
(1989) 02 AHC CK 0085

In the Allahabad High Court

Case No : Criminal Miscellaneous Case No. 38 of 1989

J.S. Huja and Others

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 27-02-1989

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 482

Water (Prevention and Control of Pollution) Act, 1974 — Section 25, 47(1), 50

Citation : (1990) 1 AWC 30

Hon'ble Judges : Rajeshwar Singh, J

Bench : Single Bench

Advocate : R.K. Singh, for the Appellant;

Final Decision : Dismissed

Judgement

Rajeshwar Singh, J.—This is an application u/s 482 Code of Criminal Procedure wherein three applicants who-are being prosecuted for violation of the Water (Prevention and Control of Pollution) Act, 1974, have prayed that the complaint pending in the Court of the Magistrate against them and filed by Law Officer of U.P. Pollution Control Board be" quashed. The following points were pressed at the time of admission initially:

1. The applicants, even if they are Directors, cannot be prosecuted, because Directors cannot be prosecuted for the offence.
 2. The applicants are not Directors.
 3. The applicants are old persons suffering from various ailments.
 4. The applicants reside at different places.
 5. No statement was recorded before issuing summons to the applicants.
 6. No counter-affidavit has been filed by the opposite parties.
2. When the Court proposed to dictate the order, the learned Counsel made a

request that the case be listed again for admission. The Court ordered on 7-2-1989 that the case was already listed for admission. All the same one week was allowed to the applicants to show law, if any. Ultimately, the case was fixed for judgment. Then the applicants have moved an application for amendment. Through this application following points have been raised:

7. The applicants are being prosecuted for not taking the consent of the Board. But the applicants applied for consent and within four months Board did not give any consent. The refusal of application for consent by the . Secretary is without jurisdiction and so it will be deemed under the provisions of Section 25 of the Act that permission was given by the Board unconditionally.

8. A similar petition has been admitted by this High Court at Allahabad, though copy that petition has not been filed, but its order has been quoted in the application for amendment.

3. In order to support the arguments that the applicants are no longer Directors ,some papers have been filed to show that they have retired, though the date of retirement is not clear.

Section 47(1) of the Act runs as under:

Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was incharge 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.

4. It has been said in the complaint, a copy of which has been filed by the applicants, that the accused persons are knowingly and intentionally discharging their polluted trade effluent without obtaining the consent of the Board and they are Directors and Secretary of the company and they are responsible for the conduct of day to day business of the company and responsible for not obtaining the consent of the board and discharging the trade effluents without obtaining consent. It has further been said that they are in Charge of the business of the company and they are responsible for day to day working of the company and also conducting business of the company and continuous commissioning of the offence. Thus there is clear allegation against them that they are responsible for conduct of the work of the company. So they can be prosecuted unless they prove that the offence was committed without their knowledge or that they exercised all due diligence to prevent the commissioning of such offence. Hence the first point has no force. Even if they have retired, it will be seen as to when they have retired. From the complaint, it appears that the offence was

committed in the year 1983 initially and there is nothing to show as to when they retired. Even if they have retired, it will be a question of fact to be examined by the Court below as to when they ceased to be responsible for the conduct of the business of the company irrespective of the fact whether they were Directors or not. This disputed question of fact cannot be gone into in proceedings u/s 482 Code of Criminal Procedure. Hence the first point and point No. 2, mentioned above, have no force.

5. The point that applicants are old persons suffering from various ailments and they reside at different places is irrelevant.

6. The point No. 5 is that the Court did not record any statement, before issuing summonses. u/s 50 of the Act, all officers of the Pollution Board are public servants. Section 200 Code of Criminal Procedure says that when a complaint is made in writing by a public servant, the Magistrate need not examine the complainant and the witnesses. So, this point also does not have any merit.

7. The point that no counter-affidavit has been filed by the opposite parties also does not have any merit. When an application is moved u/s 482 Code of Criminal Procedure and it is not worth admitting on the allegations contained in the application itself, there appears to be no necessity of counter-affidavit from the side of the opposite parties and counter-affidavit has not yet been called from them. Only notice was issued.

8. Point No. 7 is sought to be added through amendment and it is sought to be supported by the documents filed by the applicants. It is not evident from the complaint that has been filed against the applicants. In this connection an application of the year 1986 and order communicated by the Secretary have been referred. Firstly, the complaint alleges commission of the offence even before 1986. Secondly, it says that the applications that were given by the applicants for permission were incomplete. If the applications were incomplete, the Secretary could probably ask for further details. The letter filed with application for amendment also shows that even full fees for application was not deposited. So after taking evidence and considering the circumstances, it may be possible to say that an incomplete application could be disposed of by the Secretary saying that the formalities should be completed. This will be mixed question of law and fact as to what was the deficiency in the application and what was its effect.

9. In fact the law is that at this stage this Court has only to consider the complaint as it stands and it has not to consider the case of the accused and give a finding after considering the matter made available by the accused.

10. In this connection, the case of *State of Punjab v. Dharam Singh* 1987 SCC 89, may be referred. In this case their Lordships of the Supreme Court said that the High Court had not confined its scrutiny to the averments contained in the first information report but has traversed beyond and examined the case in the light of the contentions put-forth by the Respondents in their petition u/s 482

Code of Criminal Procedure That was disapproved. So the contentions of the applicants cannot be judged in proceedings u/s 482 Code of Criminal Procedure and the documents supplied by them cannot be analysed.

11. Now I come to the last point that a similar matter was admitted by this High Court at Allahabad. The copy of that petition has not been filed. So it cannot be said that the matter admitted at Allahabad is similar. Moreover in that order of admission no principle of law seems to have been laid down. That order seems to have been passed in 1986 admitting the petition but now we have Supreme Court case of 1987, referred to earlier. So the matter is to be decided keeping in view that Supreme Court case.

12. The result is that amendment application should be refused and application u/s 482 Code of Criminal Procedure should be rejected.

13. The application for amendment of the application u/s 482 Code of Criminal Procedure is rejected and the application u/s 482 Code of Criminal Procedure is dismissed.