
(2018) 03 MP CK 0085
In the Madhya Pradesh High Court
Case No : MCRC OF 8837 OF 2012

G.P. Kundargi

APPELLANT

Vs

M.P. State Pollution Control Board

RESPONDENT

Date of Decision : 20-03-2018

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 142, 202(1), 482
Environment (Protection) Act, 1986 — Section 15, 19, 21
Water (Prevention & Control of Pollution) Act, 1974 — Section 4
Water Act, 1974 — Section 25, 26
Air Act, 1981 — Section 21
Negotiable Instruments Act, 1881 — Section 138, 141
Prevention of Food Adulteration Act, 1954 — Section 7, 16

Citation : (2018) 03 MP CK 0085

Hon'ble Judges : SUSHIL KUMAR PALO, J

Bench : Single Bench

Advocate : R.N.Singh, Akshay Pawar, Sankalp Kochar, V.S.Shroti, Sourav Soni

Final Decision : Dismissed

Judgement

The petitioners have jointly filed this petition under section 482 of the Code of Criminal Procedure to invoke the inherent jurisdiction of this Court and

to quash the Criminal Case No.339/2010 registered before the Chief Judicial Magistrate, Balaghat.

2.Briefly stated, the facts given rise to filing of this case are that the respondent-Madhya Pradesh Pollution Control Board (hereinafter referred to as

the ""PCB"") filed a criminal complaint case before the Chief Judicial Magistrate, Bhopal against the petitioners vide Annexure-A-3 under sections 15,

19 and 21 of the Environment (Protection) Act, 1986 [for brevity ""1986 Act""] contending that the PCB has been constituted under section 4 of the

Water (Prevention & Control of Pollution) Act, 1974 [for short ""1974 Act""]. The

Environment (Protection) Act, 1986 empowers the Regional Officer of PCB to file complaint under section 19 of the Act of 1986.

3 . It is claimed that on 23.3.2009 the Department of Environment and Forest Ministry, Government of India, New Delhi issued a letter to the PCB

that the Manganese Ore India Limited (for short ""MOIL""), Balaghat while operating the manganese ore quarry and its Beneficiation Plant situated at

villages Bharveli, Hirapur, Manegaon, Manjhara, Ablajiri and Tawejiri, Tahsil, District Balaghat have been operating without obtaining sanction under

the 1986 Act. Hence, the PCB be directed to initiate action under section 19 of the 1986 Act. PCB, therefore, issued a letter dated 13.4.2009 and

07.11.2009 to the Regional Officer, Jabalpur to initiate action against MOIL, Balaghat under section 19 of the 1986 Act. By letter dated 19.5.2009

M/s.MOIL intimated that for the quarry of manganese ore in Balaghat, a Beneficiation Plant has been established and is operational since 07.1.2008.

The production has been shown to be 9376 Metric Ton (MT) in the year 2007-08; 86997 MT in 2008-09 and 7300 MT in April, 2009. It is stated that

before the Beneficiation Plant has been established and became operational, an environmental clearance ought to have been obtained by MOIL, as

per the requirement of notification dated 14.9.2006. But, no such clearance/sanction has been obtained.

4. On 22.3.2009, the Department of Environment and Forest, New Delhi given the clearance/sanction. Therefore, the Beneficiation Plant has been

established and functional from 07.1.2008 till 23.2.2009 is without valid sanction from the Department of Environment and Forest.

5. The petitioner No.1-G.P.Kundargi is the Director of the Process & Planning. The petitioner No.2-V.N.Chandrakar, the then Incharge Agent, under

whose supervision the Beneficiation Plant was constructed. The petitioner No.3-M.P. Patel is the Agent of MOIL, Bharveli Office and is now the

Incharge of Beneficiation Plant. The Petitioner No.4 is P.Karaiya who is the Manager of the Balaghat Manganese Ore quarry and Manganese

Beneficiation Plant. The petitioner No.5 is the M/s.Manganese Ore India Limited through its Manager K.Chandrakar. The petitioners No.1 to 4 are

responsible persons for the operation of the plant and also responsible for day to day business of the Manganese Beneficiation Plant and, therefore,

are liable under section 15 of the 1986 Act.

