

IN THE HIGH COURT OF MADHYA PRADESH, JABALPUR

**BEFORE
SHRI JUSTICE SUJOY PAUL**

ON THE 1st April, 2022

M.Cr.C. No. 17458 of 2021

BETWEEN :-

1. Amrutlal Sanghani

2. Dr. A.G. Mehta

3. Chetan D. Bhatti,

4. Hitesh M. Pipalaya

SUBMITTING CHEMICAL

Signature of Hitesh

5. Dharmresh Patel

6. Sambhaji J Patil

PETITIONERS

(By Shri Surendra Singh, Sr. Advocate with Shri Shivam Singh, Advocate)

AND

1. State of Madhya Pradesh
Through its In-charge Police
Station Mandleswar District
Khargon (M.P.)
2. The Sub Divisional
Agriculture Officer
Insecticide inspector
Under The Insecticide Act
1968 Mandleswar District
Khargon (M.P.)
3. Dy. Director of Agriculture
(Plant Protection) Directorate
Farmer Welfare and Agri
Development Department of
Agriculture, Bhopal, M.P.

.....Respondents

(By Shri Pramod Thakre, Government Advocate)

Whether approved for reporting	YES
Law Laid down :-	<u>1. Section 482 of Cr.P.C.-</u> challenge to the FIR – Ordinarily judicial review is limited on the parameters laid down by

Supreme Court in the case of **State of Haryana and others vs. Bhajan Lal and others**, AIR 1992 SC 604.

2. Essential Commodities Act, 1955 -

the product (insecticide) of petitioner's company was treated to be 'misbranded'. The Section 2(A) of Essential Commodities Act makes it clear that essential commodity means 'a commodity specified in the Schedule'. The Schedule does not include 'insecticide'. Thus, E.C. Act and offence mentioned therein are not attracted relating to 'insecticide'.

3. The Insecticides Act, 1968 – Section 29 – it prescribes offences and punishment – for first offence, the maximum sentence is extendable to two years with fine. Section 2(l) CrPC defines non-cognizable offence. First Schedule appended to CrPC talks about classification of offences against other laws. The offences in are punishable upto three years or fine are held to be 'non-cognizable' offence under the Schedule.

	<u>4. Section 154 CrPC</u> - FIR cannot be registered for committing non-cognizable offence. Since offence under the Insecticides Act is a non-cognizable offence, in view of judgment of State of Haryana and others vs. Bhajan Lal and others, AIR 1992 SC 604 FIR is set aside.
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ORDER

Sujoy Paul, J.

This petition filed under Section 482 of Code of Criminal Procedure (Cr.P.C.) assails the First Information Report (FIR) dated 29 January, 2021 (Annexure-P/4).

2. Briefly stated, the applicant Nos. 1, 3, 4, 5 and 6 are working as Quality Control In-charge in M/s Sumitomo Chemical India Ltd., Mumbai. The said company has factories at Bhavnagar, Gajodand Vapi in Gujarat and Silvassa in Union Territory of Dadra and Nagar Haveli.

3. Petitioner No. 2 is factory Manager looking after the production and administration of Bhavnagar factory. It is averred that he is not the Quality Manager.

4. It is pleaded that M/s Sumitomo Chemical India Ltd. was formerly known as Excel Crop Care Ltd. having its registered office at 184/87, S.V. Road Jogewari West Mumbai and having production Unit at Bhavnagar Gajodand in Gujarat and Silvassa.

5. It is further stated that pursuant to an order passed by National Company Law Tribunal, Mumbai bench dated 27th June, 2019. The previous company merged into M/s Sumitomo Chemical India Ltd.

6. The case of the petitioners is that the said company is one of the largest manufacturers of Technical grade Pesticides and formulations in the company. One of the formulations IMIDACLOPRIDE 17.8% is manufactured and sold under the brand name "IMIDACEL" (hereinafter called as 'product').

7. That the Sub-Divisional Agriculture Officer/Insecticide Officer obtained a sample of IMIDACLOPRIDE 17.8% SL from a trader of Khargone (M.P.) and sent it to Insecticide Quality Control Laboratory, Jabalpur for analysis. As per the report of the said laboratory, the sample is declared as 'misbranded'.

8. A show cause notice dated 24.06.2020 was issued to M/s Excel Crop Care Ltd. Which in turn was send to the petitioners' company. In turn, petitioners' company by letter dated 03.07.2020 denied the

allegations regarding production of said product in its factory. After certain further correspondence between the said Government officer and the company, the impugned FIR No. 44/2021 was lodged against the petitioner on 29.01.2021.

9. This FIR dated 29/01/2021 was lodged in Mandleshwar Police Station District Khargaon by respondent No.2 for violation of Section 3 r/w 7 of the Essential Commodities Act, 1955 (Act of 1955) and Section 29 of the Insecticides Act, 1968 (Act of 1968). This FIR is subject matter of challenge in this petition.

