

(2008) 06 KAR CK 0073

In the Karnataka High Court

Case No : Criminal Revision Petition No. 264 of 2005

Gemini Distilleries Ltd.

APPELLANT

Vs

Karnataka State Pollution Control Board

RESPONDENT

Date of Decision : 25-06-2008

Acts Referred:

Water (Prevention and Control of Pollution) Act, 1974 — Section 24, 25, 26

Citation : (2009) CriLJ 211 : (2009) 2 KarLJ 311

Hon'ble Judges : R.B. Naik, J

Bench : Single Bench

Advocate : C.V. Nagesh and K.R. Lankesh, for the Appellant; D. Nagaraj, for the Respondent

Judgement

R.B. Naik, J.—The accused-petitioners herein are convicted for the offences punishable Under Sections 25 & 26 of the Water Act 1974 ("Act" for short). Accused Nos. 2 to 4 being the Board of Directors/Executives of the 1st petitioner company have been sentenced to undergo simple imprisonment for a period of two years and to pay fine of Rs. 5,000/- each, in default of payment of fine, to undergo S.I., for a further period of one month for the aforesaid offences, by the Judgment dated 24.06.2003 passed by the Principal Civil Judge (Junior Division) and Additional JMFC., Nanjangud in C.C. No. 1303/1999 (old No. 783/1989). On appeal, the Presiding Officer, Fast Track Court-II, Mysore, by the Judgment dated 27.12.2004 passed in Cri.A. No. 92/2003, set aside the Judgment of conviction passed by the trial Court and remanded the matter back to the trial Court with a direction to frame fresh charge against the accused-petitioners herein for an offence u/s 24 of the "Act" which is punishable u/s 43 of the Water (Prevention and Control of Pollution) Act 1974 and to permit the parties to lead fresh evidence if any, if they so choose and dispose of the matter. Challenging the said Judgment passed by the first Appellate Court, the present revision petition is filed.

2. The brief facts of the case are that on 12.12.1989, the respondent-Pollution

Control Board ("Board" for short), through its authorised officer filed complaint u/s 200 Cr.P.C., alleging that petitioners herein are liable to be punished u/s 44 of the Act, as they had contravened the provisions of Sections 25 & 26 of the "Act". As the complaint is filed by a public servant, no sworn statement of the complainant was recorded by the trial Court and after taking cognizance for the offences alleged in the complaint, the trial Court directed to issue of process against the accused-petitioners.

It is alleged in the complaint that in the month of August 1988, one Vasanth kumari had complained to the "Board" alleging that the water in the well belonging to her situated near the petitioner company is polluted due to discharge of untreated effluents by the accused-company and it had become unfit for human use and consumption; that petitioners-2 to 4 herein being the Board of Directors of the 1st accused company, are in-charge of the day to day affairs and business of the company which was engaged in manufacturing of alcohol; that the petitioners, without complying with the conditions of the consent order and without getting the consent order renewed from the "Board", continued to discharge the trade effluents. As such the "Board" was compelled to instruct its officer to collect the samples in the presence of petitioner No. 3, after drawing a mahazar, sample water of the wells and borewells situated nearby the petitioner company was collected and the same was sent to the Government analysis center; the report submitted to the Analysis Center disclosed that the trade effluent discharged by the 1st petitioner company is not in conformity with the standards prescribed by the "Board" and the standards prescribed while giving consent order and therefore, the "Board", in its meeting held on 29.03.1989 resolved to initiate legal action against petitioner-company; that on perusing the reports of the Board Analyst and the report regarding the water in the wells surrounding the company there was effluent discharged by the accused-company and in spite of communication of the said report, the accused-company has not taken any steps to correct themselves or to stop the discharge of trade effluents, instead, it is discharging the trade effluents which is not in conformity with the standards specified by the "Board", and thereby, the petitioners have violated Sections 25 & 26 of the "Act" and therefore, they are liable to be punished u/s 44 of the "Act". As such, consequent upon the complaint filed by the Regional Officer of the complainant-Board, case against petitioner is registered. Though the case is a warrant case, the trial Court without recording the evidence before charge passed an order holding that there was sufficient material to frame the charges and accordingly, charge was framed against the accused-petitioners on 05.03.2002 for the offences punishable Under Sections 25 and 26 of the Water Pollution Act.

3. To establish its case, the "Board", apart from examining its Regional Officer who presented the complaint as PW.1 examined two other witnesses as PWs. 2 & 3, got marked Ex.P.1 to P.18. The evidence was let on behalf of the accused-petitioners. The statement of accused Petitioners 2 to 4 u/s 313 Cr.P.C., has been recorded and after appreciating the oral and documentary evidence, the trial

Court held that the accused-petitioners have contravened Sections 25 & 26 of the "Act" and therefore, they are liable to be punished u/s 44 of the "Act" and sentenced them as stated herein before. As stated supra, the first appellate court found that there is contravention of Section 24 and not Sections 25 & 26 therefore, they are liable to be punished u/s 43 of the Water (Prevention and Control of Pollution) Act 1974 and accordingly, set aside the order of conviction passed by the trial Court and remanded the matter back to the trial Court.