6. On behalf of the petitioner No.1-G.P.Kundargi, it is claimed that he has been appointed as the Director (Production & Planning) MOIL as per order dated 15.6.2010 issued by the Government of India, Ministry of Steel and subsequent thereto he joined at Headquarter, Nagpur. Hence, he is not at all liable for the operation of the mines of MOIL before 15.6.2010. It is contended that as per the complaint by the PCB offence has been committed from 07.1.2008 to 22.3.2009, therefore, the petitioner No.1 was not the Director of the company and hence, he cannot be held responsible for the acts prior to 15.6.2010. It is further claimed that the production capacity of the plant was 3 lacs Ton Per Annum (TPA) of manganese ore. The production is shown in the plant for the years 2007-09 to be below 3 lacs ton, even after the establishment of Beneficiation Plant. Hence no offence is made out, therefore, the petitioner No.1 is not liable and entitled for the quashment of the Criminal Complaint Case No. 339/2010.

7. It is also contended that the petitioner No.1 was appointed at Nagpur. The incident allegedly took place at Balaghat. The petitioner No.1, though Director of the Company^Â was not the Incharge of the operation of day to day business of MOIL, Balaghat, therefore, the petitioner No.1 cannot be held responsible for the so called offence. In this regard, learned senior counsel has placed reliance on the decision in the cases of Anita Malhotra vs.

Apparel Export Promotion Council and others, (2012) 1 SCC 520.

8. On behalf of the petitioner No.2 to 5 request is made to quash the Criminal Case No.339/2010 registered before the Chief Judicial Magistrate, Balaghat on the ground that the complaint is lodged by the incompetent authority as there is no order authorizing the Regional Officer of the PCB to file the complaint under section 19 of the 1986 Act. The contents of the complaint dehors the request of the Central Government made vide letter dated 23.3.2009 inasmuch as the request made for launching the prosecution for enhancement in production capacity in the Beneficiation Plant without environment clearance of the production of the Beneficiation Plant and not for enhancement of the production capacity. The complaint, therefore, has travelled beyond the mandate of the letter dated 23.3.2009, wherein the Ministry of Environment Protection and Forest had directed the State Government to take action against the defaulting unit. The petitioner No.1 not a party of the defaulting unit. The production capacity for the Balaghat

mines had the environment clearance since 1994. Therefore, the Act of 1986 is culled out. Environmental clearance has been granted to the mines of MOIL at Balaghat and the sanction for enhancement production capacity of 3 MTPA to 5 MTPA has been accorded by the Ministry of Environment and Forest. Therefore, the complaint against the petitioners is high-handedness and cavalier behaviour on the part of the respondents. It is also argued that the notification dated 27.1.1994¹ makes it axiomatic that the environment clearance would be required for expansion or modernization of any activity, if the pollution load exceeds the existing one or new project listed in Schedule-I of the notification. Hence, the environmental clearance would have been required only for expansion or modernization of activity. This is not the case in the instant factual matrix. The MOIL has been carrying out its production with 3 lac MTPA capacity and expansion or modernization has been done with prior environment clearance. Hence, there is no violation of the notification dated 27.1.1994 or circular dated 13.10.2006. In this background the complaint tantamount to abuse of process of law and² deserves to be quashed in limine.

9. During the course of arguments, the petitioners No. 2 to 5 also referred to the summary record of 9th meeting of Experts Appraisal Committee for

Environmental Appraisal of Mining Project constituted under the Environment Impact Assessment (EIA) Notification of 2006. It is stated in paragraph

2.27 with regard to Balaghat Mining Project of MOIL, in which, it has been decided that the said beneficiation plant is reported to be under

construction for which work had started prior to the EIA Notification, 2006 coming into force with all requisite clearance as applicable at the time and

hence the beneficiation plant does not require environmental clearance. It is also argued that in the Summary Record of 23rd meeting of the Expert

Appraisal Committee for Environmental Appraisal of Mining Project constituted under the EIA Notification, 2006 dated 19.1.2009 it has been held that

with regard to MOIL of Balaghat Manganese Ore Project, Bharveli based on the presentation made and discussion held the Committee recommended

the project for environmental clearance both for the manganese mine and beneficiation plant of 0.5 million TPA capacity. It is further argued that the

PCB under the Water Act, 1974 has given the environmental clearance for 3 lac MTPA vide letters dated 24.10.2006 and 18.8.2008. Hence, the total

production including the beneficiation plant has not exceeded the production capacity, therefore, it would not be appropriate to hold that the petitioners have committed any offence.

