
(1995) 05 GUJ CK 0005
In the Gujarat High Court

Gujarat Pollution Control Board

APPELLANT

Vs

Aegies Chemicals and Others

RESPONDENT

Date of Decision : 05-05-1995

Acts Referred:

Water (Prevention and Control of Pollution) Act, 1974 — Section 43, 44, 47, 47

Citation : (1995) 2 GLR 1691

Hon'ble Judges : K.J. Vaidya, J

Bench : Single Bench

Judgement

K.J. Vaidya, J.—This Criminal Revision Application at the instance of Mr. D.K. Solanki, Assistant Law Officer, "Gujarat Pollution Control Board, Gandhinagar" is directed against the impugned judgment and order dated 30-8-1993, rendered in Criminal Case No. 1362 of 1990 by the learned Chief Metropolitan Magistrate, Ahmedabad, whereby Messrs. Aegies Chemicals, a Partnership firm, having its factory situated at G1DC, Vatva, Ahmedabad and two of its partners, who came to be prosecuted for the alleged offences punishable under Sections 43 and 44 read with Section 47 of the Water (Prevention and Control of Pollution) Act, 1974 were ordered to be "discharged" on the alleged ground that prima facie case was not made out.

2. Messrs. B.R. Gupta, the learned Advocate appearing for the Petitioner-Board and Mr. J.A. Shelat, the learned A.P.P. while challenging the impugned order, submitted that the same being ex-facie illegal and perverse, the same deserves to be quashed and set aside.

3. On going through the impugned judgment, it appears that the learned Magistrate has ordered discharge of the respondents on two grounds, viz., (i) that the report of the Board Analyst in respect of the trade effluent taken by the Board Officer is inadmissible in evidence in view of the alleged breach of the provisions of Section 21(3) and (5) of the Act. According to the learned Magistrate, the prosecution witness Mr. M.M. Raol, who collected the said sample of the trade effluent, has admitted in his cross-examination that he had orally

asked Mr. P.M. Choksi, respondent No. 3 herein whether he wanted to divide sample of the trade effluent in question into two parts to which he had said no but regarding this denial, no note has been made in the inspection report. According to the learned Magistrate, Mr. M.M. Raol was expected to make such a note in the inspection report itself but since he has admittedly failed to do so, his oral version before the Court cannot be believed!! (ii) That Mr. Raol while giving evidence before the Court has not stated a word about the seal applied to Kerba in his inspection report. This also according to the learned Magistrate was fatal to the prosecution as bare words of Mr. Raol in absence of the contemporaneous record cannot be relied upon !!

4. Now, on carefully examining the aforesaid two grounds of discharge given by the learned Magistrate, at the very outset, it may be stated that the same are as indiscreet, arbitrary, frivolous, fallacious and fanciful as it could be!!

4.1 Accordingly, turning to the first ground of discharge regarding the non-compliance of Sub-sections (2), (3) & (5) of the Water Pollution Act, when Mr. Raol while giving the evidence before the Court staled on oath that before taking the sample, he did inquire from the respondent No. 3 whether he wanted to divide sample of trade effluent in question into two, and when he in turn simply said no to it there was indeed no reason for the learned Magistrate to doubt his bona fides, more particularly when writing in the said regard duly signed by the respondent No. 3 himself came to be executed and exhibited vide Exh. 16 on the record!! In this view of the matter, to disregard the evidence of Mr. Raol more particularly in view of the writing executed by the respondent No. 3 is to say the least is apparently nothing else but to misread the evidence to excuse out discharged! As a matter of fact, on the one hand to misread the evidence and thereafter making the same an anvil to hammer out, out of the consideration the evidence of Mr. Raol and that too at the stage of framing of the charge is simply unwarranted and shocking!! In this view of the matter, the learned Magistrate was down-right wrong in holding that the report of the public analyst was inadmissible making it a ground that no prima facie case was made out by the prosecution.

5. Similarly, turning to the second ground of discharge, viz., Mr. Raol has not made any reference regarding affixing of seal to Kerba in the inspection report, it may be stated that the same is also equally unacceptable being patently perverse. The reason is if we peruse the evidence of Mr. Raol, he in an unmistakable terms has deposed before the Court that he had applied seal on the top of the Kerba wherein the sample of the trade effluent in question was taken. Not only that but on the said Kerba, a slip was tagged, wherein the name and address of the factory, the time and date of taking sample, etc., etc. which contained his (Mr. Raol's) as well as signatures of the respondent No. 3. The same is produced at Exh. 17. Not only that, but the place where the sample was taken, regarding which a map was also prepared, which is produced at Exh. 18. In this view of the matter, the second ground of discharge also being ex-facie

perverse fails. It is indeed unfortunate that in such a serious case of water pollution, despite there being specific evidence on the record, making out the prima facie case against the accused, the learned Magistrate quite shockingly misreading the same on fanciful ground has discharged the accused. This is indeed too much!! Prima facie, such an error cannot be said to be mere judicial error, and accordingly, it is indeed extremely serious and too shocking to be countenanced lightly. Such orders discharging the accused unnecessarily fails the law and bring into disrepute the image of the "Administration of Justice" where at times we have the misfortune of over-hearing some sarcastical observations that the strength of law is that of the cob-web only which at the most can catch hold of some flies or mosquitoes and that, it is, weak enough to hold up even a small thing like lizzard and cockroach or like a net where small fishes only can be caught!!

6. Mr. Akshay Mehta, the learned Advocate appearing for the respondent-accused has strenuously urged before this Court that the learned Magistrate cannot be said to have committed any error when he on the basis of his reasoning ultimately reached to the conclusion that no prima facie case was made out and in this view of the matter, the impugned order of discharge deserves to be confirmed.

6.1 Now for the reasons already discussed above, it is indeed not possible for this Court to accept the submission made by Mr. Mehta. At this stage, Mr. Mehta in the alternative requested this Court not to give exhaustive reasons while allowing this Criminal Revision Application and quashing and setting aside the impugned order of discharge. Here also, it is indeed difficult to accept the submission of Mr. Mehta for the simple reason that this is not the first case which suffers from totally misconceived and perverse approach but in series of other matters under the Pollution Act which have been heard and decided by this Court, the learned Magistrate in utterly unconcerned manner has just done the same thing, throwing to the winds the urgent and emergent cause of the public justice ignoring altogether the principles of victimology where he should not have been oblivious to the deteriorating living conditions of the victims, viz., people, animals, crop of the area of the pollution!!

7. In view of the aforesaid discussion, taking into consideration the evidence brought on the record, there being prima facie evidence, the impugned order of discharge being ex-facie perverse and illegal, the same deserves to be quashed and set aside.

8. In the result, this Criminal Revision Application is allowed. The impugned (order of discharge is quashed and set aside. The matter is remanded to the trial Court to be disposed of on merits according to law and that the same shall be heard by the learned Magistrate other than the one who has passed the impugned order of discharge. Since the alleged offence is of the year 1989, the learned Magistrate is directed to give Top Most Priority and decide the same preferably on or before 30th November, 1995 and for this purpose within a week

of receipt of this judgment, the learned Magistrate shall issue the process to the respondents giving it a direct service to the complainant or his successor in the office, to be served. In the event of any difficulty for the complainant, the Police Officer of the concerned area be directed to give assistance which shall be immediately given.