

(1988) 09 P&H CK 0010
In the Punjab And Haryana At Chandigarh
Case No : Criminal Revision No. 632 of 1985

L.R. Wadhawani

APPELLANT

Vs

The Haryana State, State Board For The Prevention and
Control of Water Pollution, Chandigarh

RESPONDENT

Date of Decision : 13-09-1988

Acts Referred:

Water (Prevention and Control of Pollution) Act, 1974 — Section 43

Citation : (1988) 09 P&H CK 0010

Hon'ble Judges : S.S. Grewal, J

Bench : Single Bench

Advocate : K.K. Cuccria, for the Appellant; K.C. Bajaj, for the Respondent

Judgement

S.S. Grewal, J.—This revision petition is directed against the order of the Chief Judicial Magistrate, Faridabad, dated 6.4.1986. whereby, the said Court dismissed the application moved by the parties to the complaint, for compounding the offence, and. for withdrawal of the complaint.

2. In brief the facts relevant for disposal of this revision petition are, that the Haryana State Board for the Prevention and Control of

Water Pollution, Chandigarh (hereinafter referred to as "the Board") filed a complaint in the Court of the Chief Judicial Magistrate, Faridabad, for prosecution of the accused Petitioner under Sections 43 and 44 of the Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as "the Act"). While the complaint was in final stages, application for compounding the offence, and, for withdrawal of the complaint was moved jointly by the complainant-Board as well as by the accused party. It was mentioned in the said application that the accused had closed the manufacturing process of Ink, which was causing pollution. The accused had agreed that whenever they would start the manufacturing of ink, they would first install the water treatment plant, and they would also require the consent of the Board under the Act It was further mentioned in the said application that it would be in the interest of both the

parties, and, the general public at large, that the complaint was withdrawn. It was also mentioned that since the Board had achieved the aim of stopping pollution of water, the matter had been compromised. Prayer in the application was made for permission to withdraw the complaint, and the same be dismissed as withdrawn.

3. Vide the impugned order, learned lower Court held that no provision has been made for composition of offence under the Act by the legislature. The trial Court further held that there was no provision in the Code of Criminal Procedure, 1973, for compounding the offence in which the punishment provided was seven years, and, the case would be triable as a warrant case. Consequently the application for compounding the offence by the complainant and the accused, and, for withdrawal of the complaint by the Board, was dismissed. Aggrieved against the impugned order, the accused has filed this revision petition.

4. L.R. Wadhvani Petitioner also moved Criminal Misc. No. 4251-M of 1987 u/s 482, Code of Criminal Procedure, read with Article 227 of the Constitution of India, for quashing proceedings pending against him in the Court of the Chief Judicial Magistrate, Faridabad, on the complaint lodged by the Board, on the basis of which prosecution was launched against him under Sections 43 and 44 of the Act. This petition has also been pressed before me on the ground that considering the fact that the accused had closed his business of manufacturing ink since 1984, written request was made by the Board to compound the offence, and, to withdraw the complaint.

5. As common questions of law and fact are involved both in Criminal Revision No. 632 of 1985, and, Criminal Misc. No. 4251-M of 1987, these petitions shall be disposed of by one judgment.

6. I have heard the learned Counsel for the parties, and, have carefully perused the record.

7. The contention raised by the learned Counsel for the Petitioner is two fold. The first contention raised by him was that the complaint was triable as a summons case, and as such in view of the provisions of Section 357 of the Code of Criminal Procedure, the offence under which the accused-Petitioner has been charged, can be legally compounded. This argument is without any merit. The Legislature has provided imprisonment for seven years for committing the offence, for which the accused-Petitioner has been charged to stand trial in the lower Court. The case would fall under the category of Warrant Case, and, the same cannot be legally compounded either u/s 357, or, u/s 3(sic)0, Code of Criminal Procedure.

8. The second contention raised on behalf of the learned Counsel for the petitions is to the effect that the trial Court has erred in not permitting the complainant to withdraw its complaint on the analogy of Section 321, Cr. P. C. 1973, which corresponds to Section 494 of the old Criminal Procedure Code. A careful perusal of Section 321 Cr. P.C. shows that it relates to withdrawal from prosecution by the Public Prosecutor, or, the Assistant Public Prosecutor. The provisions of

Section 321 Cr. P.C. do not strictly cover the case of the complainant-Board. In the absence of any specific provision under the Act, under which the prosecution has been launched against the Petitioner, mere fact that the counsel for the complainant-Board had also signed the application for withdrawal of the complaint would not fill in this lacuna. At any rate, from the perusal of the said application it is quite apparent that no prayer, whatsoever, was made by the counsel for the complainant-Board to withdraw prosecution against the accused-Petitioner. Mere mention in the said application to withdraw the complaint, or, the same be dismissed as withdrawn, would not be sufficient to hold that the said application tantamounts to request for withdrawal of the prosecution launched against the accused-Petitioner by the complainant-Board. No any such plea was raised, or, disposed of by the trial Court. The case of the revision-Petitioner, thus, cannot be said to be covered by Section 321 Cr. P.C. Nor on the analogy of the said provision of law the complainant-Board can be permitted to withdraw its prosecution launched against the Petitioner. The authority in case State of Orissa Vs. Chandrika Mohapatra and Others, which deals with principles for exercising discretion for granting consent to withdrawal of prosecution, would not in any manner help the case of the revision Petitioner.

9. The criminal complaint pending in the Court of Chief Judicial Magistrate is in final stage Learned Counsel for the accused Petitioner has not been able to point out any infirmity in the proceedings pending against the accused in the trial Court, from which it can be reasonably inferred that there has been any miscarriage of justice. Nor from the circumstances, referred to above, a genuine case has been made out for quashment of proceedings in the instant case, in the interest of administration of justice.

10. For the foregoing reasons, I do not find any merit in either of the two petitions i.e. Criminal Revision No. 632 of 1985, and, Criminal Misc. No. 4251-M of 1987, and, the same are hereby dismissed The record of the lower Court be sent back forthwith. The trial Court is directed to dispose of this old complaint expeditiously.