SEC. 3(k),13,17,29 OF INSECTICIDE ACT 1968, PENDING BEFORE THE CIVIL JUDGE AND JMFC COURT AT SHAHAPUR, AGAINST THE PETITIONERS.

THIS PETITION, COMING ON FOR FURTHER ARGUMENTS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S.VISHWAJITH SHETTY

ORAL ORDER

(PER: HON'BLE MR. JUSTICE S.VISHWAJITH SHETTY)

1. Petitioners, who are arraigned as accused Nos.1 and 2 in CC No.688/2022 (P.C.No.60/2022) pending before the Court of Civil Judge and JMFC, Shahapur, registered for the offences punishable under Sections 3(k), 13, 17 and 29 of the Insecticides Act, 1968 (hereinafter referred to as 'the Act' for short), are before this Court under Section 482 of Cr.P.C. with a prayer to quash the entire proceedings in the above said case as against them.
2. Heard the learned counsel for the parties.
3. In the present case, a private complaint was filed by the jurisdictional Agricultural Officer before the Court of Civil Judge



and JMFC, Shahapur, alleging that during the course of inspection, it was found that the insecticide which were displayed for sale in the retail shop/showroom of accused Nos.1 and 2 manufactured by accused No.3 was found to be of substandard. Therefore, the sample of the said insecticide was collected from the retail shop/showroom of accused Nos.1 and 2 and forwarded for chemical examination. In the report received from the laboratory, it is mentioned that the sample was of substandard and therefore, complaint was filed before the jurisdictional Court to prosecute and punish the accused mentioned in the complaint for the aforesaid offences. The Trial Court having taken cognizance of the alleged offences had issued summons to the accused and being aggrieved by the same, accused Nos.1 and 2 are before this Court.

4. Learned counsel for the petitioners submits that petitioners are the owners of the show room/retail shop from which complainant had seized the substandard insecticide manufactured by a Company known as '*Byer Crops Science Limited*', which is arraigned as accused No.3 in the impugned criminal proceedings. He submits that petitioners are not the manufacturers of the seized insecticide nor were they aware



that the said insecticide was of substandard. Therefore, they cannot be prosecuted for the alleged offences. In support of his arguments, he has placed reliance on the judgment of the Hon'ble Supreme Court in the case of ***M/s. Kisan Beej Bhadar, Abohar vs. Chief Agricultural Officers, Ferozepur and Another*** reported in ***1990 (Supp) SCC 111*** and also on the judgment of the High Court of Punjab and Haryana in the case of *M/s. Rallis India Limited and Others vs. State of Punjab through Insecticide Inspector* passed in *CRM-M-20338-2017 (O&M)* dated *20.04.2022*.

5. Learned HCGP submits that the seizure of insecticide was from the retail shop/showroom of the petitioners and chemical examination report from the competent Laboratory has certified that the seized insecticide was of substandard quality. Therefore, the alleged offences get attracted even as against the petitioners. Accordingly, he prays to dismiss the petition.

6. It is not in dispute that accused Nos.1 and 2 are the owners of the showroom/retail shop in which substandard insecticide manufactured by accused No.3/Company was stored/displayed for sale. The petitioners have produced valid



licence issued under the statute for stock and exhibit for sale of insecticides.

7. Section 13 of the Act, provides for grant of licence for manufacturing, selling, exhibiting for sale or distributing any insecticide and the said provision is not a penal provision. Section 17 of the Act, prohibits import and manufacture of certain insecticides. Violation of Section 13 and Section 17 of the Act is punishable under Section 29 of the Act. Section 29 of the Act, provides for offences and punishment. Section 29 of the Act, reads as follows:-

"29. Offences and punishment.—(1)

Whoever,—

(a) imports, manufactures, sells, stocks or exhibits for sale or distributes any insecticide deemed to be misbranded under sub-clause (i) or sub-clause (iii) or sub-clause (viii) of clause (k) of section 3; or

(b) imports or manufactures any insecticide without a certificate of registration; or

(c) manufactures, sells, stocks or exhibits for sale or distributes an insecticide without a licence; or



(d) sells or distributes an insecticide, in contravention of section 27; or

(e) causes an insecticides, the use of which has been prohibited under section 27, to be used by any worker; or

(f) obstructs an Insecticide Inspector in the exercise of his powers or discharge of his duties under this Act or the rules made thereunder, [shall be punishable –

(i) for the first offence, with imprisonment for a term which may extend to two years, or with fine which shall not be less than ten thousand rupees but which may extend to fifty thousand rupees, or with both;

(ii) for the second and a subsequent offence, with imprisonment for a term which may extend to three years, or with fine which shall not be less than fifteen thousand rupees but which may extend to seventy-five thousand rupees, or with both].

(2) Whoever uses an insecticide in contravention of any provision of this Act or any rule made thereunder shall be punishable with fine [which shall not be less than five hundred rupees but



which may extend to five thousand rupees, or imprisonment for a term which may extend to six months, or with both].

(3) Whoever contravenes any of the other provisions of this Act or any rule made thereunder or any condition of a certificate of registration or licence granted thereunder, shall be punishable—

(i) for the first offence, with imprisonment for a term which may extend to [one year, or with fine which shall not be less than five thousand rupees but which may extend to twenty-five thousand rupees, or with both];

(ii) for the second and a subsequent offence, with imprisonment for a term which may extend to [two years, or with fine which shall not be less than ten thousand rupees but which may extend to fifty thousand rupees, or with both].

