Before Gurvinder Singh Gill, J.

M/S CHEMINOVA INDIA LIMITED AND OTHERS—*Petitioners*

versus

STATE OF PUNJAB AND ANOTHER—*Respondents*

CRM-M No.1162 of 2020

May 12, 2020

Insecticides Act, 1968—S.29—Insecticides Rules, 1971—Rl.27(5)—Quashing of complaint—Misbranding of insecticide and found to contain 36.90% of active ingredient as against 40% as labelled on packaging (tin)—Plea that entire proceedings stand vitiated as no show cause notice issued, not accepted—Allegations that all petitioners had knowingly and with connivance manufactured, sold and distributed the misbranded insecticide—Allegations are sufficient to initiate prosecution against them.

Held that there are allegations in brief to the effect that they all had knowingly and with the consent and connivance had manufactured sold and distributed the misbranded insecticide. The complaint is not expected to be encyclopaedic and it is only during the course of trial that the complainant can fully substantiate the averments and allegations made in the complaint as regards the role and responsibility of the petitioners and as regards misbranding of the insecticide. The allegations as levelled in the complaint are sufficient to initiate prosecution against them.

(Para 44)

Pankaj Maini, Advocate, *for the petitioners.*

Rashmi Attri, A.A.G., Punjab.

GURVINDER SINGH GILL, J.

(1) The petitioners have approached this Court seeking quashing of complaint No. 26 dated 25.3.2014 (Annexure P-1) initiated by respondent No. 2- The Insecticide Inspector, Attari, District Amritsar under Sections 3(k)(i), 17, 18, and 33 punishable under Section 29 of the Insecticides Act, 1968(hereinafter refered to as the Act), read with Rule 27(5) of the Insecticides Rules, 1971.

(2) The facts, as extracted from complaint(Annexure P-1), are that on 10.2.2011 Shri Tejbir Singh, Insecticide Inspector, Attari,

District Amritsar accompanied by Shri Kulwant Singh, Agriculture Development Officer, Attari inspected the premises of firm M/s Navneet Singh, Railway Road, Attari, District Amritsar where its sole proprietor Sh. Navneet Singh was present. Sixty tins containing insecticide *Trizophos 40% E.C* (each tin containing 100 ml.) were found stocked in the premises for sale. After serving notice in terms of Form XX, 3 tins were taken out of the aforesaid 60 tins as test samples and were duly sealed. One sealed sample was handed over to Shri Navneet Singh, Proprietor of the firm while the remaining two sealed samples were handed over to Shri Gurvinderpal Singh, Agriculture Development Officer (Plant Protection), Amritsar on 11.2.2011. One sample out of the said two samples was sent to Senior Analyst, Insecticide Testing Laboratory, Ludhiana, for analysis vide letter no. 1782 dated 17.2.2011. The second sealed sample remained in custody of Shri Gurvinderpal Singh, Agriculture Development Officer (Plant Protection), Amritsar as reference sample.

(3) The sample, upon analysis by the Senior Analyst, Insecticide Testing Laboratory, Ludhiana was declared to be misbranded vide report dated 14.3.2011, as the same was found to contain active ingredient to the extentof 34.70 % only as against the labeled declaration of 40%. A copy of report of the Insecticide Testing Laboratory, Ludhiana(Annexure P-5 colly.) was communicated to Shri Navneet Singh, Proprietor of firm M/s Navneet Singh(dealer) along with show cause notice no. 2112 dated 24.3.2011(Annexure P-6 colly.).

(4) Shri Navneet Singh (dealer) submitted his reply in response to the show cause notice which was received in the office of the Chief Agriculture Officer, Amritsar on 30.3.2011. At the time of personal hearing on 5.4.2011, Shri Navneet Singh (dealer) produced a photocopy of invoice dated 4.6.2010 indicating that he had purchased the insecticides in question from M/s Cheminova India Limited. Consequently, a copy of analysis report and show-cause notice was communicated to Managing Director of themanufacturing company i.e. M/s Cheminova India Limited, Bharuch, Gujrat, and to other responsible persons of the said company vide registered letter No.2191-95 dated 28.3.2011 (Annexure P-7 colly.). In response thereof, the manufacturing company i.e petitioner no.1 through its officials requested the Chief Agriculture Officer, Amritsar for re-analysis of second sample of insecticide, vide letters dated 15.4.2011(Annexure P-7 colly). Upon receipt of draft of ` 500/- from the firm, the second sample which was in the custody of Shri

Gurvinderpal Singh, Agriculture Development Officer (Plant Protection) Amritsar was sent to Central Insecticide Testing Laboratory, Faridabad for re-analysis vide forwarding letter no. 1425 dated 2.5.2011.

(5) The Central Insecticide Testing Laboratory, Faridabad, upon analysis of the second sample, reported that the sample was misbranded as the same was found to contain 36.90 % of active ingredient as against 40 %, as labelled on the packing(tin). The said report was received in the office of the Chief Agriculture Officer, Amritsar on 9.12.2011 and a copy thereof was sent to the dealer as well as to manufacturing firm M/s Cheminova India Limited, Bharuch. The Joint Director of Agriculture (Plant Protection), Punjab accorded sanction for prosecution as per provisions of Section 31(1) of the Insecticides Act, 1968 vide letter no. 3182-84 dated 22.11.2013, which was received in the office of Chief Agriculture Officer, Amritsar on 28.11.2013.

(6) The Insecticide Inspector, thereafter, instituted the complaint(Annexure P-1) on 25.3.2014 in the Court of Judicial Magistrate, Amritsar against Shri Navneet Singh, Proprietor of M/s Navneet Singh (dealer), M/s Cheminova India Limited, Bharuch(manufacturing firm) and other responsible persons of the manufacturing firm.

