

(2017) 04 MP CK 0159
In the Madhya Pradesh High Court
Case No : 811 of 2016

Bhajan @ Rambhajan

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 04-04-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 482](#), [Section 197](#), [Section 200\(a\)](#)
a> - Saving of inherent powers of High Court - Prosecution of Judges and public servants - Examinat

Citation : (2017) 04 MP CK 0159

Hon'ble Judges : Alok Verma

Bench : Division Bench

Advocate : Jitendra Verma, Aniket Naik

Judgement

1. This application under Section 482 Cr.P.C. is filed for quashment of proceedings in Criminal Case No.559/2015 and other consequential proceedings initiated against the present applicant under Section 15 and 17 of Environment (Protection) Act.

2. According to the facts stated in the application, the present applicant is Chief Municipal Officer. His initial appointment took place by appointment letter dated 08.09.1982, which is annexed as annexure-P-1. On 30.01.2015, Madhya Pradesh Pollution Control Board (hereinafter referred as "board") filed a complaint under Sections 15 and 17 of Environment (Protection) Act, 1986 (hereinafter referred as "Act 1986") alleging therein that the present applicant was working as Chief Municipal Officer in Municipal Council, Badwah, District-Khargone, which is a statutory body created under the provisions of Madhya Pradesh Municipalities Act, 1961. Section 3, 6 and 25 of the Act 1986 confer power on the Government of India to make rules using the power conferred therein. The Government of India framed rules known as Municipal Solid Waste (Management and Handling) Rules, 2000 (hereinafter called "Rules 2000").

3. Under Rule 6(3) of the rules 2000, there is a provision of obtaining authorization letter by Municipal authorities in respect of management and disposal of solid waste. Such authorization letter issued by the State Pollution Control Board was valid for prescribed period. Authorization letter was issued to Municipal Council, Badwah on 27.01.2004, which was valid till 31.12.2004. It is alleged that the present applicant as Chief Municipal Officer of the Municipal Council failed to take necessary steps for renewal of the authorization letter.

4. The complaint filed by the Pollution Control Board is annexed as Annexure-P-4. The description of alleged offence is as under:- "VERNACULAR MATTER OMITTED"

5. When this complaint was filed before the Court of concerning Magistrate, the Magistrate proceeded to issue summons to the present applicant against which, this application is filed on following grounds (i) that the applicant was government servant and a public servant also. (ii) Under the provisions under Section 197 of Cr.P.C., it was necessary for the Board to seek a sanction of the Government before filing the complaint (iii) the Investigating Officer conduct an inquiry for the purpose of finding out whether the person against whom irregularities and offence is alleged and action is proposed to be taken. According to petitioner a notice under Section 19(B) of Act, 1986 is to be given before filing such complaint. (iv) The Magistrate did not examine the complainant and any other witnesses before reaching to the satisfaction that summons were required to be issued against the present applicant. (v) It is also case of the petitioner that he was not the Chief Municipal Officer of the Municipal Council, when authorization letter was issued by the board expired on 31.12.2004 and in the complaint, other persons who functioned as Chief Municipal Officer in between, were not shown as accused.

6. Learned counsel for the respondent vehemently opposed the application and submits that for taking action against Chief Municipal Officer under Section 15 and 17 of the Act, 1986, no sanction under Section 197 of Cr.P.C. was required.

7. During the argument, the question raised by this application under Section 482 Cr.P.C. is maintainable. Without his approach the revisional Court, against the cognizance taken by the Magistrate against the present applicant and for this purpose, learned counsel for the applicant places reliance on judgment of Hon"ble Apex Court in case of Devendra Kishanlal Dagalia v. Dwarkesh Diamonds Private Limited and Others (2014) 2 SCC 246, in which it was held that once an order summoning accused under Section 204 of Cr.P.C. was passed by the Magistrate and review the order by the Magistrate is not possible, the only remedy lies under Section 482 of Cr.P.C. Similarly reliance was placed on judgment of Hon"ble Apex Court in case of Suresh Kumar Tekriwal v. State of Jharkhand and Another (2005) 12 SCC 278.

8. So far as the maintainability of an application under Section 482 Cr.P.C. is concerned, it is now well settled that an application is maintainable even when

no revision was filed against the order against which the revision lies before concerning revisional Court. However, it was on many times expressed by Hon"ble the Apex Court in various cases that while exercising the jurisdiction under Section 482 of Cr.P.C, the High Court should exercise caution and only when no other remedy is available and when injustice stare on face, such power should have been exercised.

