
(1999) 06 OHC CK 0011

In the Orissa High Court

Case No : Criminal Miscellaneous Case No. 3374 of 1996

Fertiliser Corporation of India Ltd.

APPELLANT

Vs

Orissa State Prevention and Control of Pollution Board

RESPONDENT

Date of Decision : 28-06-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2000) 89 CLT 61 : (1999) 17 OCR 379 : (1999) 2 OLR 299

Hon'ble Judges : P.K. Mohanty, J

Bench : Single Bench

Advocate : J.K. Misra, D.R. Dey and A.K. Sahu, for the Appellant; B.P. Das, B.B. Das, B.M. Sarangi and R.R. Mohanty, for the Respondent

Final Decision : Allowed

Judgement

P.K. Mohanty, J.—This is an application u/s 482, Cr. P.C. by the Fertiliser Corporation of India Ltd., Talcher Unit against the order of the learned Sub-Divisional Judicial Magistrate, Bhubaneswar dated 30.7.1996 rejecting the application filed by the Orissa Stated Prevention and Control of Pollution Board, (opp. party) to close the complaint and not to proceed further with the prosecution.

2. The short facts of the petitioner's case is that the petitioner is a company registered under the Companies Act. 1956, engaged in manufacturing Urea Fertiliser. It is situated at Talcher in the district of Angul. In their application dated 26.12.1986. it had sought for consent of the Orissa State Prevention and Control of Pollution Board (hereinafter referred to as "the Board") tor existing new or altered out let/discharge of sewage and/or trade effluents Under Sections 25/26 of the Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as "the Water Pollution Act, 1974"). The Board granted consent u/s 25 of the Water Pollution Act, 1974 by its order dated 27.11.1987 with the conditions stipulated therein. The consent which was valid up to 31.3.1988, was subsequently extended by the order dated 7.11.1988. On 23.12.1988. a

representative of the Board inspected the petitioner's industry and allegedly found non-compliance of the terms and conditions as stipulated in the consent order. On the basis of the inspection report, the Board decided to lodge a complaint u/s 44 read with Section 49 of the Water Pollution Act, 1974 against Shree A.C. Kharbanda, Former General Manager and Shree K.P. Chatterji, Former Chief Engineer (TS) who are allegedly responsible for violation of the terms and conditions stipulated in the consent order. The Board authorised its Member-Secretary to lodge the complaint in appropriate Court. It is alleged that instead of the Member-Secretary, who was exclusively authorised to lodge the complaint, one Shree M.K. Khuntia, Junior Law Officer of the Board, as a public servant as contemplated u/s 50 of the Water Pollution Act, 1974 read with Section 21 of the Indian Penal Code filed the aforesaid complaint which was registered as 3 (C) C.C. No. 1 of 1989 in the Court of the learned S.D.J.M., Talcher. Upon consideration, cognizance was taken and summons were issued to the accused persons. After appearance of the accused persons, the case was transferred to the Court of the learned S.D.J.M., Bhubaneswar for disposal in accordance with the law. On being transferred to the Court of the learned S.D.J.M., Bhubaneswar, the case was registered as 2 (C) C.C. No. 236 of 1993. Evidence of the two witnesses were recorded and charges were framed by the order dated 9.6.1994. It appears that the petitioner approached the learned Addl. Sessions Judge in Criminal Revision No. 43 of 1994 for quashing the order of taking cognizance dated 9.6.1994. However, by the judgment dated 27.4.1996, the said revision was dismissed as the learned Addl. Sessions Judge found no illegality in framing of the charges and proceeding with the trial. It appears that during the pendency of the revision, the Board moved a petition before the learned S.D.J.M. for withdrawal of the complaint and not to pursue the case. It is urged that the Board having been fully satisfied that the F.C.I. Ltd. has fully complied with the consent order, it was worthwhile not to proceed with the said complaint against the accused persons who are public servants of a public sector undertaking of the Government of India. The said application has been rejected by the learned S.D.J.M. by his order dated 30.7.1996 which is impugned in the present petition.

3. Mr. J. K. Misra, learned counsel for the petitioner has contended that the complaint itself was incompetent since it has been filed by the Assistant Law Officer, who was not authorised by the Board to file the complaint inasmuch as since the Board authorised the Member-Secretary to file the complaint, on its behalf, the Member-Secretary could not have further delegated the power to a subordinate officer. It is further contended that as the Board has filed an application before the learned S.D.J.M. not to pursue the matter and to withdraw the same, as the accused persons have complied with the conditions stipulated in the consent order, the learned Magistrate ought to have allowed the said application and dropped the proceeding. A reference has been made to a decision of this Court in Criminal Misc. Case No. 990 of 1995 (Siba Kumar Bangar v. State Prevention Control of Pollution Board and Ors.), disposed of on 14.5.1997 to

contend that since the Board has decided not to pursue the case, it will be the abuse of the process of the Court if the proceeding is allowed to continue.

4. The petition dated 8.5.1996 filed by the Board has been annexed as Annexure-1 to this petition. In paragraph-4 of the said petition, it has been averred that as the complainant-Board has decided not to prosecute the case any further and not to take any further step in the case, since the accused persons are not responsible for the same. The prayer of the Board is quoted herein below :

"Under the above mentioned facts and circumstances, it is humbly prayed that as the complainant does not want to produce the witnesses for the cross-examination after charge and does not want to produce any other witnesses as the complainant wants to close the case and when complainant prays for impugning the statement of the complainant witnesses before the charge, your honour be kind enough not to proceed with the case and to acquit the accused under the above mentioned special circumstances for the end of justice and equity."

In view of the petition filed by the Board not to proceed with the complaint and not to adduce any further evidence in support of the prosecution, continuance of the criminal proceeding would be a futile exercise and would be an abuse of the process of law. In a similar matter, this Court in Criminal Misc. Case No. 990 of 1995 (supra) has taken a similar view.

5. In the result, the Criminal Misc. Case is allowed and Criminal Proceeding in 2 (C) CC. No. 236 of 1993 and 3 (C) CC No. 1/89) in the Court of the S.D.J.M., Bhubaneswar is quashed.