

(1991) 09 P&H CK 0089

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 123-DBA of 1986 and Criminal Miscellaneous No. 10664 of 1991

Assistant Environmental Engineer, Haryana State Board for
Prevention and Control of Water Pollution

APPELLANT

Vs

Jai Bharat Woollen Finishing Works and Others

RESPONDENT

Date of Decision : 24-09-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378(5)

Limitation Act, 1963 — Section 5

Water (Prevention and Control of Pollution) Act, 1974 — Section 43, 44

Citation : (1993) 77 CompCas 386 : (1993) CriLJ 384

Hon'ble Judges : J.B. Garg, J;A.P. Chowdhri, J

Bench : Division Bench

Advocate : M.S. Jain and Adarsh Jain, for the Appellant; G.S. Bawa and K.L. Arora, for the Respondent

Final Decision : Partly Allowed

Judgement

A.P. Chowdhri, J.—The Haryana State Board for Prevention and Control of Water Pollution (for short, "the Board"), through its Assistant Environmental Engineer, filed a complaint under Sections 43 and 44 of the Water (Prevention and Control of Pollution) Act, 1974 (hereinafter called "the Act"), against the partnership concern known as Jai Bharat Woollen Finishing Works, its manager, Subhash Chander, and partner, Smt. Phoola Devi. The accused were tried by the Sub-Divisional Judicial Magistrate, Panipat, and were acquitted by judgment dated June 1, 1985. Aggrieved by the acquittal, the Board has preferred this appeal.

2. According to the prosecution, the accused were carrying on the job of blanket finishing in Industrial Area, Panipat. The job involves use of chemicals such as soda ash, acids, etc. As a result of the operation carried on by the accused, some effluent is generated containing various chemicals. The said effluent is in the form of water polluted chemically, physically and biologically. The accused had been discharging the said effluent without any treatment at all in the open drain

of the municipal drain. The accused failed to obtain the consent of the Board in accordance with the provisions of Sections 25 and 26 of the Act. The Board served a number of notices on the accused to apply for obtaining the requisite consent of the Board, but they paid no heed. On July 31, 1981, the Assistant Environmental Engineer took a sample of the effluent from the outlet of the firm after giving the accused a notice of his intention to have the sample analysed. The notice was served on the accused, Subhash Chander. It was taken according to the provisions of the Act and the rules framed thereunder. The sample was analysed by the Board analyst and as a result thereof, it was found that the sample was not in conformity with I. S. 2490 applicable in this behalf. The Board took a decision dated April 18, 1980, to prosecute the accused. In accordance with the said decision, the aforesaid accused were prosecuted by presenting a complaint.

3. At the trial, the complainant examined R. P. Misra, Assistant Environmental Engineer, PW 1 ; S. C. Mann, Assistant Environmental Chemist, PW 2, and produced a copy of the resolution of the Board for the prosecution of the accused.

4. Smt. Phoola Devi, accused, admitted that she was a partner in the firm, accused No. 1, but stated that she did not take part in running the business of the factory. She admitted that the firm was carrying on the work of finishing job on blankets. The other evidence appearing against the accused was, however, denied. Subhash Chander, accused, in his statement, admitted that he was the manager of the accused firm. He added that Smt. Phoola Devi was not taking any active part in the business of the firm. He denied the other material appearing against the accused in evidence. The accused examined Chamba Ram, DW 1, who is working in another factory situated opposite Jai Bharat Woollen Mills. According to him, only one bottle of the trade effluent was taken as a sample and even though a request was made by the manager, Subhash Chander, a second bottle of sample was not taken.

5. The learned trial court noticed a number of contentions raised on behalf of the complainant as well as the accused, but we regret to say that the court failed to record any firm finding, for instance, it was not held that there was no valid sanction. It was not found that Smt. Phoola Devi was a sleeping partner and as such not liable to be prosecuted. It was not found that the accused had been draining out the polluted water after first discharging the same into the municipal drain. In fact, the discussion in paragraph 14, which is the only, paragraph devoted for the purpose, hardly makes any sense and learned counsel appearing for the accused to support the judgment, was equally at a loss to put sense in what has been said therein. The result reached by the trial court was that discharge of polluted water into vacant land did not constitute an offence and, therefore, acquitted the accused.

