

**(1992) 04 P&H CK 0033**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : Criminal Appeal No. 585 of 1987**

Haryana State Board for the Prevention and Control of Water Pollution APPELLANT

Vs

Bharat Carpets Ltd. and Others RESPONDENT

**Date of Decision :** 08-04-1992

**Acts Referred:**

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

**Citation :** (1995) 84 CompCas 681 : (1993) CriLJ 283 : (1993) 2 ILR (P&H) 31 : (1995) 1 RCR(Criminal) 87

**Hon'ble Judges :** J.S. Sekhon, J; Amarjeet Chaudhary, J

**Bench :** Division Bench

**Advocate :** R.K. Chhibbar and Anand Chhibbar, for the Appellant; M.M. Chaudhary, for the Respondent

**Final Decision :** Dismissed

## Judgement

Amarjeet Chaudhary, J.—The Haryana State Board for the Prevention and Control of Water Pollution, Chandigarh (hereinafter referred to as "the Board"), has challenged the order of the Judicial Magistrate First Class, Faridabad, dated August 3, 1987, vide which the complaint filed by the Board under Sections 43 and 44 of the Water (Prevention and Control of Pollution) Act, 1974, against respondents Nos. 2 and 5 was dismissed in default.

2. The facts which led to the filing of the appeal are that Shri Ajit Kumar, Assistant Environmental Engineer of the complainant-Board, visited the premises of Bharat Carpets Limited, Gurukul Industrial Area, Faridabad (hereinafter referred to as "the company"), on March 5, 1981, with R.P. Misra, the then Environmental Engineer. A sample from the outlet was collected by R.P. Misra. The said sample was alleged to have been taken in the presence of D.P. Gupta, the accused, and was got signed from R. P. Misra. The sample was sent for analysis, The report of the analyst was received according to which it was clear that the effluent which the accused were discharging in the land was not within

the prescribed ISI standard. All the parameters were in excess and in violation of the standards prescribed by the Board, i.e., the ISI standards. The Board filed the complaint on October 31, 1981, under Sections 43 and 44 of the Water (Prevention and Control of Pollution) Act, 1974 (for short "the Act"), in the court of Judicial Magistrate, First Class, Faridabad. The complaint was filed against the following persons :

1. Bharat Carpets Limited, Gurukul Industrial Area, Faridabad.
2. Mr. S.N.C. Bakhshi, C/o. Bharat Carpets Ltd., Gurukul Industrial Area, Faridabad.
3. Mr. B.N. Gupta, managing director, Bharat Carpets Ltd., Gurukul Industrial Area, Faridabad.
4. Mr. M.L. Khaitan, chairman, Bharat Carpets Ltd., Gurukul Industrial Area, Faridabad.
5. Mr. D.P. Gupta, production officer, Bharat Carpets Ltd., Gurukul Industrial Area, Faridabad (Haryana).

3. The accused were summoned by the court.

4. The Board examined Jasbir Singh, clerk of the complainant-Board, PW-1, Ajit Kumar, PW-2, and R.P. Misra, Assistant Environmental Engineer, PW-3, in support of its case.

5. In defence, Jagdish Lal Nanda, DW-1, and Ram Gopal Sharma, DW-2, were examined. Statements of the accused, D.P. Gupta and S.N.C. Bakhshi, were also recorded. On August 3, 1987, the learned Judicial Magistrate, First Class dismissed the complaint as nobody on behalf of the complainant had appeared. As a result, accused Nos. 2 and 5 were acquitted. Aggrieved against the acquittal of the accused, the Board has filed the present appeal.

6. Counsel for the appellant contended that once the charge had been framed against the accused, the complaint could not be dismissed in default.

7. It was brought to the notice of the court that during the pendency of the criminal appeal respondent No. 3, B.N. Gupta, the managing director and respondent No. 4, M.L. Khaitan, the chairman of the company, have since expired. Shri R.K. Chhibber, senior advocate, contended that the appeal qua them abates. Mr. Chhibber further contends that S.N.C. Bakhshi, respondent No. 2, and D.P. Gupta, respondent No. 5, were the small functionaries of the company and they were not involved in the day to day business of the company and as such, the appeal qua them also deserves to be dismissed.

