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**(1996) 08 PAT CK 0034**

**In the Patna High Court**

**Case No :** Crim. Misc. Nos. 3536, 3627 and 3638 and etc. of 1996(R)

Ganesh Pd. Sarawgi and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

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**Date of Decision :** 14-08-1996

**Acts Referred:**

**Citation :** (1996) 08 PAT CK 0034

**Final Decision :** Dismissed

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## **Judgement**

Loknath Prasad, J.—All these five criminal miscellaneous applications were taken up together as common question of law and facts are involved and this common order will dispose of all these applications which were preferred u/s 482, Cr. P.C.

2. In Crim. Misc. 3621/96 R, Ajay Kumar Sarawgi, in Crim. Misc. 3627/96R Ramesh Chandra Patel; in Crim. Misc. 3668/96R Ganesh Pd. Sarawgi; in Crim. Misc. 3536/96R Prabhash Chandra Jaiswal and in Crim. Misc. 3555/96R" Samir Kumar Mitra are the petitioners.

3. All these applications were preferred for quashing the order dated 13-6-96 initiated by opposite party No. 2 the S. D. M. Khunti. In Misc. case Nos. 330/96, 328/96, 426/96, 312/96 of 1996 and 327/96 respectively through which the proceeding u/s 133, Cr. P.C. was drawn up by the opposite party No. 2 as against the petitioners and a conditional order was passed for removal of nuisance in due course of their trade and occupation which are injurious to the health or physical comfort of the community in general and also for filing show cause by their appearance as to why the conditional order should not be made absolute.

4. The fact, in short, for the purpose deciding the quashing matter is that all the petitioners are running lac factory within the jurisdiction of S.D. M. Khunti and a public petition was filed that from their factory they are discharging polluted water and effluents which are flowing to a river Banai and further. Sewn their factory poisonous gases are discharged through Chimnis injurious to the public health and causing hardships to the community in general. On the basis is of the

public petition, the S.D.M. made a local enquiry and found the allegation to be true and it has also been alleged that they had not established treatment plant etc., as directed by the Pollution Board and thus, proceeding u/s 133, Cr. P.C. was initiated as mentioned above.

5. All the petitioners are admittedly the owner or Manager of the lac factory and they had challenged the initiation of the proceeding u/s 133, Cr. P.C. firstly on the ground that actually there is no discharge of effluents either in the river nor there is discharge of poisonous gas from their respective Chimnis and earlier they had obtained the consent order of the Bihar Pollution Board who is the competent authority for supervising running of such factory in discharge of effluents and though the period of consent had expired, but they have applied for renewal and uptill now no renewal order has been passed and the matter is under enquiry and it will be deemed that the Pollution Board will give the consent. It has also been alleged by these petitioners that there are separate Pollution Acts in respect of Air and Water and in view of the provision of the Special Acts, it is Pollution Board which is competent to initiate such proceeding and in such a situation Section 133, Cr. P.C. has got no application and in that view of the matter, initiation of proceeding u/s 133, Cr. P.C. is apparently illegal and a gross mis-use of the process of the Court and as such liable to be quashed.

6. On the other hand, on behalf of opp. party No. 2 that is, S. D.M. Khunti also counter affidavit was filed to show that there was public petition for which an enquiry was held by the S.D.M. himself and it was found that the petitioners' factory were discharging effluents detrimental to the health of the general public and also polluting a stream. In addition to that, the discharge from the Chimnis also causing hardship to the general public. It was also contended that only a proceeding u/s 133, Cr. P.C. has been initiated and the petitioners were directed to file show cause and then enquiry will be held and in such a situation initiation of proceeding is not liable to be quashed, and as such proceeding is not specifically or impliedly barred under Pollution laws. Furthermore, the petitioners have not installed treatment plant to avoid the pollution which is a condition of discharge-consent-order.

7. Admittedly the petitioners are running lac factory and admittedly discharge of effluent of factory is being made and also there is discharge of smoke from the Chimnis installed at the factory. The only point raised on behalf of the petitioners is that there are two separate Acts, that is, Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) Act (hereinafter to be referred to as the Air Pollution and Water Pollution Acts) to control the pollution of any factory and the Board is competent to enquire into all the allegations and for violation of the provisions penal provision is also there in both the Acts, and also there is specific provision of Sections 52 and 60 of the Act which got over-riding effect and it has been clearly mentioned that the provisions of the Act shall have, notwithstanding anything inconsistent therewith contained in enactment other than this Act. In that view of the matter, initiation

of proceeding u/s 133, Cr. P.C. is abuse of the process of Court and violation of the provisions of the Special Act.

8. In support of this contention the learned lawyer for the petitioner relied upon a case law of Madhya Pradesh High Court reported in Abdul Hamid Vs. The Gwalior Rayon Silk Mfg. (Wvg) Co. Ltd. and Others, .