10. On behalf of the respondent it is contended that the MOIL established anew plant i.e. Beneficiation Plant and commissioned the same without

obtaining the environmental clearance from the Government of India under the Environment Impact Assessment Notification dated 14.09.2006 and

without obtaining the consent of PCB under sections 25 of the Water Act, 1974 and section 21 of the Air Act, 1981. It is also submitted that the

Environment Clearance under the Notification dated 14.9.2006 issued by the Government of India is mandatory, to obtain the consent of PCB. It is

mandatory to follow the conditions imposed therein. The company applied for environmental clearance on 08.12.2006 for enhancement of production

of manganese ore and for setting up of beneficiation plant. The company established its Beneficiation Plant and commissioned the same on 07.1.2008.

On 23.3.2009 the Government of India has granted environment clearance to the company and the Government of India has also informed the State

Government about the illegalities committed by the company and with regard to violation of notification, therefore, directed to initiate action under

section 19 of 1986 Act. On 19.5.2009, the petitioners wrote to the PCB furnishing information on production of minerals from the mines including

production from Beneficiation Plant. The petitioners as officers at the time of offence were incharge and are responsible to the company for conduct

of the business. Hence are liable for the offence committed. The Beneficiation plant was commissioned on 07.1.2008 without obtaining the

environment clearance from the Government of India as required under the EIA Notification dated 14.9.2006. This continued commission of offence

by operation from 07.1.2008 till date 23.3.2009 on which the environmental clearance was granted. The petitioners produced minerals without

obtaining the environmental clearance or consent of the PCB. Hence, are liable for the same. Therefore, prima facie offence is made out against the

petitioners as offered in the complaint.

11. It is further submitted that petitioner No.1-G.P.Kundargi joined the company on 01.6.2008. Vide letter dated 25.5.2008 as General Manager of

MOIL became the Director of the Production & Planning. Subsequently, by order

dated 15.6.2010 he became the Director Production & Planning of

MOIL with effect from 02.6.2008 itself indicates that he joined as Director since 02.6.2008. The alleged offence committed for the period 07.1.2008

till 22.3.2009. Hence, he is liable for the offence. It is also contended that petitioner No.1-G.P.Kundargi is responsible for the company and for its

operation. Even otherwise, it is a matter of evidence. Evidence is yet to be recorded. Therefore, the petitioner No.1-G.P.Kundagi is holding

managerial post and is responsible to observe the directions, rules and regulations made by the Central Government, specified in the notification of

EIA.

12. There are specific allegations made against each of the petitioners. In paragraph 11 of the complaint the question of vicarious liability or the mens

rea need not be considered at this stage, for statutory liability has been fastened under the statute and, therefore, it is a case of strict liability.

13. As regarding incompetence of Regional Officer to file a complaint, learned counsel for the respondent submitted that the Regional Officer has the

competence to file a complaint under section 19 of the 1986 Act, even though the procedural irregularity can be cured at a later stage also. In his

concluding remarks during arguments, learned counsel appearing for the respondent/PCB submitted that the scope of interference under section 482

of the Code of Criminal Procedure is very limited. The Court has to exercise its jurisdiction sparingly and when there is prima facie case against the

petitioners/accused persons, the exercise of power under section 482 Cr.P.C. is not called for.

14. Heard the counsel for the parties. Perused the record.

15. As per the role of the Directors it has been specifically attributed. The responsibility of the Directors in conducting the affairs of the

accused/company has to be clearly spelt out. Bald statement is not sufficient to proceed against the Director. The petitioners role in day to day affairs

of the company has to be brought out. Apart from relying on the citation of Anita Malhotra (supra) the petitioners No.2 to 5 have also placed reliance

on the decision in the case of National Small Industries Corporation Limited vs. Harmeet Singh Paintal and another, (2010) 3 SCC 330 which is a case

under section 138 of the Negotiable Instruments Act, 1881 wherein vicarious liability of the Directors/accused held to be pleaded and proved and not

inferred. The Apex Court has further added that the averments required to be made in the complaint, therefore, to be specifically spelt out how and in what manner the Director who was incharge was responsible to the accused/ company for conducting the business.

