

(2017) 09 BOM CK 0154
In the Bombay High Court
Case No : 1237 of 2002

Maharashtra Pollution Control Board

APPELLANT

Vs

M/s. Deepak Fertilisers and Petro Chemicals Corporation Ltd.,
& Ors.

RESPONDENT

Date of Decision : 08-09-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 378\(4\)](#) - Appeal in case of acquittal
[Water \(Prevention and Control of Pollution\) Act, 1974](#), [Section 25](#), [Section 24](#)

Citation : (2017) 09 BOM CK 0154

Hon'ble Judges : Sandeep K. Shinde

Bench : SINGLE BENCH

Advocate : Prabha Badadare, Rajendra Desai, Manoj J. Bhatt

Final Decision : Dismissed

Judgement

1. The Maharashtra Pollution Control Board ("MPCB" for short) has preferred this Appeal under Section 378(4) of the Code of Criminal Procedure, 1973 against the judgment and order dated 25.10.2001 passed by the learned Additional Sessions Judge, Raigad, Alibag in Criminal Appeal No.6 of 1997 whereby the Respondent No.1-Company was acquitted of the offences punishable under Sections 24 read with Section 43 of the Water (Prevention and Control of Pollution) Act, 1974.

2. Heard the learned counsel for the Appellants and the learned counsel for the Respondent No.1-Company. Perused the records and proceedings and the judgment and order passed at the first instance by the learned JMFC, Panvel in Regular Criminal Case No.122 of 1994 dated 20.12.1996 and the judgment and order dated 25.10.2001 passed in the Criminal Appeal No.6 of 1997 by the learned Additional Sessions Judge, Raigad, Alibag.

3. The MPCB had filed a complaint against the Respondent No.1 and two of its officers under Sections 43, 44, 45(A) read with Sections 24,25, 26 of the Water

(Prevention and Control of Pollution) Act, 1974 (Hereinafter referred to as the "Said Act") on 21.4.1994. It is the complainant's case that the Respondent No.1 is the limited company incorporated under the provisions of the Companies Act, 1956. The other two accused were persons in-charge and responsible to conduct the business of the accused company and in that capacity, they were jointly and severally liable for noncompliance of consent conditions and discharge of polluted water from the factory of Accused No.1 into the environment not conforming to the standards prescribed by the Board in its consent issued to the Accused No.1 and the renewal of consent orders issued from time to time. The member secretary of the Board granted consent to Accused No.1 dated 10.1.1983 which was valid upto 31.1.1985 stipulating therein certain terms and conditions for operating plant by the Accused. One of the conditions relates to disposal whereunder the Respondents were under obligation to discharge treated effluent in MIDC Sewage System; and until such facilities are made available, it shall be disposed of into local nala. It is the Complainant's case that the Respondents had discharged its effluent in violation of the standard prescribed by the consent. On 17.2.1994, sample of the said effluent was collected and analysed whereupon it was found that the Respondent- Company was discharging the effluent causing environmental hazard. The Complainant further alleged that on 17.2.1994, a sample was collected at the extreme end of the drain carrying the effluent of the factory of the accused. Samples were sent to the Government Analyst, Public Health Laboratory for the analysis and also the Board Laboratory at New Bombay. The reports would show that parameters like suspended solids amonical nitrogen and nitrate nitrogen were not meeting the standards prescribed by the Board. In the complaint, it was alleged that factory of the Respondent-Company was discharging highly alkaline water in Kasadi river and thereby causing environmental pollution. On this set of allegations, the complaint was filed by the Board.

4. The learned JMFC after appreciating the evidence acquitted the officers of the said company, however, convicted the company by the judgment and order dated 20.12.1996 whereby company was convicted under Section 24 read with Section 43 of the said Act and imposed the fine of Rs.5,000/-. Aggrieved by the conviction, the company had preferred an Appeal before the Additional Sessions Judge, Alibag, Raigad who was pleased to acquit the company by the judgment and order dated 25.10.2001. That against the said acquittal, the Board has preferred this Appeal.

