
(1996) 01 P&H CK 0068

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 15998-M of 1995

Friends Dyeing & Finishing Mills (P) Ltd.

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 07-01-1996

Acts Referred:

Citation : (1996) 2 AICLR 325 : (1996) 1 RCR(Criminal) 711

Hon'ble Judges : S.C.Malte, J

Advocate : Ashok Aggarwal, Anil Kumar Sharma, M.S. Lobana, Advocates for appearing Parties

Judgement

S.C. Malte, J. (Oral)

1. The petitioners in this case are facing charge under the provisions of Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as "the Act"). The allegations are that these petitioners have polluted the water and thus committed the offence punishable under section 44, read with section 47 of the Act. On getting that complaint, the learned Magistrate by order dated 26.7.1991 took cognizance and ordered to issue summons to the accused petitioners. The petitioners have now filed this petition to seek the quashing of the complaint.

2. The first ground raised before me pertains to the question as to whether the complaint was properly filed, so as to entitle the court to take cognizance. It was submitted on behalf of the petitioner that as per section 49 of the said Act, the Court shall not take cognizance of an offence under the said Act except on a complaint by a Board or any officer authorised in that behalf. It was submitted that the complaint as it is now, was filed by the Board through its Environmental Engineer, Ludhiana. It was submitted that filing of the complaint by the Board would not amount to filing of it by the public servant contemplated under Section 200, Clause (a) of the Cr.P.C. and, therefore, the Magistrate erred in dispensing with the personal attendance of the Board before issuing summons to the accused. It was submitted that the Magistrate taking cognizance of such complaint was under obligation to examine the complaint on oath; and since

in this case the complainant was the Board who was not a public servant whose attendance can be dispensed with as per those provisions; it was obligatory on the part of the Court to take necessary steps before he made up his mind to issue process. In support of that proposition, my attention was invited to a case of Haryana State Board for Prevention and Control of Water Pollution v. M/s Jai Bharat Woollen Finishing Works, Panipat, 1992(1) Recent C.R. 128. In that case, I find that their Lordships were mainly concerned with the question of limitation to file the appeal as per section 378(5) Cr.P.C. That provision prescribes different period of limitation in respect of appeals filed by a complainant who is a public servant. In case of public servant, appeal against acquittal can be filed within six months, and in other case the period of limitation is curtailed to 60 days only. While considering that aspect of limitation, their Lordships were of the view that the period of limitation in that case would be 60 days. Their Lordships while disposing of that point, observed that a complaint filed by the Board could not be equated with a complaint filed by the public servant. Obviously that ruling is limited to the question of limitation under Section 378(5) of the Cr.P.C., and observations made in that ruling cannot be bodily lifted to apply to the present case in which the question is as to whether the complaint had been filed by the proper person so as to enable the Court to take cognizance of it. In this case, complaint has been filed by the Board through its Environmental Engineer. Obviously since the Board happens to be a juristic person, it is bound to act through some of its officers who would be a public servant within the meaning of section 21 of Penal Code. Since the Board is the "person" as defined under Section 11 of the Penal Code, and since it is required to act through one of its officers, the filing of the complaint by the Board through authorised officer to act on its behalf, would be sufficient compliance with the requirement of section 49 of the said Act. In the complaint it is stated that the Environmental Engineer who has signed a complaint was the person who was duly authorised to act behalf of the Board for the purpose of filing the complaint. In that respect the counsel for the petitioner brought my attention to a Notification No. Admn III/F/96/85/15130 dated Patiala the 19.11.1985. With reference to that the counsel for the petitioner argued that that notification simply empowers the concerned officer to sign the complaints, etc, but no specific mention was regarding filing of the complaint in the Court. The learned counsel for the petitioner, however, has not read the lower part of the notification which reads as under :

"The Board further by an other resolution resolved that the following officers of the Board be authorised to sign, verify and file complaints/ applications and appeals to be filed by or on behalf of the Board in the Court of Law/appellate authority:

"All Environmental Engineers and Assistant Environment Engineers of the Board."

In my opinion, that was the answer to the petitioner's contention that the complaint was not properly filed.

3. The next question then arises as to whether it was obligatory on the part of

the Magistrate to examine the complainant before issuance of process. Here the question of interpretation of section 200 Cr.P.C. deserves attention. It in clear terms provides that the Magistrate can dispense with the examination on oath of the complainant and the witnesses, if such complaint was filed by a public servant acting or purporting to act in the discharge of his official duties. In this case, the Environmental Engineer who purported to act in discharge of his official duties as a representative of juristic person (the Board) has filed this complaint, and the Magistrate has rightly dispensed with his examination on oath.

4. The third point raised before me was that before issuance of process, the Magistrate should have passed an elaborate order. The order passed by the Magistrate indicates that he has perused the complaint and documents filed with it, and got himself satisfied that sufficient grounds existed to summon the accused. It is not necessary that the Magistrate should go on discussing various averments in the complaint and the documents in support of it while passing such order. All that is required is that the order passed by the Magistrate should be eloquent enough to indicate application of mind. If that test is satisfied, no other act is necessary. I thus find no substance in this petition. Hence, it is dismissed.