(7) The learned counsel for the petitioner, while assailing the complaint in question and consequential proceedings has made the followingsubmissions:

(i) that in the present case, since the show-cause notice in terms of Section 24(2) of the Insecticides Act, 1968 had not been issued to the manufacturing firm M/s. Cheminova India Ltd., therefore the entire proceedings stand vitiated as issuance of such notice is mandatory and that on account of such omission the manufacturing firm M/s Cheminova India Ltd. stood seriously prejudiced;

(ii) that in the present case, since the report of Central Insecticide Testing Laboratory, Faridabad was received seven months after receipt of second sample, no sanctity could be attached to such report received after undue delay of seven months and the prosecution of accused in such circumstances is abuse of process of law;

(iii) that in the case in hand, since no show cause notice in terms of section 24(2) of the Act was issued to any of

the accused after receipt ofreport in respect of re-analysis by Central Insecticide Labarotory, the entire proceedings stand vitiated;

(iv) that since there is no sanction for prosecuting the manufacturing firm, therefore its office bearers including the Managing Director can not be prosecuted in their individual capacity for any of the offence allegedly committed by the firm. The learned counsel, in order to hammer forth his submission places reliance upon the following judgements:

1. 2012(4) RCR(Criminal) 988 (Pb. & Hr.) Sanjay AggarwalVs. State of Punjab

2. 2009(4) RCR(Criminal) 981, Sant Lal Surekha Vs. Stateof Punjab

3. 2012(4) RCR(Criminal) 986, Amar Singh Sidhu Vs. Stateof Punjab

(v) that there is violation of provisions of Section 202 Cr.P.C inasmuch as no inquiry was conducted before summoning the accused despite the fact that some of the accused are residents of a different State;

(vi) that the petition, in any case deserves to be allowed on grounds of parity as the complaint (Annexure P-1) already stands quashed qua the dealer vide order dated 25.2.2019 passsed in CRM-M 30610 of 2014.

(vii) that the Managing Director or other office bearers of the firm, in the absence of specific allegations against them, can not be held responsible in any manner and can not be prosecuted. The learned counsel places reliance upon the following judgements in support of his aforesaid submission:

1. 2010(3) RCR(Criminal) 912 (SC), State of NCT of Delhi Vs. Rajiv Khurana

2. Judgement dated 2.7.2015, rendered by this Court in Criminal Misc. No. M-29114 of 2014 titled M/s Cheminova India Ltd. Vs. State of Haryana.

(8) On the other hand, the learned State counsel, while opposing the petition, has submitted that in the present case a show

cause notice in terms of Section 24(2) of the Insecticides Act, 1968 was initially issued to the dealer i.e. Shri Navneet Singh, from whose premises the sample was drawn and that pursuant to disclosure of information by the aforesaid dealer regarding the sample having been manufactured by M/s Cheminova India Limited, Bharuch, a copy of the Chemical Examiner's report along with show cause notice was communicated to the Managing Director of the manufacturing firm M/s Cheminova India Ltd. and to other responsible persons of thecompany. It has further been submitted that the sample in question was got analysed during its validity period which was to expire on 10.3.2012 and that even otherwise there is no inordinate delay in getting the sample analysed so as to have prejudiced the accused-petitioners in any manner.

(9) The learned State counsel has further submitted that since a proper sanction has been accorded by the Joint Director of Agriculture (Plant Protection), Punjab vide letter dated 5.4.2013 which was subsequently amended vide letter dated 22.11.2013, no infirmity can be found in the complaint in question or the proceedings conducted thereafter. A prayer has, thus, been made for dismissal of the petition.

(10) The rival submissions addressed before this Court have been considered. Each of the submissions put forth by learned counsel for the petitioners is being discussed individually as follows:

Submission no. (i) :

(11) Submission no. (i) on behalf of the petitioners pertains to non-compliance of Section 24(2) of the Insecticides Act, 1968,which reads as follows :-

> "24. Report of Insecticide Analyst
>
> 1. The Insecticide Analyst to whom a sample of any insecticide has been submitted for test or analysis under sub-section (6) of Sec. 22, shall, within a period of sixty days, deliver to the Insecticide Inspector submitting it a signed report in duplicate in the prescribed form.
>
> 2. The Insecticide Inspector on receipt thereof shall deliver one copy of thereport to the person from whom the sample was taken and shall retain the other copy for use in any prosecution in respect of the sample.
>
> 3. Any document purporting to be a report signed by an Insecticide Analyst shall be evidence of facts stated therein,

and such evidence shall be conclusive unless the person from whom the sample was taken has within twenty-eight days of the receipt of a copy of the report notified in writing the Insecticide Inspector or the Court before which any proceeding in respect of the sample are pending that he intends to adduce evidence in contravention of the report.

4. Unless the sample has already been tested or analyzed in the Central Insecticides Laboratory, where a person has under sub-section (3) notified his intention of adducing evidence in contravention of the insecticide analysts report the Court may, of its own motion or its discretion at the request either of the complainant or of the accused, cause the sample of the insecticide produced before the Magistrate under sub-section (6) of Sec. 22 to be sent for test or analysis to the laboratory, which shall make the test or analysis and report in writing signed by, or under the authority of, the Director of Central Insecticides Laboratory the result thereof, and such report shall be conclusive evidence of the facts stated therein.

5. The cost of a test or analysis made by the Central Insecticides Laboratoryunder subsection (4) shall be paid by the complainant or the accused as the Court shall direct."

(12) Section 24(2) of the Insecticides Act 1968 mandates that a show cause cause be issued to the person from whom the sample has been drawn so as toseek his reply. After issuance of show-cause notice to dealer Navneet Singh and pursuant disclosure of the name of manufacturer, a copy of Analyst's report and show cause notice dated 28.3.2011(Annexure P-7 colly) wasissued to the Managing Director of the firm i.e. M/s Cheminova India Limited and to other office bearers vide registered letter No.2191-95 dated 28.3.2011. The manufacturing firm cannot feign ignorance of the said noticeas it was pursuant to the said notice that a request was made vide letter dated 15.4.2011(Annexure P-7 colly) by the manufacturing firm i.e. petitioner No. 1 seeking re-analysis of the second sample which was accepted and the second sample was got analysed. In these circumstances, it cannot be said that petitioner no.1 has been prejudiced in any manner.

