
(1994) 07 RAJ CK 0010

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 107 of 1987

Lakshmi Cement

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 11-07-1994

Acts Referred:

Air (Prevention and Control of Pollution) Act, 1981 — Section 21, 21(5), 22, 37, 39
Criminal Procedure Code, 1973 (CrPC) — Section 133, 482
Penal Code, 1860 (IPC) — Section 268, 269, 270, 271, 272

Citation : (1994) CriLJ 3649 : (1994) 2 RLW 308 : (1994) 2 WLN 390

Hon'ble Judges : R.P. Saxena, J

Bench : Single Bench

Advocate : Rajendra Mehta, for the Appellant; S.M. Singhvi, Public Prosecutor (for No. 1) and D.S. Shishodia, assisted by Maneesh Shishodia, (for No. 2), for the Respondent

Judgement

Rajendra Saxena, J.—Heard. Perused the record of the learned lower Courts.

2. The petitioner-Company filed an application for grant of consent u/s 21 of the Air (Prevention and Control of Pollution) Act, 1981, hereinafter referred to as "the Act" to the Rajasthan State Water Pollution and Control Board, Jaipur (respondent No. 2), which was rejected vide letter dated 15-5-1984 on the ground that the petitioner Co. had failed to submit the feasibility report and time bound programme for procuring stack monitoring equipments and arrangements of laboratory facilities as also the arrangements to be made at the stack for monitoring failure in submission of the detailed specification of the control equipments. The Chairman, Pollution Control Board subsequently being satisfied that certain measures were taken by the petitioner for having the E.S.P. installed at the Kiln, advised the petitioner to file a fresh application for grant of provisional consent to undertake measures for control of air pollution vide his letter dated 24th August, 1984. Thereupon, the petitioner submitted an application dated 11-9-1984 u/s 21 of the Act praying for the provisional consent. The respondent by its letter dated 19-9-1984 informed the petitioner

that its earlier application for consent was rejected and the petitioner despite the directions to stop the operation to the kiln till proper consent was obtained from the Board, was still running the kiln, which constituted an offence under Sections 37 and 39 of the Act. The Chairman of the Board also endorsed a copy of the said letter to the Collector and requested him to take administrative action against the petitioner u/s 133, Cr.P.C. for stopping functioning of the kiln on account of public nuisance and the grave danger being caused to the public health. The Collector sent a copy of the said letter to the S.D.M., Mount Abu, who by his order dated 19-11- 1984 issued a notice u/s 133, Cr.P.C. to the petitioner and also passed the conditional order for removal of the nuisance.

3. The petitioner filed preliminary objection regarding the maintainability of the case u/s 133, Cr.P.C. against it on the ground that after coming into force of the Act, the provisions of Chapter X and in particular Section 133, Cr.P.C. automatically stood repealed. The learned S.D.M. vide his order dated 6-10-1986 rejected the preliminary objection filed by the petitioner. Aggrieved by the said order, petitioner filed a revision petition before the learned Sessions Judge, Sirohi, who dismissed the same and directed the S.D.M. to expedite the proceedings. Petitioner has now filed this Misb. Petition u/s 482, Cr.P.C. praying for quashing the proceedings initiated against him u/s 133, Cr.P.C. and for setting aside the conditional order dated 19- 11-1984.

4. This is an admitted position that the respondent Board later on gave provisional consent to the petitioner upto 30th July, 1985. Again by letter dated 5-7-1986, the provisional consent valid upto 31-7-1985 was extended upto 30-3-1987.

5. Mr. D.S. Shishodia, learned Senior Advocate for respondent No. 2 has submitted that the petitioner Company has now installed air pollution control equipments like Electrostatic Precipitators, bag house etc. for the control of emissions of air pollutants and that the Unit is operating under valid consent from the State Board as required u/s 21 of the Act. Mr. Shishodia has further submitted that the emissions being discharged by the unit from its plant are also within prescribed limits and that the analysis reports show the emissions of SPM 164 mg/Nm³ as against stipulated limit of 250 mg/Nm³. Mr. Shishodia has, therefore, submitted that in view of the above facts, the petition filed by the petitioner against the State Board has become infructuous. He also stated that in view of these facts, the alleged public nuisance committed by the petitioner-Company now no more survives and, therefore, there is no justification in continuing the proceedings u/s 133, Cr.P.C. against the petitioner.