16. Learned counsel for the petitioner has also referred to the decision in the case of N.K.Wahi vs. Shekhar Singh and others, (2007) 9 SCC 481

wherein in a case under the provisions of Negotiable Instruments Act the Hon'ble Apex Court has laid down that the constructive liability is of the

Director as postulated under section 141 of the 1881 Act for the conduct or business of the company has to be spelled out. In the absence of the

same, the complaint is not tenable.

17. The petitioner has further placed reliance on the decision in the case of S.M.S.Pharmaceuticals Ltd. vs. Neeta Bhalla and another, (2005) 8 SCC

89 wherein offence under section 138 of the Negotiable Instruments Act the Apex Court has propounded that in case of dishonour of cheque, in

respect of offence by the company the essential averments are to be made in the complaint that at the time when the offence was committed the

person accused was in charge of, and responsible for the conduct of business of the company. Without this averment, the complaint cannot be said to

be satisfied.

18. Learned counsel for the petitioners No.2 to 5 has also referred to the case of Mona Ben Ketanbhai Shah and another vs. State of Gujarat and

others, (2004) 7 SCC 15 wherein in a case of dishonour of cheque the Apex Court has laid down the principle about vicarious liability of the partner

and relevant consideration for quashing the complaint against the accused. The Apex Court held that if the complaint is read as a whole, the factual

foundation of the offence has been laid in the complaint, it should not be quashed. The Court must discharge the accused if taking everything stated in

the complaint as correct and construed the allegations made therein liberally in favour of the complainant, the ingredients of the offence are altogether

lacking.

19. Learned counsel for the respondent on the other hand in advancing the arguments submitted that when the complainant supports the facts on oath

that he has personal knowledge of facts and the criminality of the company, the Director is liable criminally. In this regard reliance has been placed in

the case of K.Sitaram vs. CFL Capital Finance Service Ltd., 2017) 5 SCC 725 wherein it has been held that under Corporate criminal liability relating

to offence by company, the person acting on behalf of the company viz. Director, etc. can be made criminally liable where a statute regime of

vicarious liability covers the situation and where there is no such statutory regime.

20. Learned counsel for the respondent-Pollution Control Board (PCB) has also advanced the arguments that object and purpose is to eliminate the

danger to human life, therefore, placing reliance on the decision in the case of Dineshchandra Jamnadas Gandhi vs. State of Gujarat and another, AIR

1989 SC 1011 it is contended that statute of Food Adulteration is a social defence legislation, therefore, appropriate construction should be made to

suppress the mischief of food adulteration. He further referred to the decision in the case of R.K.Kalyani vs. Janak C. Mehta and others, (2009) 1

SCC 516 wherein the Apex Court has discussed the inherent power of the High Court for quashing the First Information Report under section 482 of

the Code of Criminal Procedure and held that the respondent were sought to be proceeded against on the premises that they were vicariously liable

for affairs of the company, for that the company must be made an accused as legal fiction is raised both against the company as well as the person

responsible for the acts of the company. Besides when the vicarious criminal liability is fastened on a person on the premise that he was charge of the

affairs of the company and responsible to it all the ingredients laid down under the statute must be fulfilled.

21. Reliance has also been placed on the decision in the case of State of Madhya Pradesh vs. Shamsheer Singh and another, AIR 1989 SC 1789

wherein in the case under Essential Commodities Act when the accused export bags without valid permit, the Apex Court held that it was a case of

attempted unlawful export of fertiliser bags and not the case of mere preparation alone. Mens rea is not necessary. The decision of the High Court

was reversed holding that section is comprehensively worded so that it takes within its fold not only contraventions done knowingly or intentionally but

even otherwise i.e. done unintentionally. Therefore, it would be proper to hold that the accused acted bonafide and was not directly responsible for the

conduct. of the conduct and the contract one of the fundamental postulates of a legal order that rules of law enforces objective manner to be ascertain

by the Court and to substitute the opinion of the personal charge with the approach of law for the law itself. The consequence would that whenever

defendant in criminal case sought that law was thus, and so, he is to be treated as though, the law was thus and so, i.e., the law actually is thus and so.