(13) The purpose of Section 24(2) of the Insecticides Act, 1968 is to make the person from whom sample is taken, aware about the Chemical Examiner's report. Although Section 24(2) of the Insecticides

Act, 1968 does not itself lay down that such report is to be conveyed to the manufacturing firm or to other accused but it is expected in the interest of natural justice and fair trial that a copy of the Chemical Examiner's report be conveyed to the manufacturing firm also especially if the manufacturing firm is also to be prosecuted.

(14) At the same time, a pragmatic approach is however, required to be adoptedso as to ensure that the purpose envisaged by the provisions of section 24(2) of the Act is duly achieved and not that in the zest of compliance ofmandate of section 24(2) of the Act, the object intended to be achieved by the Act itself is defeated. While the object of the Act is to check sale of spurious or misbranded insecticides, section 24(2) of the Act embodies the principle *Audi Alteram Partem* inasmuch as the same is in is furtherance of basic principles of criminal jurisprudence that the accused must be given a proper opportunity to defend himself. Section 24(2) of the Act can not be allowed to be used as means for wrong-doers to get away with their evil designs on grounds of purported non-compliance of provisions of law. The provisions of section 24(2) of the Act do not mandate that each and every of the accused is to be afforded an individual opportunity of re-analysis. If in a given case, re-analysis has been got done at the instance of any one of the accused, then certainly there is no need for any further re-analysis. In this context, a reference may be made to a judgment of this Court reported as ***M/s Ravi Organics Ltd.*** *versus* ***State of Punjab and others***[1] wherein it has been held as follows:-

> "7. Once a sample has already been re-analysed, the law does not permit for any further analysis. It is immaterial whether the re-analysis was done at the instance of the dealer or at theinstance of distributor or even at the instance of themanufacturer. Right to get re-analysis would come to an end once the re-analysis has been carried out. In the present case, the re-analysis had been carried out as per the request made by the distributor i. e. M/s. Somanil Chemicals. The right as contained under Sections 24 (3) and 24 (4) of the Act to getthe re-analysis of the sample came to an end once the same is done. After the re-analysis of the sample was done at the instance of M/s. Somanil Chemicals from whom the insecticides in question was

[1] 2006(3) RCR (Crl.) 1002

purchased by the dealer, the manufacturer i.e., the present petitioner could not claim any further right to go in for analysis once again."

(15) The ratio of aforesaid judgment leaves no manner of doubt that once the second sample has been got re-analysed whether at the instance of dealer or distributor or manufacturer, the object of the provisions will stand achieved and the said right of re-analysis will be said to have been duly exercised qua all the co-accused. Thereafter, there would be no question of exercise of any such right again at the instance of other accused.

(16) The aforesaid submission can be tested from another angle as well inasmuch as in the case of insecticides, as per the settled procedure, only 3 samples are drawn whereas in a given case the number of accused can be more than 3 as in the present case wherein 8 persons have been arrayed as accused. Resultantly, it is not possible to get the sample re-analysed individually at the instance of each of the 7 accused when in fact only 3 samples are drawn . Thus the irresistible conclusion that can be drawn is that the purpose of section 24(2) is to only to have a second opinion regarding the ingredients of the sample by getting the same re-analysed from Central Insecticide Laboratory and once the second sample has been got re-analysed, be it at the instance of any one of the accused, the purpose stands duly achieved. The approach of the Courts, in any case, has to be object-oriented. Thus, submission no. (i), as raised above on behalf of petitioners, can not beaccepted.

Submission no. (ii) :

(17) The contention of the petitioner to the effect that there is a delay getting the sample analysed has to be examined in light of the following relevant dates :

10.2.2011: Sample was drawn from the dealer.

17.2.2011: Sample was sent to Insecticide Testing Laboratory, Ludhiana.

14.3.2011: Report of analysis received from Insecticide Testing Laboratory, Ludhiana.

24.3.2011: Report along with show-cause notice (Annexure P-6 colly) was sent to dealer.

28.3.2011: Copy of Analyst's report alongwith show-casuse

notice(Annexure P-7 colly) was sent to Managing Director of the manufacturing firm M/s Cheminova India Ltd. and to its other office bearers.

15.4.2011: Vide letter dated 15.4.2011(Annexure P-7 colly), the manufacturing firm requested for re-analysis of second sample.

2.5.2011: Pursuant to deposit of Demand Draft for an amount of Rs.500/-, the second sample was sent to Central Insecticide Testing Laboratory, Faridabad for re-analysis.

9.12.2011: Report regarding re-analysis of second sample was received from Central Insecticide Testing Laboratory, Faridabad.

(18) A perusal of above mentioned dates does reveal that there has been some delay in receipt of report regarding re-analysis from Central InsecticideTesting Laboratory, Faridabad but the said delay of seven months cannot be termed as an inordinate delay in getting the samples analysed so as to have prejudiced the accused in any manner. The sample, in any case, was to expire on 10.3.2012 i.e. much after the sample stood analysed. As such, there being no merit in submission no.(ii), the same is repelled.

Submission No. (iii) :

(19) Submission No. (iii) is to the effect that omission to issue a fresh notice to the accused after receipt of report regarding re-analysis by CentralInsecticide Laboratory, Faridabad, renders the trial vitiated. I am afraid the aforesaid submission cannot be accepted inasmuch as Section 24(2) of the Act only mandates that a show-cause notice be issued to the person from whom the sample is drawn after receipt of report of the Analyst in the first instance. There is no such provision which mandates that a fresh show-cause notice is to be issued to the accused after receipt of report regarding reanalysis of the second sample. In any case, the accused were duly conveyed a copy of the report of the re-analysis by Central insecticidelaboratory Faridabad. As such there is no weight in the aforesaid submission no. (iii) and the same cannot be accepted.