6. The learned P.P. has asserted that the courts below have rightly held that simply by coming into force of the Act, the provisions of Chapter X and Section 133, Cr.P.C. do not automatically stand repealed and that the proceedings initiated by the learned S.D.M. u/s 133, Cr.P.C. against the petitioner Company were legally maintainable and justified.

7. I have given my thoughtful consideration to the submissions made before me. The Act has been enacted to provide for the prevention, control and abatement of air pollution, for the establishment, with a view to carrying out the aforesaid purposes, of Boards, for conferring on and assigning to such Boards powers and functions relating there to and for matters connected therewith. Moreover, certain decisions were taken in the United Nations Conference on the Human Environment held in Stockholm in June, 1972, in which India participated to take appropriate steps for the prevention of the natural resources of the earth which, among other thing, include the preservation of the quality of air and control of air pollution. Hence this Act has also been enacted to implement the aforesaid decisions in so far as they related to the preservation of the quality of air and control of air pollution. This Act has come into force w.e.f. 16th May, 1981. Section 46 of the Act simply bars the jurisdiction of civil courts to entertain any suit or proceeding in respect of any matter which an Appellate Authority constituted under this Act is empowered by or under this Act to determine. This bar of jurisdiction does not apply to criminal courts. Chapter X of the Cr.P.C. deals with the maintenance of public order and tranquillity and public nuisance.

8. Section 133, Cr.P.C. empowers the Magistrate specified therein to make a conditional order for the removal of such nuisances in emergent cases. Sections 268-294,IPC which relate to public nuisances under the Penal Code provide punishments for the commission of offences, while Chapter X of Cr.P.C. contains a procedure for speedy removal of the obstruction or the nuisance itself which is injurious to the public. When on disclosure of existence of a public nuisance from information and evidence the Magistrate considers that such unlawful obstruction or nuisance should be removed from any public place or regulated, he is empowered to, initiate proceeding u/s 133, Cr.P.C. and also to pass conditional order for removal or regulating such public nuisance within a time frame fixed by him.

9. It is true that Chapter VI of the Act provides for penalties for failure to comply- with the provisions of Section 21(5) or Section 22 or with orders or directions issued under the Act and for trial of such offences, the provisions of the Act shall apply being a Special Act and override provisions of I.P.C. But proceedings under Chapter X including Section 133, Cr.P.C. are merely preventive in nature relating to maintenance of public order and tranquillity. Such preventive proceedings are, therefore, independent and separate proceedings, which are not at all related with the trial of offences enumerated in the Act.

10. Therefore, in my considered opinion, the provisions of Section 133, Cr.P.C. do not stand automatically or impliedly repealed after the commencement of the Act. In such circumstances, the proceedings u/s 133, Cr.P.C. before the learned S.D.M. were not without jurisdiction or barred by the provisions of the Act.

11. However, in view of the specific submissions made by Mr. D.S. Shishodia, learned counsel for the respondent-Board, the alleged public nuisance has now come to an end long back because the petitioner has installed the requisite air

pollution control equipments and the emissions being discharged by the petitioner's Unit from its plant are also within prescribed limits. Therefore, the proceedings u/s 133, Cr.P.C., which were initiated against the petitioner Company vide order dated 29-11-1984 have now become infructuous and no substantial purpose will be served by its continuance.

12. Hence for the reasons mentioned above and to secure the ends of justice and to avoid abuse of process of court, the proceedings initiated u/s 133, Cr.P.C. against the petitioner Company are hereby dropped as having become infructuous. With these observations, this Misc. Petition stands disposed of accordingly.