6. Shri G.S. Bawa, learned counsel appearing for the accused, raised a preliminary objection. He contended that the appeal was barred by limitation. He referred to Section 378(5) of the Code of Criminal Procedure (for short "the

Code"), which reads as under :

"No application under Sub-section (4) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of six months, where the complainant is a public servant, and sixty days in every other case, computed from the date of that order of acquittal."

7. He further pointed out that the judgment of acquittal is dated June 1, 1985. An application for a certified copy was made on the same day. The copy was ready on June 5, 1985. The appeal was filed on November 28, 1985. He further submitted that the Board could not possibly be held to be a public servant and, therefore, in terms of Section 378(5) of the Code, the period of limitation was sixty days which expired on August 5, 1985, after taking into consideration the period taken in preparation of a certified copy of the judgment. According to him, thus, the appeal was barred by limitation by 115 days. In support of the contention, Shri Bawa placed reliance on *Municipal Corporation of Delhi Vs. Jagdish Lal and Another*, ; *Municipal Corporation of Delhi v. Amrit Lal* [1981] CCC 33 (Delhi) ; *Municipal Corporation of Delhi v. S.K. Jain* [1985] 1 R.C. R. 403 and *Municipal Corporation of Delhi v. Dhani Ram* [1988] 1 R.C. C. 300 : all Division Bench decisions of the Delhi High Court. In all these decisions, it was held that the Municipal Corporation of Delhi is not a public servant and, thus, the period of limitation within which an appeal could be filed u/s 378(5) of the Code was sixty days from the date of the order of acquittal. Shri M.S. Jain, learned counsel for the appellant, on the other hand, contended that the Board was a juristic person and could only function through the Chairman or Members or officers of the Board. Members, Officers and servants of the Board had been expressly declared to be public servants u/s 50 of the Act, and, thus, the period of limitation should be reckoned to be six months. If this were accepted, then the appeal would be within the period prescribed under the Code. In the alternative, Shri Jain made an application u/s 5 of the Limitation Act, being Criminal Miscellaneous Application No. 10664 of 1991. It was stated in the application that the Environmental Engineer, Sonapat, apprised the Board about the acquittal of the accused by his letter dated June 21, 1985, forwarding a certified copy of the judgment of acquittal dated June 1, 1985. The District Attorney of the Board examined the case and recommended on July 3, 1985, that an appeal should be filed against the judgment. The member-secretary of the Board agreed with the views of the District Attorney and submitted the file to the Chairman who also agreed with the report of the District Attorney, vide his note dated July 23, 1985. He directed the office to take steps to engage a senior advocate. The relevant papers were collected and the matter was discussed with a senior advocate. The advocate further expressed the view that the period of limitation for filing the appeal was six months, that is, up to December 1, 1985. On the basis of the said advice, the Board, in its meeting dated November 10, 1985, decided to prefer an appeal and, accordingly, the papers were submitted to the advocate on November 26, 1985, and the application for special leave was filed in the High Court on November 29, 1985. Along with the application, an affidavit of Shri E.N.

Malik, member-secretary of the Board, with regard to the material facts alleged in the application was also filed. The application has, however, been vehemently opposed mainly on the ground that a careful perusal of various dates mentioned in the application would reveal that the matter was being dealt with leisurely and there was no sense of urgency attached to it at any stage. It was also argued that the affidavit of the advocate who allegedly gave the advice with regard to the period of limitation being six months had not been placed on record.

8. It may be stated at the outset that the apex court has settled the law in *Mangu Ram Vs. Municipal Corporation of Delhi*, that Section 5 of the Limitation Act, 1963, applies to applications for special leave u/s 417(3) of the Code of Criminal Procedure, 1898, which is analogous to Section 378(5) of the Code. The further settled law is that courts should adopt a liberal approach while considering sufficient cause u/s 5 of the Limitation Act. The exposition of law on the subject in *Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others*, is very instructive and may be referred to with advantage. Inter alia, their Lordships of the Supreme Court observed therein that the judiciary is respected not on account of its power to legalise injustice on technical grounds, but because it is capable of removing injustice and is expected to do so. The Board received the advice of the advocate that the period of limitation in filing the special leave application was six months.

