

(2010) 03 SHI CK 0061

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal No. 702 of 2002

H.P. State Pollution Control Board

APPELLANT

Vs

Ganesh Industries and Others

RESPONDENT

Date of Decision : 03-03-2010

Acts Referred:

Air (Prevention and Control of Pollution) Act, 1981 — Section 21, 37, 39, 4, 43

Water (Prevention and Control of Pollution) Act, 1974 — Section 33, 41, 42, 43, 44

Citation : (2010) 03 SHI CK 0061

Hon'ble Judges : Surinder Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Surinder Singh J.

1. The H.P. State Pollution Control Board, through the Assistant Environmental Engineer, has filed the instant appeal assailing the acquittal of the Respondents in complaint case No. 189/3 of 1996/91 for the offences punishable under Sections 37 and 39 of the Air (Prevention and Control of Pollution) Act, 1981, in short "the Act".

2. In brief, the facts giving rise to this appeal can be stated thus. Respondent "M/s. Ganesh Industries" was a crusher unit operating in the industrial area in Bhatta Kufar w.e.f. the year 1982 to July, 1991, without obtaining necessary sanction from the State Pollution Control Board. Pradeep Kumar was owner of this unit and Gurcharan Dass Respondent its Manager. In CWP No. 52 of 1993 the unit along with others was completely closed by the order of this Court.

3. On 8th August, 1991 the complaint was filed on behalf of the State Pollution Control Board by its Assistant Environmental Engineer, Shimla that the Respondents were operating an Industry since July, 1975 within the "Pollution Control Area" without obtaining prior permission/consent of the Board thereby committed the breach of Section 21 of the Act aforesaid which is an offence

under Sections 37 and 39 of the said Act.

4. Allegations were denied by the Respondents as such, they were put on trial but acquitted, inter alia, on the grounds that the complaint was not properly instituted as per the provisions of Section 43 of the Act and also that the Board failed to prove the notification that the area in question fell within the Air Pollution Control Area, if any notified by the government.

5. I have heard the learned Counsel for the parties and have carefully gone through the record.

6. The complainant-Board is a statutory body which was created under the Water (Prevention and Control of Pollution) Act 1974. However, Section 4 of the Air (Prevention and Control of Pollution) Act 1981 also empowered the said Board to exercise the powers to perform the functions of the Board for the purpose of prevention and control of the air pollution. Section 43 of the 1981 Act provides for taking of the cognizance of the offences by the Court. It reads as under:

43. Cognizance of offences. (1) No court shall take cognizance of any offence under this Act except on a complaint made by.

(a) A Board or any officer authorized in this behalf by it; or

(b) Any person who has given notice of not less than sixty days, in the manner prescribed, of the alleged offence and of his intention to make a complaint to the Board or officer authorized as aforesaid, and no court inferior to that of a Metropolitan Magistrate or a judicial Magistrate of the first class shall try any offence punishable under this Act.

(2) Where a complaint has been made under Clause (b) of Sub-section (1), the Board shall, on demand by such person, make available the relevant reports in its possession to that person:

Provided that the Board may refuse to make any such report available to such person if the same is, in its opinion, against the public interest.)

7. Sub-section 1 of Section 43 starts with a non-obstante clause. The Court cannot take the cognizance of the complaint which is not instituted by a competent person.

8. In the instant case, the complaint has not been filed by the Board nor there any resolution under the Act in question, authorizing any officer much less the A.E.E. to institute the complaint.

9. The prosecution banks upon a resolution Ext. PP whereby the authority is given in favour of the Assistant Engineer of the Board to prosecute the Respondent u/s 33, 41-45 of the Water (Prevention and Control of Pollution) Act 1974 whereas in the instant case, offence alleged is u/s 21 of the Air (Prevention and Control of Pollution) Act 1981. This authorization would not mean to be valid for the offences in question. Therefore, in the above circumstances, the

complaint is not properly instituted and the trial Court could not have taken the cognizance.

10. Further, Section 21 of the Act aforesaid puts restriction on use of certain industrial plants which requires the previous consent of the State-Board for its establishment or operation in "air pollution controlled area". Thus, it is sine quo non on behalf of the complainant to prove that the crusher unit was set up at a place which was declared as "air pollution control area" by the State government so as to attract Section 21 of the said Act.

11. The complainant has failed to prove any notification to this effect on record therefore, it cannot be said that Respondent has infringed the provisions of sub Section 21 so as to bring home the offence under Sections 37 and 39 of the Act *ibid*.

12. In view of this, the acquittal of the Respondent is borne out from the record. Therefore, no interference is called for. Appeal is dismissed.