10. Shri Surendra Singh, learned Senior Advocate submits that :

(1) the 'Product' was treated to be misbranded. The Essential Commodities Act is not applicable to the product which is an Insecticide. To bolster this, Section 2A(1) of the Act of 1955 is relied upon. Schedule appended to this Act was referred to show that Insecticide is not one of the items mentioned in the Schedule. Thus, provisions of Act of 1955 are not attractive and, therefore, question of committing any offence under this Act does not arise.

(2) Section 29(1)(f) and sub-section (2) of Act of 1968 were relied upon. It is further submitted that Section 2(l) of Cr.P.C. defines "non-

cognizable offence”. First schedule of Cr.P.C. which contains “Classification of offences in **other Laws**” defines the punishment in following words “if punishment with imprisonment for less than three years or with fine”, it is ‘non-cognizable offence’. Thus, the stand of petitioners is that the offence alleged against the present petitioners under the Act of 1968 are non-cognizable offences.

(3) For non-cognizable offence, FIR under Section 164 of Cr.P.C. cannot be registered which is clear from the plain language of Section 154 and the judgment of Supreme Court in the case of **State of Haryana and others vs. Bhajan Lal and others, AIR 1992 SC 604.**

11. *Per contra*, Shri Pramod Thakre, learned Government Advocate for the State, placed reliance on Section 155(4) of the Cr.P.C. and section 2(d) of Cr.P.C. He relied upon **Keshav Lal Thakur vs. State of Bihar, (1996) 11 SCC 557.**

12. Parties confined their arguments to the extent indicated above.

13. I have heard the parties at length and perused the record.

14. This is trite that scope of judicial review at the stage of FIR is very limited. The Court cannot examine the correctness of the allegations.

15. If allegations are accepted as such at their face value in its entirety and still do not *prima facie* constitute any offence or make out a case against the accused, FIR can be interfered with.

16. The first question is, therefore, whether as per the admitted facts, any offence under the **Essential Commodities Act** is made out or not. As per Section 2(A) of Essential Commodities Act, 'essential commodity' means 'specified in the Schedule'. A microscopic reading of Schedule shows that insecticide is not one of the commodity/item mentioned in the Schedule. The learned Government Advocate also could not point out any item, which attracts Section 2(A) of the Essential Commodities Act. Thus, on the basis of admitted facts, no FIR can sustain judicial scrutiny relating to offence under the E.C. Act.

17. So far offence under Insecticides Act is concerned, relevant portion of Section 29 of the **Insecticides Act, 1968** may be seen, which reads as under:-

“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.”

(Emphasis Supplied)

18. The offences are mentioned from Clause (a) to Clause (f). For first offence, the imprisonment is permissible upto a period of two years with fine. Section 2(l) of CrPC defines ‘non-cognizable offence’ as under :-

2(l). “Non-cognizable offence” means an offence for which, and “non-cognizable case” means a case in which, a police officer has no authority to arrest without warrant.”

19. Schedule I of CrPC which deals with classification of offences against other laws provides that if offence is punishable with imprisonment for less than three years or with fine only, it is a ‘non-cognizable offence’. In **Bhajanlal’s case** (supra), the Apex Court has held as under :-

“**108.** In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent

abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1)

(2). Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. **do not disclose a cognizable offence**, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.”

(Emphasis Supplied)

20. The heading of Section 154 of CrPC itself shows that it relates to cognizable offence. The curtains are finally drawn on this aspect in **Bhajanlal** (*supra*) wherein the Supreme Court held that FIR can be interfered with if it does not disclose a cognizable offence. Thus, I find substantial force in the argument of learned Senior Counsel that even as per facts of the FIR, no offence under the Essential Commodities Act and Insecticides Act are made out or in other words, said Acts are not attracted.

21. I will be failing in my duty if I won't consider the argument of Shri Thakre, learned Government Advocate, Section 155 of CrPC on which Shri Thakre placed reliance deals with non-cognizable offences and investigation in such cases. Section 2(d) and its explanation was relied upon by learned Government Advocate, which in my opinion has no

relevance so far validity of FIR is concerned. Thus, judgment of Supreme Court in (1996) 11 Supreme Court Cases 557 (**Keshav Lal Thakur vs. State of Bihar**) is also of no significance on the question of legality, validity and propriety of the FIR. Interestingly, even in **Keshav Lal Thakur** (supra) the Apex Court opined ‘on the own showing of the police, the offence under Section 31 of the Act is non-cognizable and therefore, the police could not have registered a case for such an offence under Section 154 of CrPC’.

22. In view of foregoing analysis, the impugned FIR cannot be permitted to stand. Resultantly, the FIR No.0044 dated 29.01.2021 is set aside. The petition is **allowed**. No cost.

(SUJOY PAUL)
JUDGE

Akm/manju/rv