4. Learned Counsel for the petitioners submitted that after issuance of process and after accused-petitioners put in their appearance in the case and as the case was one triable as warrant case as provided under Chapter-XIX of the Code of Criminal Procedure, the trial Court ought to have adopted the procedure for trial of the case instituted otherwise than on police report, as contemplated under Chapter XIX(b) and Section 244 of the Cr.P.C. should have been strictly followed. The trial Court should have heard the prosecution and then should have taken all such evidence as may be produced by the prosecution in support of its case and it should have also issued summons to the witnesses if any sought to be examined on behalf of the prosecution and also should have called upon the witnesses to produce the documents, then thereafter, if the Magistrate found that the material on record even if unrebutted no case against the accused is made out he ought to have discharged the accused or if the material disclosed an offence and if the same would warrant his conviction, the Magistrate should have charged the accused. It is further argued that u/s 245(2) of Cr.P.C., the Magistrate should have discharged the accused person for the reasons to be recorded if he considered the charge to be groundless, or if the Magistrate found that there were grounds for presuming that the accused has committed an offence alleged against them and in his opinion could be adequately punished by him, he could frame the charge in writing by exercise of his power u/s 246 of Cr.P.C.

It is further submitted by the learned Counsel that in the instant case, the learned Magistrate, after recording the sworn statement has issued process. The accused-petitioners put in appearance, the learned Magistrate, without, complying with the provisions as contained in Sections 244, 245 & 246 of Cr.P.C., directly framed charge as against the petitioners for contravention of Section 25 & 26 of the Act, then thereafter, in support of the charge, the prosecution examined the witnesses PWs. 1 to 3 and the accused were held guilty as stated above.

5. It is further submitted that the first appellate Court has erroneously appreciated the material on record, though the learned Magistrate has not recorded any evidence before framing of the charge and as such, the evidence recorded by the learned Magistrate in proof of the charge should not have been taken into account by the 1st appellant court, as there was no evidence at all in the eye of law, since the very framing of the charge being defective, the evidence recorded in support of the charge was also illegal, the first appellate Court,

appreciating the said defective evidence recorded in proof of the charge, has erroneously held that material on record makes out a case as against the petitioners that they have contravened Section 24 of the Act.

6. It is submitted by the learned Counsel for the petitioner-accused that the scope of appeal was very limited and in the appeal filed by the convicted accused-petitioner the respondent-State having not filed any appeal against the conviction and sentence passed by the Trial Court, the first appellate court had to only appreciate as to whether the order of conviction and sentence passed by the trial Court was just and proper, the first appellate court would not have made out a fresh/new case for the prosecution against the petitioners which is not at all the case of the respondent-complainant and when the respondent-complainants themselves have no grievance about the order of conviction and sentence passed by the trial Court, the first appellate court had no jurisdiction to direct the trial Court to frame fresh charge for contravention of Section 24 of the "Act" which is punishable u/s 43 of the Act, therefore, the finding recorded by the first appellate court is erroneous and the same is liable to be set aside. It is further submitted by the learned Counsel for the petitioners that the complaint filed before the trial Court was for contravention of Sections 25 & 26 of the "Act", cognizance was taken in respect of said offences only and as such, the first appellate Court fell in error in directing the trial Court to frame charge for contravention of Section 24 of the Act punishable u/s 43 of the Act for which, no cognizance was taken.

7. Per contra learned Counsel D. Nagaraj appearing for the Respondent Board justified the order passed by the first appellate court in remanding the matter with a direction to frame fresh charge u/s 24 of the said "Act" punishable u/s 43 of the "Act". He further submitted that evidence recorded by the trial court in proof of charge also would form basis for arriving at a conclusion as to the nature of offence committed by the accused-petitioners, though the said evidence is recorded after framing of charges and prayed for dismissal of the revision petition.

8. It is necessary to note that u/s 200 Cr.P.C., a Magistrate taking cognizance of an offence on a private complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses and also by the Magistrate. But however, the proviso is clear the same indicates that when the complaint is made in writing, the Magistrate need not examine the complainant and the witness. Further, under the proviso (a), if public servant acting or purporting to act in the discharge of his official duties or a court has made the complaint, the Magistrate need not examine the complainant and his witness. In the instant case, there is no dispute with regard to a public servant having filed the complaint and also with regard to taking of cognizance and issuance of process.