5. As it appears from the record that sample was collected on 17.2.1994 by the authorised officer of the Board and was sent for analysis to the State Laboratory and the laboratory of the Water Board. Therefore, the prosecution was in respect of alkaline effluent notice by the board. While taking sample on 17.2.1994, P.W.1- Complainant in his evidence had stated that effluent treatment plant of accused is connected by pipe to the effluent treatment at MIDC , Taloja. It appears from his evidence that compound wall of the accused factory is situated about 6/7 meters towards Kasadi river side from their effluent treatment plant structure.

This witness admitted that there were about 25 factories in MIDC, Taloja and effluent from all these factories were collected in MIDC plant and effluent from MIDC plant was discharged in the creek at MIDC, Taloja and the said creek is not part of the Kasadi river. The Complainant had examined Mr. Fulmali, P.W.2 who had collected sample on 17.2.1994. According to him, alongwith production manager of the accused factory, he took an effluent sample from the extreme end of the drain of the accused effluent treatment plant from a pipe carrying effluent beyond effluent treatment plant. In cross-examination, he, however, admitted that there is distance of more than 17 meters between the effluent treatment plant and compound wall of the company and the distance between the compound wall and Kasadi river is more than 20 meters. It is his version that when he collected sample, he did not go beyond the compound wall. It also appears that he could not answer court's question, as to from which plant, he collected the sample of effluent.

6. The learned Appellate Court upon appreciating the evidence of the Complainant and P.W.2-Mr. Fulmali has correctly concluded the factum of collection of sample at the extreme end of the drain carrying effluent of the factory of the accused was doubtful. More so, it also appears from the evidence that the effluent treatment plant of the accused is connected by the pipe to the effluent treatment plant of the MIDC, Taloja. In the given set of facts, it cannot be said that the finding recorded by the learned Appellate Court is unreasonable and I do not find any compelling and substantial reasons to interfere with the finding recorded by the learned Appellate Court on the factum of collection of sample which according to it was doubtful. That once it is held that the factum of collection of sample was itself doubtful, all further steps taken in pursuant thereto like that of obtaining report does not carry prosecution case any more further. In view of this fact, I am of the view that finding recorded by the learned Appellate Court does not require any interference.

7. Besides, after perusing the record, it also appears that the trial Court while framing the charge had referred to collection of samples on 21.12.1993 and on 5.1.1994. In other words, factum of collection of samples by Mr. Fulmali on 17.2.1994 has not been referred to in the charge. In view of this admitted fact, the learned Appellate Court has correctly held that the charge itself was defective. More so, it is also brought to the notice of this Court that while authorizing to file complaint against the accused, as per the resolution, company and its officers were to prosecution in respect of violation of provisions of Sections 24 and 25 of the Said Act. In other words, there was no authorisation to prosecute the company under Section 24 of the said Act. However, complaint, was also filed under Section 24 of the said Act. On this count also, finding recorded by the Appellate Court that the complainant had no authority to prosecute the company under Section 24 in absence of authorisation strikes at the root of the prosecution case, also deserves no interference.

8. It is settled position of law that an order of acquittal has to be interfered only

when there are compelling and substantial reasons for doing so and if the order is clearly unreasonable. In the case in hand, in my view, the prosecution has not established beyond reasonable doubt that they had collected the samples at extreme end of the drain carrying effluent of the factory. In fact, the prosecution witness had admitted that the effluent treatment plant of the accused is connected by pipe to the effluent treatment plant of the MIDC at Taloja. Besides, it is an admitted fact that the Complainant was not authorised to prosecute the company under Section 24 of the said Act. It is in these circumstances even though laboratory reports indicate that the effluent release by the company were not conforming with the standards in terms of the consent but since collection of sample of effluent was itself doubtful, in my view, the Appellate Court has not committed any error in acquitting the respondent no.1-company. That for the reasons aforesaid, the above Criminal Appeal fails and accordingly stands dismissed.