Submission No. (iv) :

(20) Submission No. (iv) is to the effect that the firm cannot be prosecuted in the absence of a valid sanction for prosecuting the firm. The learned counsel has pressed into service three judgements of this

Court i.e. ***Sanjay Aggarwal's*** *case (supra),* ***Sant Lal Surekha's*** *case (supra)* and ***Amar Singh Sidhu's case*** *(supra).* A perusal of the aforesaid judgments would show that these were rendered in cases wherein sanction had been accorded for prosecuting the firm only while there was no sanction for prosecuting the Directors and office bearers of the firms who were sought to be prosecuted in their individual capacity. It was held therein that sanction for prosecuting each such accused in individual capacity was required and consequently the complaint as well as consequential proceedings against the accused against whom sanction had not been accorded were quashed. There can certainly be no dispute as regards the said proposition of law.

(21) However, in the present case, the petitioner has not been able to factually substantiate the said submission inasmuch he has not even annexed a copyof sanction order with the petition although the same is part of the complaint, so as to show that the sanction was accorded only in respect ofthe other accused and not in respect of the firm. The factum of according of sanction is specifically mentioned in para 14 of the complaint.

(22) The learned counsel for the petitioners has not able to show anything to the contrary. It was for the petitioner to have specifically pleaded this point in his petition and was expected to have annexed a copy of the sanction orderin case he was to show that the name of petitioner No. 1 is missing from the sanction order. In these circumstances, the aforesaid contention regarding there being no sanction for prosecuting petitioner no.1 cannot be accepted. Although, the counsel made some oral submissions regarding the consent being defective but the petitioner not even having chosen to annex a copy of the sanction order, the said submission can not be appreciated. In these circumstances, this Court does not find any ground for casting any doubt as regards the aspect of according of sanction for prosecution of petitioners. Submission no. (iv), as such, is repelled.

Submission No. (v) :

(23) The learned counsel submitted that in view of provisions of section 202 of the Code of Criminal Procedure, the Magistrate, in case of an accused residing beyond his territorial jurisdiction, is under legal compulsion to postpone the issue of process and either to inquire into the matter himself or direct investigation to be conducted by the police so as to find as to whether there are sufficient grounds to proceed against the accused or not.

(24) It has been submitted that since the petitioners no. 2 to 6 reside in Mumbai, Bathinda, Ludhiana and Bharuch(Gujrat), the issuance of process by Chief Judicial Magistrate, Amritsar without taking recourse to Section 202 Cr.P.C. is violation of provisions contained therein since an inquiry as contemplated under sub-section (1) of Section 202 Cr.P.C. is mandatory in nature, as would be evident from the use of the word "shall" in section 202(1) Cr.P.C. The learned counsel has further submitted that where a power is conferred to do a certain thing in a certain manner, such thing must be done in that manner only and that other methods of performance are necessarily forbidden. It is further been submitted that if a mandatory provision of law is not complied with, any action taken in ignorance of such provision is a nullity in the eye of law even if no prejudice is caused. The learned counselin order to hammer forth his aforesaid submission places reliance upon ***National Bank of Oman*** *versus* ***Barakara Abdul Aziz & another***[2] **.**

(25) On the other hand, the learned State counsel has submitted that since it is a case where a 'public servant' is the complainant who has lodged complaint in his official capacity, the procedure as adopted by the Magistrate can not be said to be erroneous, especially in view of *proviso* to section 200 Cr.P.C. which carves out an exception in cases where complaint is filed by a 'public servant' in discharge of his official duties, as in the present case.

(26) I have considered the aforesaid contentions as regards application of section 202 Cr.P.C. Code of Criminal Procedure 1973 is a compendium of law relating to procedure for trial of criminal offences. Sections 200, 202, 203 and 204, Cr.P.C. which have bearing on the issue raised on behalf of petitioner read as under :

> "200. Examination of complainant.- A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate :
>
> Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses -

[2] (2013) 2 SCC 488

(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 192 :

Provided further that if the Magistrate makes over the case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.

202. Postponement of issue of process.-(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdictionpostpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding :

Provided that no such direction for investigation shall be made -

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Sessions; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath undersection 200.

(2)In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witness on oath :

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3)If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Codeon an

officer in charge of a police station except the power to arrest without warrant.

203. *Dismissal of complaint.*- If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under Section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall record his reasons for so doing.

204. *Issue of process.*- (1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be -

(a) a summons-case, he shall issue his summons for the attendance of the accused, or

(b) a warrant-case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrates having jurisdiction.

(2)No summons or warrant shall be issued against the accused under sub-section (1) until a list of the prosecution witnesses has been filed.

(3)In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under sub-section (1) shall be accompanied by a copy of such complaint.

(4)When by any law for the time being in force any process-fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.

(5)Nothing in this section shall be deemed to affect the provisions of section 87.

