
(2009) 08 MP CK 0019

In the Madhya Pradesh High Court

Case No : Criminal Rev. No. 691 of 2009

Kailash Chandra Pathak (Dr.)

APPELLANT

Vs

M.P. Pollution Control Board and Another

RESPONDENT

Date of Decision : 31-08-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197

Water (Prevention and Control of Pollution) Act, 1974 — Section 19, 19(2), 49

Citation : (2010) 2 MPJR 226

Hon'ble Judges : N.K. Mody, J

Bench : Single Bench

Final Decision : Allowed

Judgement

N.K. Mody, J.

Being aggrieved by the order dated 5.6.2009 passed by CJM, Ratlam in Cr. Case No. 378/2007 whereby the application filed by the petitioner u/s 197 Cr.P.C. was dismissed, the present petition has been filed.

Short facts of the case are that respondent No. 1 filed a complaint against the petitioner and respondent No. 2 for the offence alleged to have been committed. After taking cognizance notices were issued to the petitioner. At the initial stage, an application was filed u/s 197 Cr.P.C. wherein it was alleged that petitioner is a public servant, therefore without obtaining the sanction from the State Govt., the petitioner cannot be prosecuted. It was prayed that complaint be dismissed.

The application filed by the petitioner was opposed by the respondent No. 1. After hearing the parties, learned trial court dismissed the application, against which the present petition has been filed.

Learned counsel for petitioner submits that undisputedly the petitioner is a public servant. In the circumstances, without obtaining necessary sanction the petitioner cannot be prosecuted. It is submitted that in the similar situation the complaint was filed by the respondent No. 1 against other officers and in Cr. Rev.

No. 472/2004 decided on 14.8.2007, Gwalior Bench of this court has held that permission u/s 197 Cr.P.C. is mandatory requirement of law and without complying that, the petitioner cannot be prosecuted. It is submitted that in view of the aforesaid position of law, the petition filed by the petitioner be allowed and impugned order passed by the learned trial court be set aside.

Ms. Preeti Waghmare, learned counsel appearing on behalf of respondent No. 1 submits that before filing any prosecution under the provisions of Water Pollution Act, permission has to be obtained u/s 49 of the Water (Prevention and Control of Pollution) Act from the Pollution Control Board. Since the prosecution has been filed after obtaining permission from the Board, therefore, there was no necessity for obtaining sanction u/s 197 Cr.P.C. For this contention, reliance is placed on a decision in the matter of State Prevention and Control of Pollution Board Vs. Berhampur Municipality and Another, wherein complaint was filed by State Prevention and Control of Pollution Board against Behrampur Municipality for which the sanction was given by the Board, Orissa High Court held that "section 197 Cr.P.C. is in the nature of general provision applicable to offences prescribed under the Penal Code as well as special statutes but S. 49 of the Act is a special provision applicable to offences committed under Act 6 of 1974. It is accepted principle of interpretation that if a special provision is applicable to a case, a general provision relating to the same matter will not apply to that case."

On the strength of aforesaid decision, learned counsel submits that no illegality has been committed by the learned trial court. It is submitted that the petition filed by the petitioner be dismissed.

From perusal of the decision rendered by this court in the matter of Arun Mathure (supra) it is evident that while passing the order this court has taken consideration the law laid down by Orissa High Court in the matter of Behrampur Municipality and thereafter it was held that the aim of the Legislature while enacting Section 197 of Cr.P.C. is to protect public servant against false, fabulous and malafide criminal cases which are related to the work or act done by them, while discharging their duties as public servant. It was further held by this court that upon perusal of sub section (2) of section 19 that both the provision i.e. section 197 Cr.P.C. and Sec. 19 of Water (Prevention and Control of Pollution) Act are different, having no clash in between. Since this court has taken a view after taking into consideration the decision rendered by Orissa High Court, in the opinion of this Court learned trial court committed error in dismissing the application filed by the petitioner and in taking the cognizance of the offence against the petitioner.

In view of this, the petition filed by the petitioner is allowed. The impugned order dated 5.6.2009 passed by JMFC, Ratlam in case No. 378/2007 is set aside and also the complaint filed by respondent No. 1 stands dismissed and the petitioner stands discharged. However it is made clear that respondent No. 1 shall be at liberty to file fresh prosecution after obtaining the necessary sanction.

With the aforesaid observation, the petition stands disposed of.