8. Faced with this situation, Mr. Rameshwar Malik, counsel for the appellant-Board, contended that as per the provisions of Section 47 of the Act, where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to the

company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

9. We have considered the submissions of learned counsel for the parties and have gone through the paper-book.

10. We find force in the submissions of learned counsel for the appellant, but the arguments advanced by counsel for the respondents also require consideration. Section 249 of the Code of Criminal Procedure clearly envisages that when proceedings have been instituted upon a complaint and on the day fixed for the hearing of the case the complainant is absent, the Magistrate may, at any time before the charge has been framed, discharge the accused. The emphasis is on the words "before charge has been framed". In the instant case, the charge had already been framed and as such the complaint could not be dismissed in the absence of the complainant.

11. It has come in the statement of S.N.C. Bakhshi, respondent No. 2, recorded u/s 313 of the Criminal Procedure Code, 1973, that he was the chief security officer of the company at the relevant time and it was incorrect that he had any control over or connection with the day to day business of the company. According to Ram Gopal Sharma, DW-2, S.N.C. Bakhshi was an administrative and security officer in the company. In cross-examination, he stated that it was incorrect to suggest that D.P. Gupta was not a finishing and packing in-charge in the factory. D.P. Gupta, in his statement u/s 315 of the Criminal Procedure Code, also stated that at the time of the inspection of the company by Ajit Kumar and R.P. Misra on March 5, 1981, he was simply asked by them to sign papers and he had told them that he was not the manager of the company but he was assured that only a sample was being collected as a routine and was not being taken for any other purpose.

12. Before arriving at a particular conclusion, it will be worthwhile to go through the provisions of Section 47 of the Act and the proviso thereunder which reads as :

"Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of, the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly :

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence."

13. Thus, the evidence on record and the proviso to Section 47 of the Act leave no manner of doubt that none of the respondents, i.e., S.N.C. Bakhshi and D.P.

Gupta, can be said to have committed any offence as they were not responsible for the conduct of the day to day business of the company and as such cannot be proceeded against.

14. Section 47 of the Act is in pari materia to Section 23C of the Foreign Exchange Regulation Act, 1947, and Section 34 of the Drugs and Cosmetics Act, 1940. In *State of Karnataka Vs. Pratap Chand and Others*, , it was held that a partnership firm charged for the offences u/s 18(a) (ii) and (c) of the Drugs and Cosmetics Act, 1940, the partner of the firm who was in overall control of the day to day business of the firm would alone be liable to be convicted and the partner who was not in such control could not be proceeded with merely because he had the right to participate in the business of the firm under the terms of the partnership deed. In *Girdhari Lal Gupta and Another Vs. D.N. Mehta, Assistant Collector of Customs and Another*, , it was observed as follows (at p. 873) :

"What then does the expression "a person in charge of and responsible for the conduct of the affairs of a company" mean ? It will be noticed that the word "company" includes a firm or other association and the same test must apply to a director in charge and a partner of a firm in charge of a business. It seems to us that in the context a person "in charge" must mean that the person should be in overall control of the day to day business of the company or firm. This inference follows from the wording of Section 23C(2). It mentions director, who may be a party to the policy being followed by a company and yet not be in charge of the business of the company. Further, it mentions manager, who usually is in charge of the business but not in overall charge. Similarly, the other officers may be in charge of only some part of business."

15. Keeping in view the above observations, and from the evidence in the present case it can be concluded that the managing director and the chairman of the company who were in overall control of the day to day business of the company, could have been held to be liable and not S.N.C. Bakhshi and D.P. Gupta as they were neither in charge of the company nor acquainted with the day to day business of the company.

16. Considering all the pros and cons of the matter, we have come to the conclusion that this appeal fails and the same is hereby dismissed.