The construction of the language of such a statute should be construed in the manner which would suppress the mischief advance the remedy and

promote its object and prevent the subtle evasion and foil its artful circumvention.

22. Learned counsel for the petitioners No.2 to 5 arguing on the point of cognizance and issuance of summon referred to in the case of Aroon Poorie

vs. Jayakumar Hiremath, (2017) 7 SCC 767 and Mahendra Singh Dhoni vs. Yerraguntla Shyamsundar and another, (2017) 7 SCC 760 and argued that

the summons must be carefully scrutinized and the allegation made in the complaint should meet the basic ingredients of the offence and the concept

of territorial jurisdiction is satisfied, are to be considered and whether the accused needs to be summoned or not. In this regard Magistrate may hold

an enquiry either by himself or direct investigation by the police, prior to issuance of the process under section 202 (1) of the Code of Criminal

Procedure. In the absence of such course being adopted by the Magistrate, he has no jurisdiction to issue summons. The present case is completely on

a different footing.

23. The High Court is not the Court of appeal and it is to be considered whether the Court should exercise the jurisdiction under section 482 of the

Code of Criminal Procedure. In the case of Monica Kumar (Dr.) and another vs. State of Uttar Pradesh and others, (2008) 8 SCC 781 the Apex

Court held that while exercising the jurisdiction under section 142 of the Code of Criminal Procedure for quashing the criminal proceeding the

Supreme Court does not function as a court of appeal or revision. When the allegations are assumed to be true the High Court has to assess the

nature of allegations and the prosecution case. Though there is no hard and fast rule laid down in this regard, the facts are hazy and evidence has not

been collected, it has been held that High Court under section 482 Cr.P.C. should normally refrain from giving prima facie decision.

24. In the case of Radhey Shyam Khemka and another vs. State of Bihar, (1993) 3 SCC 54 the Apex Court has opined that while exercising the

powers under section 482 of the Code of Criminal Procedure for quashing the

prosecution, the High Court cannot hold a parallel trial. If offence prima facie falls under the Penal Code, launching of prosecution cannot be thwarted by High Court under section 482 of the Code of Criminal Procedure merely because penal action open under another statute. Mens rea is essential for offence under the Penal Code but to constitute offence under any social welfare legislation, mere breach or contravention of its provision is sufficient. In the circumstances prevailed it would be appropriate not to interference at this stage in the impugned order.

25. As regarding material to proceed against, the petitioners No.2 to 5 further placed reliance on the decision in the case of Pepsi Foods Ltd. and

another vs. Special Judicial Magistrate and others, (1998) 5 SCC 749 wherein it has been held that under section 482 of the Code of Criminal

Procedure the High Court's power to quash the proceeding can be exercised to discharge the accused at the stage of framing of charge or existence

of remedy of an appeal and revision not a bar to invoke the jurisdiction of the High Court under Article 227 of the Constitution or under section 482 of

Cr.P.C. It has been held by the Apex Court that absence of material on record to show that the appellants held licence under Fruit Products Order for

the manufacture of the offending beverage, the continuance of proceeding against the appellants therein would be abuse of process of law. In this

case, the prosecution of the company and its Managing Director under sections 7/16 of the PFA Act, 1954 for the manufacturing of adulterated

product was held that preliminary evidence does not disclose as to the appellants were manufacturer of either bottle or the beverage or both. Before

issuing notice the Magistrate should have carefully scrutinized the evidence brought on record.

26. Placing reliance on the case of State of Haryana vs. Bhajan Lal, 1992 Supp. (1) SCC 335 wherein the guideline has been provided by the Apex

Court for quashing of the proceeding under section 482 of the Code of Criminal Procedure, learned counsel for the petitioners No.2 to 5 has further

claimed that proceeding has been initiated mala fide against the petitioners holding high office with a view to wreck vengeance and spite them due to

private and personal grudge, therefore, complaint has been lodged dishonestly making allegations and hence, the same are liable to be quashed. But,

the Apex Court in the same case has held that if the purpose of registration of a

case and intended investigation is not tainted with malafide, the proceeding is not entitled to be quashed.