(27) The scheme of the Code (Cr.P.C.), as evident from the above reproduced provisions is that upon presentation of complaint, a Magistrate, after examining the complainant and his witnesses on oath can take cognizance of an offence. However, an exception has been made in case a written complaint has been made by a 'public servant' in discharge of his official duties in which case such complainant is

not required to be examined before taking cognizance of offence. Section 202(1) requires the Magistrate to postpone the issue of process against the accused and either inquire into the case himself or direct an investigation to be made by a police officer, particularly if the accused resides beyond the territorial jurisdiction of the Magistrate, for the purpose of deciding whether or not there exist sufficient grounds for proceeding against such accused. *Proviso* to Section 202(1) lays down that direction for investigation shall not be issued where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Sessions or where the complaint has not been made by a Court unless the complainant and the witnesses have been examined on oath under Section 200. Under Section 202(2), the Magistrate making an inquiry under sub-section (1) can take evidence of the witnesses on oath. If the Magistrate thinks that the offence complained of is triable exclusively by the Court of Sessions then in terms of *proviso* to Section 202, he is required to call upon the complainant to produce all his witnesses and examine them on oath. Section 203 empowers the Magistrate to dismiss the complaint if, after considering the statements made by the complainant and the witnesses on oath and the result of the inquiry or investigation, if any, made under Section 202(1), he is satisfied that there is no sufficient ground for proceeding against accused. Section 204, deals with issuance of process and lays down that the Magistrate taking cognizance of an offence shall issue summons for attendance of the accused in a summons-case and may even issue warrants ina warrant-case for causing attendance of accused.

(28) The underlying object of examining the complainant and the witnesses before issuing process is to ascertain the truth or falsehood of the complaint and determine as to whether there is a *prima facie* case against the person who, according to the complainant has committed an offence. The purpose of holding an inquiry or investigation in respect of accused residing beyond territorial jurisdiction of Magistrate in terms of section 202(1) Cr.P.C. is to protect innocent from being harassed by unscrupulous elements. Hon'ble Supreme Court in ***Mohinder Singh*** *versus* ***Gulwant Singh***[3] described the purpose and scope of inquiry of section 202 Cr.P.C. in the following words :

> "11. … … … ...The scope of enquiry under Section 202 is extremely restricted only to finding out the truth or

[3] (1992) 2 SCC 213

> otherwise of the allegations made in the complaint in order to determine whether process should issue or not under Section 204 of the Code or whether the complaint should be dismissed by resorting to Section 203 of the Code on the footing that there is no sufficient ground for proceeding on the basis of the statements of the complainant and of his witnesses, if any. But the enquiry at that stage does not partake the character of a full dress trial which can only take place after process is issued under Section 204 of the Code calling upon the proposed accused to answer the accusation made against him for adjudging the guilt or otherwise of the said accused person. Further, the question whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of the enquiry contemplated under Section 202 of the Code. To say in other words, during the course of the enquiry under Section 202 of the Code, the enquiry officer has to satisfy himself simply on the evidence adduced by the prosecution whether *prima facie* case has been made out so as to put the proposed accused on a regular trial and that no detailed enquiry is called for during the course of such enquiry."

(29) Adverting back to the precise controversy raised in the present case i.e. as to whether it is mandatory on part of the Magistrate to postpone issue of process when an accused person is found to be residing outside the territorial jurisdiction of the such Court and thereafter either enquire into the case himself or direct an investigation to be made by the police officer and as to whether the said provisions of section 202 Cr.P.C. can be said to be complied with in the present case, the provisions of section 202 Code of Criminal Procedure, 1973 were amended vide Amendment Act 2005, so as to incorporate the words - *"and shall, in a case where the accused is residingat a place beyond the area in which he exercises his jurisdiction"*, which took effect from 23rd June, 2006. The same was found necessary in order to ensure that a criminal complaint is not used as a tool for settling scores by getting innocent persons summoned in some Court situated far away from their place of residence.

(30) A perusal simpliciter of section 202 Cr.P.C. would show that the word "shall" has been used in sub-section (1) as well as in sub-section (2) pointing towards an obligation cast upon Magistrate to do the following two acts:

Usage of word "shall" in sub-section (1) :

"and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction, postpone the issue of process against the accused and either inquire into the case himself or direct an investigation to be made. "

Usage of word "shall" in sub-section (2) :

"In an enquiry under sub-section (1), the Magistrate may, if he thinks fit take evidence of the witnesses on oath:

provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he ***shall*** call upon the complainant to produce all his witnesses and examine them on oath."

(emphasis supplied)

(31) The word "shall", as occurring in sub-section (2) of section 202 Cr.P.C. came to be interpreted by Hon'ble Supreme Court in ***Shivjee Singh*** *versus* ***Nagendra Tiwary and others***[4] wherein it was held that Magistrate is not required to examine all the witnesses cited in the complaint for taking cognizance or passing committal order despite the fact that the word *"shall"* has been used before the words *"call upon the complainant to produce all his witnesses and examine them on oath"* in section 202(2) Cr.P.C. The relevant extract from said judgement reads as follows:

"7 ..... By its very nomenclature, Criminal Procedure Code is a compendium of law relating to criminal procedure. The provisions contained therein are required to be interpreted keeping in view the well recognized rule of construction that procedural prescriptions are meant for doing substantial justice. If violation of the procedural provision does not result in denial of fair hearing or causes prejudice to the parties, the same has to be treated as directory notwithstanding the use of word 'shall'."

(32) Although the use of the 'shall' in *proviso* to Section 202(1) *prima facie* tends to indicate the mandatory character of the provision contained therein, but when examined in conjunction with other provisions contained in the Code especially section 200 Cr.P.C. it can

[4] (2010) 7 SCC 578

safely be discerned that omission to hold an inquiry in every case is not sufficient to denude the Magistrate concerned of the jurisdiction to pass an order for taking cognizance andissue of process provided he is satisfied that *prima facie* case is made out for doing so. The reasons which weigh with this Court for observing so are enumerated as under:

(i) a complainant who is a 'public servant' and who has filed a complaint in discharge of his official duty would be on a different footing from that of a private complainant wherein the chances of institution of some false and frivolous complaint cannot be ruled out. In case of a 'public servant' it cannot be said that he has any personal interest in the matter or has an axe to grind against the accused so as to prompt him to file a false complaint. The legislature in its wisdom has itself placed the 'public servant' on a different pedestal as would be evident from perusal of *proviso* to section 200 Cr.P.C. The object of holding an inquiry/ investigation before taking cognizance is ensure that some innocent is not harrassed unnecessarily. However, when a complaint is instituted by a 'public servant' some assurance regarding the veracity of the averments made in the complaint can be said to be attached keeping in view the fact that a 'public servant' is expected to act fairly while discharging his official duties and unlike private litigants, wouldnot be having any vendetta against proposed accused as the alleged offence in such cases in not committed against the 'public servant' to make him vindictive towards such accused.