9. The main grievance of the accused-petitioners is that the Magistrate, on

summoning the accused-petitioner ought to have followed the procedure contemplated u/s 244 Cr.P.C. He ought to have heard the prosecution and ought to have taken note of such evidence as produced in support of the prosecution and thereafter, he should have decided as to whether such material makes out sufficient ground for proceeding against the accused and to frame charge or otherwise, whether the accused is liable to be discharged as provided u/s 245 of the Cr.P.C. A bare reading of Section 245(2) of Cr.P.C., clearly indicates that nothing prevents a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by the Magistrate and if the circumstances indicate the charge to be groundless. Thus, it is contended to reach the stage of framing of charge it was incumbent on the part of the Magistrate in a case initiated/reported otherwise than on a police report to take all such evidence as may be produced in support of the prosecution case and only such evidence which is on record can be taken into account to hold, if such evidence when un-rebutted is as sufficient and makes out a ground to form the basis to frame charge. An such, it is contended that in the instant case the Magistrate, after taking cognizance for the offences alleged had issued process, later, on appearance of the accused without resorting to the provisions as contained in Section 244 to frame charge against the accused-petitioner framed the charge and recorded evidence in proof of the charge, heard the arguments and convicted and sentenced the accused, which order of conviction and sentence was challenged in appeal by the petitioner. In the appeal, the first appellate court, without looking into the fact that though no evidence was recorded by the learned Magistrate before framing of charge, placed reliance on the evidence recorded after framing of charge and in proof of charge and arrived at a conclusion that the prosecution has not made out a case for the offence punishable Under Sections 25 & 26 of the said "Act", but however arrived at a conclusion that the evidence produced in proof of the charges by the prosecution discloses an offence punishable u/s 24 of the "Act" and remanded the matter back to the trial court to frame fresh charge for the said offence.

10. Learned Counsel submits that in fact the evidence recorded after framing of charge and in proof of the charge cannot form evidence as contemplated u/s 244 Cr.P.C. As such, the first appellate court ought to have held that there is no legal evidence on record except the complaint to hold that there are sufficient grounds to frame charge against petitioner-accused and as such, the impugned order passed by the first appellate court is bad in law. It is further submitted that the first appellate court was vested with the jurisdiction only to decide as to whether the trial court was justified or not in convicting and sentencing the accused, the first appellate court should not have made out a new case for the prosecution, more particularly in respect of an offence for which no cognizance was taken.

11. It is just and necessary to note that though an error in framing of charge will not vitiate the proceedings if the charge is indicative of the offence committed by the accused and if the same does not prejudice the case of the accused and alteration of a charge is permissible before the judgment is rendered as provided

u/s 216 of Cr.P.C., the same is permissible in the trial of the case since sufficient safeguards are provided in the said section to ensure the altered charge does not prejudice the case of the accused. The provisions as contained in Section 244 mandates that a Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution. As such, the discretion is vested with the complainant to produce the evidence in support of his case. It cannot be said that even if the averments made in the complaint alone disclose sufficient grounds, to frame charge, the Magistrate is precluded from framing such charge, which the complaint discloses, though the complainant may not produce any other evidence other than the complaint in support of the prosecution case. However, the reading of the order passed by the Appellate Court discloses that the appellate court has taken into account the evidence adduced by the parties after framing of the charge and in proof of the charge, which is apparently erroneous. The evidence brought on record after framing of charge is evidence in proof of charge and is not an evidence for framing of charge and as such, the first appellate court ought to have confined only to the averments made in the complaint and the evidence if any produced by the prosecution to arrive at conclusion if the same makes out sufficient grounds for framing of charges. It is to be noted that the case is pending for almost 19 years. As such, remanding the matter to the first appellate court would serve no purpose, since the first appellate court will have to confine itself to the material produced along with the complaint and decide if there are sufficient grounds to frame charges and then again remand the matter to the trial court for fresh disposal. Instead, I feel that interest of justice would be met if the matter is remanded to the trial court to decide on the complaint and the material produced by the complainant, if the same is sufficient and if there exist grounds for framing of charge as against the accused person and for what offence and then proceed with the case.

12. In view of the above, this court is of the considered view that the order of the first appellate court to the said extent is liable to be set aside. Hence, the following order is passed.

ORDER

The revision petition is allowed in part. The judgment dated 27.12.2004 passed by the Presiding Officer Fast Track Court-II, Mysore in CrI.A. No. 92/2003 is set aside. The matter is remanded back to the trial court. The Magistrate shall proceed further with the case as provided in Chapter-XIX of Cr.P.C. Liberty is also given to the complainant to produce additional evidence if any, in support of his case and after recording such evidence produced by the complainant, the Magistrate shall proceed further with the case as provided in chapter-XIX of Cr.P.C. As the case is of the year 1989 the trial court shall dispose the case as expeditiously as possible within an outer limit of eight months from the date of receipt of this order.