27. In this regard, learned counsel for the petitioner replying to the arguments advanced has submitted that at the time of taking cognizance the

Magistrate is not required to record reasons at the time of issuing process. It is also contended that the complainant is a public servant who had filed

complaint in the discharge of his official duty and, therefore, in view of section 200 provision (a) held that the Magistrate was fully justified in taking

cognizance of the offence without recording statement of the complaint. He further placed reliance on the case of *Dy. Chief Controller of Imports and*

Exports v. Roshanlal Agarwal and others, (2003) 4 SCC 139 wherein it has been held that High Court erred in holding that the Magistrate did not

apply its judicial mind before taking cognizance of the offence in question. In determining the question whether any process is to be issued or not, what

the Magistrate has to be satisfied is whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction

can be determined only at the trial and not at the stage of inquiry.

28. As regarding the objection raised by the petitioners that complaint has been filed by the person not authorized by the respondent-PCB, the

respondent has claimed that the Regional Officer is competent to file the complaint. It is also claimed that authorisation to file complaint, if not

produced, is not sufficient to dismiss the complaint. In this regard, reliance has been placed on the decision in the case of *Haryana State Cooperative*

Supply and Marketing Federation Limited vs. Jayam Textiles and another, (2014) 4 SCC 704 wherein the Full Bench of the Apex Court while dealing

with aspect that complaint by the company, the authorisation to file complaint was not produced, held that defect is of procedural defects and

irregularities which are curable and should not be allowed to defeat the substantive rights or to cause injustice. Procedure, a handmaiden to justice,

should never be made a tool to deny justice or perpetuate injustice by any oppressive or punitive use.

29. It would be profitable to refer to the case of *Common Cause vs. Union of India and others*, (2017) 9 SCC 499 wherein the Apex Court has

opined under the Mines & Minerals Act that illegal mining does not only mean mining outside lease area. But, illegality can take place even inside the

lease area. Non adherence of the scientific mining, balanced utilisation of natural resources and protection and preservation of environment by

adhering to statutory provisions, would attract penalty and termination of lease.

30. It would be appropriate to quote the case of Gunmala Sales Pvt. Ltd. vs. Anu Mehta and others, reported as (2015) 1 SCC 10 wherein the

Hon'ble Apex Court under the Negotiable Instruments Act has held that a roving inquiry is not contemplated under section 482 Cr.P.C. for

quashing of the complaint. When the basis averment is present in the complaint that accused/Director was in charge of and responsible to company

for conduct of its business, the Magistrate can issue process against the accused/Director.

31. The Hon'ble Apex Court in the case of U.P. Pollution Control Board vs. Dr. Bhupendra Kumar Modi and another, reported as (2009) 2 SCC 147

has observed that the High Court quashing the complaint on the ground of inadequacy of materials on record, though specific and detailed averments

regarding commission of offence for violation of sections 25 & 26 of the Water (Prevention & Control of Pollution) Act, 1974 made in the complaint

filed by the PCB under section 44 against the respondent and other accused persons, for continuous commission of offence showing specific role of

each accused in the day to day affairs of the decision making process, the Magistrate is only to be prima facie satisfied whether there are sufficient

ground for proceeding against the accused. Quashing of the complaint by the High Court was satisfied.

32. It would be in exaggeration to state that strict approach prescribed for offenders causing air and water pollution should be made. Those who

discharge noxious polluting effluents into streams, rivers or any other water bodies which detrimentally affects public health at large should be dealt

with strictly de hors technical objections, as has been held in the case of U.P. Pollution Control Board (supra).

33. Therefore, quashing the complaint in routine manner would not justify in terms of strict standards prescribed in the Environment Protection and

Pollution Control Act.

34. Thus, this Court is of the opinion that it would not be a case, in which, powers under section 482 of Cr.P.C. be exercised. Accordingly, this petition

is dismissed.