(ii) there is no *non-obstante* clause in section 202 Cr.P.C. so as to render redundant the *proviso* to section 200 Cr.P.C. which carves out anexception in case complaint is filed by 'public servant' in discharge of his official duties.

(iii)the rule of harmonious construction would also negate the contention of the petitioner. Hon'ble Supreme Court in ***Sultana Begum*** versus ***Prem Chand Jain (1997)1 SCC 373,*** held that where there appears to be an inconsistency between two provisions in the same statute, the enactment has to be read as a whole and the conflicting provisions have to be so construed so as to avoid a clash as far as possible. Paragraph 10 whereof reads as follows:

"10. … … …That being so, the rule of interpretation

requires that while interpreting two inconsistent, or, obviously repugnant provisions of an Act, the Courts should make an effort to so interpret the provisions as to harmonise them so that the purpose of the Act may be given effect to and both the provisions may be allowed to operate without rendering either of them otiose."

Since section 200 Cr.P.C. provides for an exemption from examinationof complainant in respect of complaints filed by 'public servant' in discharge of official duties, the spirit of the said provision needs to be kept intact while ensuring that the object underlying section 202 is duly achieved. It is necessary to keep in mind that the meaning of the words and expressions used in a statute ordinarily take their colour from the context in which they appear. It was never the intention of the legislators to set at naught the *proviso* to section 200 Cr.P.C. which carves out an exception in case where the complainant happens to be a 'public servant' and has filed the complaint in discharge of his official duty.

(iv) As regards the judgements relied upon by the learned counsel for the petitioner, i.e. ***National Bank of Oman's case*** (supra), a perusal of the same does show that Supreme Court, upon finding that no inquiry had been conducted by the Magistrate in terms of section 202 Cr.P.C., despite the fact that the accused was residing beyond his jurisdiction, the matter was remanded back to Magistrate to proceed in accordance with provisions of section 202 Cr.P.C. However, it needs to be noticed that in the cited case the complainant was not a 'public servant' as in the present case. The case where the complainant is a 'public servant'is on a different footing as has also been recognised by the Code itself in section 200 Cr.P.C. The cited judgement, thus, does not help the petitoner in advancing his case.

(v) the word 'shall' as existing in sub-section(2) of section 202 Cr.P.C. came to be examined by Hon'ble Supreme Court in ***Shivjee Singh*** versus ***Nagendra Tiwary and others***[5] wherein the Magistrate had chosen to examine only a few witnesses only before summoning the accused despite the use of word “shall” in section

[5] (2010) 7 SCC 578

202(2). It was held therein that Magistrate is not required to examine all the witnesses cited in the complaint for taking cognizance and that the provisions contained therein are meant for doing substantial justice and that if violation of the procedural provision does not result in denial of fair hearing and does not cause any prejudice to the parties, the same has to be treated as directory notwithstanding the use of word 'shall'." Although the aforesaid judgement was delivered while examining section 202(2) Cr.P.C but an a analogy can safely be drawn on identical lines from ratio of said judgement while interpreting the word "shall" as existing in sub-section (1) of 202 Cr.P.C., particularly if no prejudice is caused to accused by the act of the Magistrate in forming opinion in the matter without holding inquiry, if on the basis of contents of complaint and accompanying documents filed by a 'public servant' in discharge of his official duties he is *prima facie* satisfied regarding existance of a case against accused.

(vi) examining the matter from another angle, one finds that in the matters of complaints pertaining to alleged misbranding of the insecticide, it is the following two witnesses who would be the prime and the material witnesses against the accused:

1. The Insecticide Inspector who draws the sample and who normally is the complainant and;

2. The Govt. Analyst who conducts analysis of the sample drawn and as per whose report the sample is found to be misbranded.

However Cr.P.C. provides exceptions pertaining to examination of both the aforesaid witnesses. As already discussed above, by virtue of *proviso* to section 200 Cr.P.C. the Magistrate, while taking cognizance, need not record statement of 'public servant' who has filed a complaint in discharge of his official duty. And by virtue of section 293 Cr.P.C., the report of Government scientific expert is *per-se* admissible, dispensing with the requirement of examining such witness to prove his report. In these circumstances, where Cr.P.C. itself provides for exemption from examination of such witnesses, the Court would

> virtually be left with no other material witness to be examined. The other witnesses, ordinarily are either for corroborative purposes or in the nature of "link evidence". The said other witnesses need not be examined at initial stage if the court is otherwise able to form an opinion regarding existence of a *prima facie* case against the accused.

(33) In the present case where a complaint has been filed under provisions of Insecticides Act, apart from the fact that a very detailed complaint has been filed, the same is accompanied by 25 documents relied upon by the complainant which are annexed as Annexure-A to Annexure-T and Annexure T-1 to Annexure T-6 which include the Report of the Chemical Examiner and also the Central Insecticide Laboratory. Since both these reports of Government experts are *per-se* admissible and the complaint is by a 'public servant', the necessity of any further enquiry is not conceivable. In any case, no specific form of inquiry is prescribed. The word "inquiry" has been defined under Section 2(g) of Cr.P.C. as per which "inquiry" means every inquiry, other than a trial, conducted under this Code by a Magistrateor Court. No specific mode or manner of inquiry is provided under Section 202(1) of the Cr.P.C. This exercise by the Magistrate, for the purpose of deciding whether or not there is sufficient ground for proceeding against the accused, is nothing but an inquiry envisaged under Section 202 of the Code.