9. On the other hand, learned counsel for the State and the opposite party No. 2 submitted that provision of Section 133, Cr. P.C. do not stand automatically or impliedly repealed after the commencement of Air and Water Pollution Acts and actually the provisions contained in Section 133, Cr. P.C. is a preventive measure to prevent the nuisance and pollution in the general interest of the public; whereas the Pollution Acts also is for the same purpose which too also prescribes preventive measures to prevent pollution of water and air and also any violation of the provisions of these Acts there is penal provision. In that view of the matter, if there is immediate danger regarding the existing of the public nuisance detrimental to the public health, then Section 133 Cr. P.C. is attracted. In support of this contention learned counsel for the opposite party relied upon a case law of Rajasthan High Court reported in Lakshmi Cement Vs. State and Another, and also an authority of our own High Court reported in 1989 BLJR 32 Pat 47 (Azad Ahmad Rizvi v. Md. Jiyauddin). So far Madhya Pradesh High Court case Abdul Hamid Vs. The Gwalior Rayon Silk Mfg. (Wvg) Co. Ltd. and Others, is concerned, no doubt it was held by a Bench that in view of the provision of the Pollution Acts the prosecution for such violation is maintainable only after obtaining sanction from the Board concerned and in view of the commencement of the Pollution Acts, which prescribe penal provision, and also for the reason that these Pollution Acts are special Acts, initiation of proceeding u/s 133, Cr.P.C. will have no application because impliedly it will be deemed that this has no application in view of the provision of the Special Acts.

10. On the other hand in Lakshmi Cement Vs. State and Another, it was held that the provision of Section 133, Cr. P.C. do not stand automatically or implied repealed after commencement of the Pollution Acts and provision of Section 133, Cr. P.C. is preventive in nature relating to maintenance of public order and tranquility and in such a situation a conditional order may be passed which may be made absolute after the enquiry as contemplated under the Cr. P.C.

11. In S. Azad Ahmad Rizvi 1989 BLJR 32 Pat 47(2)) (supra) decided by a Bench of this Court, it was held that proceeding u/s 133, Cr. P.C. may be initiated as against a factory for public nuisance causing injury to the health and comfort of the citizen.

12. After careful consideration of the entire provision of Section 133, Cr. P.C. and that of both the Pollution Acts and Sections 52 and 60 of Air Pollution Act and Water Pollution Act which prescribe overriding effect of the Special Acts, clearly gives an impression that by virtue of promulgation of Pollution Acts, the provisions of other Acts will not be affected explicitly or impliedly and only those

portions will not be applicable which are inconsistent with the provision of the Pollution Acts. In that view of the matter, it can be said that Section 133, Cr. P.C. is not inconsistent with the provision of these pollution Acts; rather this provision is an emergency provision to remove public nuisance caused by the effluents of the discharge and air discharge causing hardship to the general public.

13. In that view of the matter and in view of the Authority of our own High Court and that of the "Rajasthan High Court, it can be said that such proceeding u/s 133, Cr. P.C. can be initiated inspite of Pollution laws on this point.

14. Moreover, the entire situation in all the cases indicate that consent order for discharge of effluent granted by the Board subject to some conditions had expired and uptill now the Board has not granted consent order or renewed the previous consent order and the matter is still pending. An opportunity was given to all the petitioners to approach the Pollution Board for a local enquiry for giving a certificate if the discharge of air and water are within the prescribed limit and not injurious to the health or not polluting the atmosphere but the petitioner failed to produce the certificate in question. This much can be observed that if at all the Pollution Board had initiated any proceeding and instituted criminal case then in that situation initiation of proceeding u/s 133, Cr. P.C. will certainly be a misuse of the process of the Court, but in all these cases certainly the consent order of the Board has expired and the Board has not initiated any proceeding under those Pollution Acts.

15. In that view of the matter, for avoiding immediate danger and removal of public nuisance, initiation of Section 133, Cr. P.C. proceeding is pot apparently bad in law; rather justified in the given situation and circumstance. Moreover, the application for quashing of those proceedings appear to be premature in nature because only a show cause notice was issued and proceedings were initiated and in such a situation, the petitioners can file show cause before the appropriate forum and after that an enquiry will be held and then the conditional order will be made absolute. In such a situation, the petitioners can very well raise their grievances that their industries are not polluting water or air or there is non-existence of any public nuisance hazardous to the health of the general public, and the Court below is certainly competent to examine all these facts. Furthermore, if during enquiry the petitioners will be able to get the matter duly examined by the Pollution Board and if they get the consent certificate, then certainly they can take this defence at the appropriate stage before the S.D.M. concerned.

16. So considering the entire facts and circumstances of the case, I am of the opinion that no case is made out for quashing all these proceedings initiated u/s 133, Cr. P.C. as against the petitioners by the opposite party No. 2. Accordingly, all these Criminal Miscellaneous Nos. 3536, 3627 3668, 3555, 3621 of 1996 (R) are dismissed.