

(1994) 08 P&H CK 0049

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 14683-M of 1990

East India Cotton Manf Co.Ltd.

APPELLANT

Vs

Har.State Board for Prevention & Control of Water Pollution

RESPONDENT

Date of Decision : 26-08-1994

Acts Referred:

Citation : (1994) 3 RCR(Criminal) 585

Hon'ble Judges : H.S.Brar, J

Advocate : S.M. Pardal, K.K. Jagia, Mr S.S. Walia, A.S. Chadha, Advocates for appearing Parties

Judgement

Harphul Singh Brar, J.

1. A prayer has been made in this petition under section 482 of the Code of Criminal Procedure for quashing of the complaint, dated October 20, 1990 under sections 33, 43 and 44 of the Water (Prevention and Control of Pollution) Act, 1974, annexed as Annexure P1 with the petition, as well as the summoning order, dated October 20, 1990, passed by the Chief Judicial Magistrate, Faridabad, annexed as Annexure P2 with the petition.

2. This learned counsel for the petitioners has sought to quash the complaint as well as the summoning order on various grounds, but I do not want to go into those, as the summoning order is an interim order and not a judgment. If the petitioners can show to the Magistrate that no case is made out against them, then the Magistrate has judicial discretion to drop the proceedings on reconsideration. Proceedings before the Magistrate commence upon taking cognizance of the offence and the issue of summons to the accused. When the accused enters appearance in response to the summons, the Magistrate has to take proceedings under Chapter XX of the Code of Criminal Procedure. But the need to try the accused arises when there is allegation in the complaint that the accused has committed the crime. If there is not allegation in the complaint involving the accused in the commission of the Crime, it is implied that the Magistrate has no jurisdiction to proceed against the accused. It is, thus, open to

the accused to plead before the Magistrate that the process against him ought not to have been issued. The Magistrate may drop the proceedings if he is satisfied on reconsideration of the complaint that there is no offence for which the accused could be tried. It is his judicial direction. No specific provision is required for the Magistrate to drop the proceedings or rescind the process. The order issuing the process is an interim order and not a judgment. It can be varied or recalled. If any authority is needed for the above proposition, reference may be made to K.M. Mathew v. State of Kerala and another, 1992(1) RCR 232 .

3. With these observations, this petition is dismissed. However, the petitioners shall have the right to urge all the points which have been taken up in this petition, before the Magistrate concerned.