(34) It has been held by Hon'ble Supreme Court in ***Mohinder Singh's case*** (supra) that the scope of enquiry contemplated under provision of section 202 Cr.P.C. is limited to the extent that the enquiry officer has to satisfy himself as to whether a *prima facie* case is made out so as to put the proposed accused on a regular trial and it does not partake the character of a full dress trial which can only take place after process is issued to accused. The trial Court having gone through the complaint and the documents annexed with the complaint which would include the report of the Chemical Examiner and having formed an opinion regarding there being sufficient grounds to proceed against the accused and having chosen to summon the accused, the impugned summoning order dated 25.3.2014(Annexure P-2) cannot be said to be lacking in any manner. The fact that matter was not adjourned to some other date or that in the summoning order it is not specifically recorded that the satisfaction being recorded is in terms of section 202 Cr.P.C. or 204 Cr.P.C. would lose significance in view of

the reasons detailed above.

(35) It is thus held that in a case instituted by 'public servant' in discharge of his official duties where apart from the complaint, other material evidence being relied upon by the complainant is also before the Court, as in the present case where report of Government Experts which are both per-se admissible have been annexed, and the Magistrate upon perusal of the complaint and the documents as annexed therewith is satisfied that sufficient grounds do exist for proceeding against the accused, the requirement of adjourning the matter for taking evidence is virtually rendered redundant as neither the 'public servant' nor the Government expert are required to be examined by virtue of *proviso* to Section 200 Cr.P.C. and Section 293 Cr.P.C. The manufacturing firm, in any case, is not disputing the factum of it having manufactured the insecticide in question. Consequently the object and purpose of section 202(1) Cr.P.C. having been achieved in the present circumstances there is no need to record the statement of the 'public servant' and of the expert for the purpose of holding an enquiry as envisaged by section 202 Cr.P.C. Needless to mention, if in some case, the Magistrate is not satisfied with the contents of the complaint and the accompanying documents or the report of some Government Expert, it would always be open to him to record a statement or take any evidence for the purpose of satisfying himself as to whether or not there exists any ground to proceed further against the accused. In other words there is no bar on the Magistrate to inquire into the matter in case he is not satisfied with the evidence putforth along with the complaint, even if filed by a 'public servant'. Thus, submission (v) can not be accepted.

Submission No. (vi) :

(36) It has been submitted by learned counsel for the petitioners that since the complaint in question already stands quashed in respect of two of the co- accused vide judgment dated 25.2.2019 passed in CRM-M 30610 of 2014 titled M/s Navneet Singh and another vs. State of Punjab, therefore the same deserves to be quashed qua the present petitioners as well on grounds of parity.

(37) I have considered the aforesaid submission and have also gone through the judgment referred to above. A perusal of the aforesaid judgment dated 25.2.2019 shows that the same was passed on a petition filed by the dealer firm and its proprietor i.e. by M/s. Navneet Singh and its proprietor Navneet Singh himself which was allowed while relying upon judgment of the Supreme Court ***M/s Kisan Beej***

Bhandar *versus* ***Chief Agricultural Officers Ferozepur***[6] and also judgments our High Court including ***M/s Anand Trading Co. and another*** *versus* ***State of Punjab***[7] and ***M/s Sandhu Kheti Store Sewa Centre*** *versus* ***State of Punjab***[8], on the ground that the petitioner happened to be dealer whereas the insecticide in question was found stocked with the dealer in sealed condition which was in fact manufactured by the firm M/s Cheminova India Ltd. Section 30(3) of the Act carves out an exception in favour of a dealer where insecticide in question is in sealed condition and has not been found to be tampered with in any manner as in the present case. As such the petitioners being the manufacturing firm and other responsible persons of the firm including the Quality Control Officers stand on a different footing from that of the dealer and thus cannot claim any parity with dealer. Thus, the fact that the complaint in question stands quashed qua the dealer cannot be said to be advantages to the petitioners in any manner. Submission no.(vi) is sans merit and is rejected.

Submission No. (vii) :

(38) It has been submitted by learned counsel for the petitioners that since there is no specific averment in the complaint as regards the role and responsibility of petitioners Nos. 2 to 6, the said petitioners cannot be held liable in any manner and cannot be prosecuted. The learned counsel relies upon ***Rajiv Khurana's*** *case (supra)* and ***judgment dated 2.7.2015 rendered in M/s Cheminova's*** *case* (supra) to press upon his aforesaid submission.

(39) In order to appreciate the aforesaid submission, it is apposite to refer to the relevant paragraph from the complaint(Annexure P-1) pertaining to the role and responsibility of petitioners No. 2 to 5. Para 16 of the complaint reads as follows:

> "16. That (i) Sh. Pramod N. Karlekar s/o Sh. Narayan D. Karlekar r/o 403, Anantashram, Road No.9, Near Sandhu Wadi Chambur, Mumbai- 400071 – Managing Director and Responsible Person of the firm M/s Cheminova India Ltd. Keshava Building, 7th floor, Bandra Kurla Complex, Bandra(East), Mumbai 400051, (ii) Sh. D.Jaipal Reddy s/o Sh. D. Durga Reddy r/o A-20/21, Mangaltirath Society, Dahez Byepass Road, Bharuch, Gujrat, Senior