9. Taking into consideration the facts that this Court is empowered to take action when there was an abuse of process of law and when there was glaring injustice, the questions raised by learned counsel for the applicant may be considered on merit. The first question is in respect of sanction under Section 197 Cr.P.C., the learned counsel for the applicant places reliance on judgment of coordinate Bench of this Court in case of Jagdish Gome v. The State of Madhya Pradesh passed in M.Cr.C. No.3741/2013 dated 02.11.2015. In this case, officer of Narmada Hydroelectric Corporation Limited were charged under Section 304-A of IPC. The allegations against them were that they released water from the dam of river Narmada without any warrant, which resulted in death of 70 people. The co-ordinate Bench of this Court found that sanction is necessary, and therefore, quashed the proceeding. The petitioner's counsel also places reliance on judgment of Hon"ble the Apex Court in case of Rakesh Kumar Mishra v. State of Bihar and others (2006) 1 SCC 557. Here the prosecution of police officer was challenged without any sanction, against whom the allegation was that he made a search without having any search warrant. The Hon"ble Apex Court held that the test was whether the omission or neglect to do that act would have brought on charge of dereliction of his official duty. The Provisions of Section 197 of Cr.P.C. should be construed strictly while determining its applicability to any act or omission of service. It does not extend to criminal activities. He also places reliance in case of Palnitkar and others v. State of Bihar and another (2002) 1 SCC 241, Maksud Saiyed v. State of Gujarat and Others (2008) 5 SCC 668, Ram Biraji Devi and Another v. Umesh Kumar Singh and Another (2006) 6 SCC 669 and Harshendra Kumar D. v. Debatilata Koley and Others (2011) 3 SCC 351.

10. On the contrary, learned counsel for the respondent/State relies on judgment passed by co-ordinate Bench of this Court in M.Cr.C. No.271/2006, M.Cr.C. No.3991/2005 and M.Cr.C. No.8740/2005 dated 22.09.2008. In the order passed by co-ordinate Bench of this Court in Para-14 the judge prescribed provisions of Section 47, 48 and 49 of Water (Prevention and Control of Pollution) Act, 1974 and in para-14 the Court made following observation:- "Section 47 of "the Act, 1974 is about offences by companies and sections 48 and 49 are the complete code so far as it relates to offences by Government Department and Companies under the "Act, 1974". It does not provide taking of permission of any authority in relation to persons said to have committed the offence alleged. After notices to the Commissioner Municipal Corporation, Bhopal through its officer(employees concerned herein arrayed as accused persons as per allegation in the complaint) not only committed the offence even on the date of the complaint but continued the offence as alleged in the complaint. Necessary averments are made against

petitioner in the complaint that they were incharge and responsible for the offences committed by Municipal Corporation, Bhopal. Learned counsel for the petitioners has relies on Anil Handa v. India Acrylic Ltd. (2000) 1 SCC 1, K. Shrikanth Singh v. M/s North East Securities Ltd. And another, 2007 (4) Crimes 310 (SC) and Prakash Chand Jain v. State of West Bengal and another, 1991 Cri. L.J. 2912. These authorities are related to cases under Negotiable Instruments Act and Prevention of Food Adulteration Act. No doubt similar language are used in Section 16 of "the Act, 1986" but aforesaid authorities are regarding Directors in the company or Partners in the Firm and some Directors and partners are Sleeping or Formal and they are not involved in the day to day working of the Company or Firm whereas these petitioners are responsible officers of the Municipal Corporation, Bhopal and clear allegations are made against them in the complaint as well as inference can be made against these petitioner that they are responsible for day to day working of Municipal Corporation. However, prima facie such plea cannot be accepted and at the time of proceeding before the Court below they free to raise objections regarding their duties and responsibility etc".

He also places reliance on judgment of Hon"ble Apex Court in case of V.C. Chinnappa Goudar v. Karnataka State Pollution Control Board and Another (2015) 14 SCC 535. In this Case, the appellant was holding post of Commissioner and provisions of Water (Prevention and Control of Pollution) Act, 1974 were involved. A question was raised whether for prosecution of Government servant and public servant, sanction under Section 197 of Cr.P.C. is required. The Hon"ble Apex Court in Para 7 to 11 observed as under:-

"7. Having considered the respective submissions, we find force in the submission of Mr. A. Mariarputham, learned Senior Counsel for the respondents. As rightly pointed out by the learned Senior Counsel under Section 48, the guilt is deemed to be committed the moment the offence under The 1974 Act is alleged against the Head of the Department of a Government Department. It is rebuttable presumption and under the proviso to Section 48, the Head of the Department will get an opportunity to demonstrate that the offence was committed without his knowledge or that in spite of due diligence to prevent the commission of such an offence, the same came to be committed. It is far different from saying that the safeguard provided under the proviso to Section 48 of the 1974 Act would in any manner enable the Head of the Department of the government department to seek unbrage under Section 197 Cr.P.C. and such a course if permitted to be made that would certainly conflict with the deemed fiction power created under Section 48 of the 1974 Act.

