
(1996) 01 P&H CK 0005

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 12356-M of 1995

Gurdev Ice Factory

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 15-01-1996

Acts Referred:

Air (Prevention and Control of Pollution) Act, 1981 — Section 21, 22A, 33, 37

Constitution of India, 1950 — Article 227

Criminal Procedure Code, 1973 (CrPC) — Section 133, 432

Citation : (1996) CriLJ 2833

Hon'ble Judges : V.K. Jhanji, J

Bench : Single Bench

Advocate : G.S. Bal, for the Appellant; T.P.S. Tung, for the Respondent

Judgement

V.K. Jhanji, J.—In this petition u/s 432, Cr. P.C. read with Article 227 of the Constitution, prayer made is for quashing of complaint dated 9-2-1995 whereby residents of MohallaChander Nagar Batala, made a complaint to the S. D. M. Batala u/s 133, Cr. P. C. bringing it to his notice that ammonia gas is leaking from M/s. Gurdev Ice Factory and is injurious to their health and eatables. They had also stated in the complaint that the residents had to run away from their houses to save their lives. They requested that immediate preventive measures be taken to stop leakage of ammonia gas from the factory. Prayer made in this petition is also to quash order dated 14-7-1995 passed by the S. D. M. whereby the petitioner-firm has been directed to stop the functioning of the factory within 7 days from the date of passing of the order and show cause and lead evidence, if any, the order be not made absolute.

2. The learned counsel for the petitioner has submitted that the complaint u/s 133 Cr. P. C. ought not have been entertained by the S. D. M. as no case has been registered under Air (Prevention and Control of Pollution) Act, 1981. Reference was made to the case of Abdul Hamid Vs. The Gwalior Rayon Silk Mfg. (Wvg) Co. Ltd. and Others, He further contended that the alleged nuisance is

continuing for a long period and, therefore, initiation of proceedings is improper. For this, reference has been made to the case of Atma Singh v. State of Punjab (1973) CLR 214, Finally, he contended that the S. D. M. was biased against the petitioner.

3. Two sets of written statements have been filed on behalf of Respondent No. 2, namely, Gurmel Singh, S. D. M., Batala and the residents of the locality i. e. Respondent Nos. 3 to 7.

4. S. D. M. in his written statement has stated that the proceedings u/s 133 Cr. P. C. have been initiated as a preventive measure in emergency because of leakage of ammonia gas from the premises of the factory. He also submitted that the matter was brought to his notice and Tehsildar was deputed to make on the spot inspection, who on visiting the site, reported that ammonia gas was leaking from the factory of the petitioner. The private respondents stated that earlier too the petitioner had filed similar petition in this Court and this Court, vide order dated 5-7-1995 passed in Criminal Misc. No. 7886-M of 1995 had directed the S. D. M. to pass fresh order after hearing the petitioner. The order impugned in this case was passed after hearing the parties and, therefore, the present petition is not maintainable. They have also stated that it is not for the first time that ammonia gas has leaked from the factory but in the past too the gas leaked a number of times and the matter was brought to the notice of the S. D. M. in the year 1992 when he issued process u/s 133, Cr. P. C. but later the petitioner entered into a compromise with the residents of the locality and the petitioner had undertaken to take effective steps by 30-6-1992 onwards to avoid leakage of ammonia gas from the factory. In the compromise, it had also been recorded that in case of violation of any of the conditions mentioned in the compromise, the petitioner would pay Rs. 50,000/-

5. I have heard the learned counsel for the parties at some length and I am of the view that there is no merit in this petition. Proceedings u/s 133 Cr. P. C. are summary and are intended to enable the Magistrate to summarily deal with cases of urgency or of imminent danger to public interest. They are not intended to enable a complainant to obtain by this process, any civil relief. The idea behind this provision is that the danger should be such that if the Magistrate does not take action under this section and directs the public to have recourse to the ordinary Courts of law, irreparable damage would be done. It has been held by the Madhya Pradesh High Court in Orient Paper Mills v. State of M. P. (1989) (1) FAC 322, that this Section applies where nuisance is actually in existence whereas Section 33 of the Water (Prevention and Control of Pollution) Act, 1974 deals with the different situations. The two provisions do not overlap each other. They deal with two different situations. Similarly, u/s 22-A of Air (Prevention & Control of Pollution) Act, 1981 Board is empowered to make application to Court where it is apprehended by the Board that air pollution, in excess of the standards laid down by the State Board is likely to occur by reason of any person operating an industrial plant or otherwise in any air pollution control area, for

restraining persons from causing air pollution. It is only u/s 21 of the Act that restrictions are placed on use of certain industrial plots without the consent of the State Board in an air pollution control area or a direction can be given u/s 22 of the Act to a person carrying on an industry not to allow emission of air pollutants in excess of the standards laid down by the State Board and if the person fails to comply with such directions, only then proceedings as provided u/s 37 of the Act to prosecute a person can be initiated against such a person. The Act does not provide for cases which are of emergent nature. The leakage of ammonia gas in residential locality is undoubtedly injurious to health as well as physical comforts of the community and hence conditional order of the Sub Divisional Magistrate directing the petitioner to stop the functioning of the factory, could not be said to be invalid. The judgment of Madhya Pradesh High Court in Orient Paper Mills's case, 1989 (1) FAC 322, (supra) has no application to the facts of the present case and is clearly distinguishable. There is also no merit in the second submission of learned counsel for the petitioner that nuisance is existing for a long period and, therefore, proceedings initiated by the S. D. M. are Improper. Earlier too, when the gas leaked, the petitioner, in order to run factory in the residential locality, gave in writing to the residents that the petitioner would take immediate measures to prevent further leakage in future but when the petitioner failed to take action in this regard and the leakage of gas occurred again, the S.D.M. had no option but to take immediate preventive measure to prevent the leakage of ammonia gas by directing the petitioner to stop the functioning of the factory. The petitioner by this order has been called upon to lead evidence as to why the order be not made absolute. It shall remain open to the petitioner to satisfy the S. D. M. that leakage of gas has stopped and the petitioner has taken effective steps to avoid leakage of gas in future.

6. For the reasons recorded above, this petition shall stand dismissed.