9. The mere fact that members, officers and servants of the Board have been declared to be public servants within the meaning of Section 21 of the Indian Penal Code u/s 50 of the Act does not warrant the conclusion that the appeal filed by the Board should be deemed to be one filed by a public servant. In the eyes of law, the Board is a distinct juristic person different from the members, officers and servants thereof. The Board is not and can never be a public servant unless there is any such deeming provision made in the Act. The normal period of limitation in this appeal for purposes of Section 378(5) of the Code, therefore, is sixty days. In this view of the matter, the appeal having been filed beyond the period of limitation would be barred by limitation.

10. This brings us to a consideration of the application u/s 5 of the Limitation Act. It has been seen that Section 5 applies to an application u/s 378(5) of the Code. It has also been seen that the Board received advice from a senior advocate that period of limitation in this case was six months and there was no good reason for the Board to doubt the correctness of that advice. Even otherwise, the delay has been satisfactorily explained by the facts mentioned in the application u/s 5 which have not been controverted. It deserves repetition to say that the courts have to take a liberal view of the provisions of Section 5 to advance the cause of justice. For all these reasons, we condone the delay in filing the appeal.

11. This brings us to the merits of the appeal.

12. Shri Bawa contended that courts could not take cognizance of the offence

without the previous sanction of the Board in view of Section 49 of the Act. We find no force in this contention. A plain reading of Section 49 of the Act shows that cognizance can be taken either on a complaint made by the Board or where it is not made by the Board then, in that case, with the previous sanction in writing of the State Board. As the complaint in the present case was made by the Board, there was no question of previous sanction of the Board, the same view was taken in *Dr. Z. Kotasek and Another Vs. The State of Bihar and Another*, .

13. Sections 25 and 26 of the Act which are the relevant sections for the case in hand were amended by the Water (Prevention and Control of Pollution) Amendment Act, 1978 (44 of 1978). The amendment was brought into effect in the State of Haryana from December 13, 1978. The State Government issued Notification No. 29/3/PH(3), dated July 14, 1980, specifying October 21, 1980, as the date on or before which an application for consent under Sub-section (2) of Section 25 read with Section 26 was to be made. Admittedly, no such application was made by the accused up to the taking of sample, that is, July 31, 1981. According to the amendment, discharge of a trade effluent into a sewerage or on land constituted an offence without the consent of the Board from October 21, 1980, onwards. It will make no difference whether the trade effluent was discharged in the municipal drain or such effluent was drained out of the municipal drain and allowed to flow on land.

14. Section 47 of the Act relating to offences by companies which expression, according to the explanation added to that section, includes a partnership firm lays down that, where an offence under the Act is committed by any company, every person who, at the time the offence was committed, was in charge of, and 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. In order to fasten liability on Smt. Phoola Devi, all that the prosecution has been able to bring on record is an admission made by Subhash Chander, manager and that of Smt. Phoola Devi herself in her statement u/s 313 that she is a partner of the firm. There is no other material on record to show that she was in charge of or was responsible to the company for the conduct of the business of the company. The burden of proving these facts is obviously on the prosecution. For this reason, it is not possible to convict Smt. Phoola Devi.

15. For the foregoing reasons, we partly allow the appeal, set aside the acquittal in so far as the firm and the manager are concerned ; we do not interfere in the acquittal of Smt. Phoola Devi. As the sample was taken more than 10 years back, we do not want to award any substantive sentence of imprisonment to Subhash Chander, accused. Neither counsel was in a position to confirm that Subhash Chander continued to be in the service of the firm or had left the same. He is thus a mere whipping boy. For these reasons, we impose a fine of Rs. 3,000 on the firm, accused No. 1 and a fine of Rs. 2,500 on Subhash Chander, accused No. 2. In default of payment of fine by Subhash Chander, he shall

undergo six months rigorous imprisonment.