8. In this context, when we refer to Section 5 Cr.P.C, the said section makes it clear that in the absence of specific provisions to the contrary, nothing contained in the Criminal Procedure Code would affect any special or local laws providing for any special form or procedure prescribed to be made applicable. There is no specific provision providing for any sanction to be secured for proceeding against

a public servant under the 1974 Act. If one can visualise a situation where Section 197 of Cr.P.C. is made applicable in respect of any prosecution under the 1974 Act and in that process the sanction is refused by the State by invoking Section 197 of Cr.P.C. that would virtually negate the deeming fiction provided under Section 48 by which the Head of the Department of a government department would otherwise be deemed guilty of the offence under the 1974 Act. In such a situation the outcome of application under Section 197 of Cr.P.C. by resorting to reliance placed by Section 4 (2) of Cr.P.C. would directly conflict with Section 48 of the 1974 Act and consequently Section 60 of the Act would automatically come into play which has an overruling effect over any other enactment other than the 1974 Act.

9. In the light of the said statutory prescription contained in Section 48, we find that there is no scope for invoking Section 197 Cr.P.C even though the appellants are stated to be public servants.

10. We, therefore, do not find any scope to interfere with the judgment impugned in these appeals. The appeals fail and the same are dismissed.

11. The Counsel for the appellants states that the appellants may be permitted to appear through their counsel. If and when the appellant apply for dispensing with their appearance by invoking Section 205 of Cr.P.C. by filing special vakalt, the same shall be considered favourably by the learned trial Judge".

11. Learned counsel appearing for the respondent submits that provision of Section 48 of Water (Prevention and Control of Pollution) Act, 1974 is pari materia with Section 17 of the Act, 1986. Section 48 of this Act provides as under:- "48. Offences by Government-Departments-Where an offence under this Act has been committed by any Department of Government, the Head of the Department 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 section shall render such Head of the Department liable to any punishment 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".

12. The provision of the Section 17 of the Act, 1986 is as under:- "17 Offences by Government Departments. (1) Where an offence under this Act has been committed by any Department of Government, the Head of the Department 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 section shall render such Head of the Department liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence

under this Act has been committed by a Department of Government 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 officer, other than the Head of the Department, such officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly".

It may be seen that these two provisions of *pari materia*, and therefore, the principle laid down by Hon''ble Apex Court in case of V.C. Chinnappa (*supra*) applies on present case also.

13. Taking all these observations made by various Courts, it is apparent that in the present case, no sanction under Section 197 of Cr.P.C. is required. The second important contention of learned counsel for the applicant was in respect of examination of complainant and other witnesses before issuing the summons in this regard. The provisions of Section 200 appended to Clause (a) of the provision is that when the complaint is filed by public servant acting in a public capacity, examination of complainant and other witnesses are not necessary, and therefore, in this case, when complaint is filed by the officer of Pollution Board, which is a statutory body, such procedure is not required, and therefore the objection raised by the petitioner in respect is also have no force.

14. So far other grounds taken by the petitioner is concerned like taking necessary steps to get the piece of land allotted to be used the treach ground for disposal of solid waste to other persons who were as CEO prior to him for lapse of authorization etc. are concerned, he can raise these grounds during his defence. At this stage, it appears that no abuse of process of Court and no injustice is done in respect of allegations made against the present applicant.

15. Learned counsel for the applicant also argues that in this case, the notice under Section 19-B of the Act, 1986 has not been given. Learned counsel for the respondent submits that provisions of Section 19-B of the Act, 1986 applies to a person other than Pollution Control Board, who is required to give notice to the person against whom a complaint is to be filed and also to the Board, so that the Board may take action within the statutory period of two months. Otherwise that person can file the complaint directly. In this matter since complaint was filed by the board, notice was not required.

16. After going through the provisions of Section 19-B of the Act, 1986, the submissions made by the learned counsel for the respondent appears correct, no notice in this matter was required. In this view of the matter, this application has no force, deserves to be dismissed and dismissed accordingly.