(4) If any person convicted of an offence under this Act commits a like offence afterwards it shall be lawful for the court before which the second or subsequent conviction takes place to cause the offender's name and place of residence, the offence and the penalty imposed to be published in such



newspapers or in such other manner as the court may direct.”

8. The allegation against the petitioners is that they had stocked/exhibited for sale insecticide manufactured by accused No.3/Company which was found to be of substandard quality. On the basis of such allegation, petitioners are asked to face trial for the offences punishable under Sections 3(k), 13, 17 and 29 of the Act.

9. Section 33 of the Act, provides for offences committed by the companies. Section 33 of the Act, reads as follows:-

"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 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."

10. From a reading of Section 33 of the Act, it is apparent that only responsible officers of the Company, who have a role in the conduct of business of the Company can be arraigned as accused along with the Company and not all employees of the Company can be arraigned as accused to face trial for the



offences punishable under Section 29 of the Act. Section 30 of the Act provides for certain defences available to accused, who are prosecuted for the offences under the Act. Section 30 of the Act, reads as follows:-

"30. Defences which may or may not be allowed in prosecutions under this Act.—(1)

Save as hereinafter provided in this section, it shall be no defence in a prosecution under this Act to prove merely that the accused was ignorant of the nature or quality of the insecticide in respect of which the offence was committed or of the risk involved in the manufacture, sale or use of such insecticide or of the circumstances of its manufacture or import.

(2) For the purposes of section 17, an insecticide shall not be deemed to be misbranded only by reason of the fact that—

(a) there has been added thereto some innocuous substance or ingredient because the same is required for the manufacture or the preparation of the insecticide as an article of commerce in a state fit for carriage or consumption, and not to increase the bulk, weight or measure of the insecticide or to conceal its inferior quality or other defect; or



(b) in the process of manufacture, preparation or conveyance some extraneous substance has unavoidably become intermixed with it.

(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.”

11. Under sub-section (3) of Section 30 of the Act, certain protection is given to person not being an importer or a manufacturer of an insecticide or his agent for the distribution



thereof, provided he proves that he comes within the clauses (a), (b) and (c) of sub-section (3) of Section 30 of the Act.

12. A perusal of the averments made in the private complaint filed in the present case would reveal that there is no such allegation against the petitioners herein that they have contravened any one of the clauses under Sub-section (3) of Section 30 of the Act. If the analogy that every person, who has even stocked substandard insecticide is liable to be prosecuted for the alleged offence is accepted, then even the purchasers of the insecticide from the retail shop/showroom may have to face the prosecution in a given case and therefore, such an analogy cannot be accepted.

13. The Hon'ble Supreme Court in the case of *M/s. Cheminova India Limited and Another vs. State of Punjab and Others* decided on 04.08.2021 passed in *Criminal Appeal No.750/2021* has held that proceedings under the 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.



14. For the purpose of initiating the criminal proceedings against accused, prosecution is primarily required to show that the said accused had *mens rea* to commit the offence. Doctrine of *mens rea* is the cornerstone of criminal jurisprudence. It means having a guilty mind or intention. Lack of such allegations or ingredients negates the entire situation in any given case.

15. For the purpose of prosecuting a person for the offences punishable under the Act, the prosecution is primarily required to show that the accused was either aware of the quality and contents of the product or that he had control as regards quality and contents of the product manufactured by the company. In the case on hand, the sample was seized from sealed covers from the bags in which the insecticide manufactured by accused No.3/company was stocked/exhibited for sale by accused Nos.1 and 2 in their retail shop/showroom. It is not in dispute that the petitioners were not responsible for the quality or contents of the product manufactured by accused No.3/Company and there is no such allegation in the complaint that petitioners had stocked or displayed the product of the



Company knowing very well that the said product was of substandard quality. Petitioners being the owners of the shop/showroom, in which products of the Company was stocked/exhibited for sale, cannot be held vicariously liable and be penalized for misbranding of the product in respect of which they were not involved in the manufacturing process. Petitioners are not the importers of the seized insecticide. Petitioners have produced copy of valid licence issued to them to stock or exhibit for sale of insecticides. There is no allegation against the petitioners that they were indulged in sale of insecticide which were not registered under the Act or prohibited under Section 27 of the Act and therefore, Sections 17 or 18 of the Act, cannot be invoked against them. There is no such allegation in the complaint that petitioners had not stored the insecticide properly in their showroom/retail shop. Under the circumstances, I am of the view that if respondent is allowed to prosecute the petitioners for the alleged offences, the same would amount to abuse of process of law and therefore, the impugned proceedings is liable to be quashed as against the petitioners. Accordingly, the following order:-



16. The petition is allowed. The entire proceedings in CC No.688/2022 (P.C.No.60/2022) pending before the Court of Civil Judge and JMFC, Shahapur, registered for the offences punishable under Sections 3(k), 13, 17 and 29 of the Act, as against the petitioners is hereby quashed.

Sd/-
(S.VISHWAJITH SHETTY)
JUDGE

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List No.: 1 SI No.: 40/CT:PK