[6] 1990 SCC (Crl.) 623
[7] 2010(3) RCR (Crl.) 662
[8] 2013(4)RCR (Crl.) 893

> Manager(Quality Control) and responsible person for quality control of M/s Cheminova India Ltd. having registered office at Keshava Building, 7th floor, Bandra Kurla Complex, Bandra(East), Mumbai 400051, (iii) Sh. J.D.Shah s/o Sh. Dhirajmal M. Shah, Flat No.4, Building No. X-2, Asawmegh, Rattan Nagar Flat, Bharuch-392001 and responsible person for quality control of M/s Cheminova India Ltd. having registered office at Keshava Building, 7th floor, Bandra Kurla Complex, Bandra(East), Mumbai 400051, (iv) Sh. D.P.Sihag s/o Sh. Sardarram Sihag, r/o H.No. 238, Ist Floor, Model Town, Phase-I, Bathinda, – Senior Regional Manager and Responsible Person for conduct of business of M/s Cheminova India Ltd. having registered office at Keshava Building, 7th floor, Bandra Kurla Complex, Bandra(East), Mumbai400051, (v) Sh. Arvind Sareen s/o Sh. Ramesh Sareen r/o H.No. 134- E, Khichlu Nagar, Ludhiana – Godown Incharge at Ludhiana of M/s Cheminova India Ltd. Bharuch, Gujrat (Attested copies of Affidavits of Responsible Persons of manufacturing company are enclosed as Annexure-T-2, T-3, T-4, T-5, T-6), did commit an offence by manufacturing, selling and distributing the above said misbranded *'Triphos'* which is punishable under section 29 for violations of provisions of section 3K(i), 17, 18 of Insecticide Act 1968 and theyare liable for action under Section 33 of the Act. The misbranded insecticide was manufactured, sold and distributed with their knowledge, consent and connivance and are liable under section 33 of the said Act"

(40) Petitioner no.2, in the present case is the Managing Director namely Sh. Pramod N. Karlekar. A Managing director need not be assigned a specific work as he, in such capacity is overall in-charge of conduct of business of the firm. Hon'ble Supreme Court in ***K.K. Ahuja*** *versus* ***V.K. Vohra***[9] described the role and position of a Managing Director as follows :

"27. The position under section 141 of the Act can be summarised thus :

(i) If the accused is the Managing Director or a Joint Managing Director, it is not necessary to make an averment in the complaint that

[9] (2009) 10 SCC 48

he is in charge of, and is responsible to thecompany, for the conduct of the business of the company. It is sufficient if an averment is made that the accused was the Managing Director or Joint Managing Director at the relevant time. This is because the prefix 'Managing' to the word 'Director' makes it clear that they were in charge of and are responsible to the company, for the conduct of the business of the company."

(41) The judgement relied upon by the learned counsel for the petitioners i.e. ***Rajiv Khurana's*** *case* (supra) does not pertain to Managing Director and as such the same is not of any advantage to the petitioner no.2 who happens to be the Managing Director of the firm. Although in the other judgement relied upon by the petitioner i.e. ***judgement dated 2.7.2015 rendered in M/s Cheminova's*** *case* (supra), the petitioner was Managing Director but in view of the role and position of a Managing Director, as explained by Supreme Court in ***K.K. Ahuja's*** *case* (supra), the said judgement can not be made applicable.

(42) As regards petitioner No. 3 namely Sh. D.P. Sihag, he, as per complaint, is stated to be the person responsible for conduct of business of the firm. A perusal of para 15, as reproduced above would show that the complainanthas annexed copies of affidavits of responsible persons with the complaint but somehow the petitioners have not annexed the said affidavits with this petition. The petitioners, in any case, are not disputing the said fact in this petition. In these circumstances, there can be no dispute that Shri D.P. Sihag is responsible for conduct of business of the firm and as such even he cannot escape from his liability on account of the sample in question having been found misbranded.

(43) Petitioner No. 5 namely Sh. J.D.Shah and petitioner no. 6 namely Sh.D. Jaipal Reddy, as per the complaint are the persons responsible for quality control of the firm. A person who is monitoring the quality of the product being manufactured by the firm is the key person who would be responsible for ensuring quality of the product being manufactured by the firm as he is the person who has to check and control the ingredients of the product being manufactured and to ensure that the same are as per the representation being made on the packaging and to ensure that there is no misbranding. In the circumstances petitioner No. 5 and 6 are also liable to be prosecuted on account of misbranding of the insecticide in question.

(44) It may here be mentioned that the complaint in question does contain the assignment of the petitioners no. 2 to 6 and there are

allegations in brief tothe effect that they all had knowingly and with the consent and connivance had manufactured sold and distributed the misbranded insecticide. The complaint is not expected to be encyclopedic and it is only during the course of trial that the complainant can fully substantiate the averments and allegations made in the complaint as regards the role and responsibility of the petitioners and as regards misbranding of the insecticide. The allegations as leveled in the complaint are sufficient to initiate prosecution against them.

(45) Petitioner No. 4 namely Sh. Arvind Sareen is stated to be Godown Incharge of petitioner No. 1. The said godown in question is situated in Ludhiana. The insecticide being manufactured in the manufacturing unit of the firm inGujarat must have been transported to different districts in different States before the same is further sent to the Distributors and thereafter to the Dealers for its sale, as per the requirement or orders received by the firm. The duty of Godown Incharge would be to ensure that articles/goods received from the manufacturing firm are kept in safe condition in the Godown and to maintain a proper inventory of all such articles and goods so received and to further pass on to the same to Distributors and Dealers as perthe directions of the manufacturing firm. Since the insecticide in question, in any case is in sealed condition, therefore the Godown Incharge whose primary job is to keep the articles intact and to further pass on the same tothe Distributors and Dealers and is himself not supposed to sell the same cannot be said to have committed any offence under Insecticides Act 1968 so as to have rendered himself liable for prosecution. As such, the complaint qua petitioner No. 5 deserves to be quashed. The submission no. 4 thus stands partly accepted qua petitioner No. 5 only.

(46) As a sequel to the discussion made above, this Court does not find merit in the petition as far as case of petitioner no. 1 to 3, 5 and 6 is concerned and the same is dismissed qua petitioner no. 1 to 3, 5 and 6. However, the petition merits acceptance qua petitioner no. 4 and the same is accepted qua petioner no. 4 only i.e. Sh. Arvind Sareen, Godown Incharge of the firm and the complaint and other consequential proceedings qua petitioner no. 4 arehereby quashed.

Dr. Sumati Jund