
(1988) 07 BOM CK 0017

In the Bombay High Court

Case No : Criminal Revision Application No. 65 of 1988

Maharashtra Pollution Control Board

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 18-07-1988

Acts Referred:

Constitution of India, 1950 — Article 12

Criminal Procedure Code, 1973 (CrPC) — Section 197

Citation : (1988) 4 BomCR 480 : (1989) MhLj 883

Hon'ble Judges : B.N. Deshmukh, J

Bench : Single Bench

Advocate : Pratibha Rasal, for the Appellant; M.V. Deshpande, for respondent
Nos. 2 to 5, G.R. Ghuge, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

B.N. Deshmukh, J.—This revision is filed by the Maharashtra Pollution Control Board against respondents challenging the order passed by the learned 3rd Additional Sessions Judge by which the order to issue process against the respondents is quashed.

2. The Water Pollution Control Board-petitioner filed complaint under the provisions of sections 25, 26 r/w sections 43 & 44 of the Water (Prevention & Control of Pollution) Act, 1974, against the respondents.

3. The allegation in the complaint was that u/s 24 of the Act, prohibition is prescribed for use of stream or a well for disposal of polluting matter and u/s 25 of the said Act, consent of the Board is necessary with regard to bring into use any new or altered outlet for the proposed discharge of trade or sewage effluent or waste into a stream in the Water Pollution Prevention Area. An application, therefore, was filed by the accused No. 1 Textile Corporation of Maharashtra Ltd. and consent was granted on certain conditions. The present complaint is filed by the petitioner-Board for breach of the conditions by the accused persons including the Textile Corporation of Marathwada Ltd.

4. Sections 43 & 44 of the said Act provide for penalty for contravention of provisions of sections 24, 25 & 26. The learned Chief Judicial Magistrate, Nanded, passed the order to issue process against all the accused persons.

5. Thereafter an application Exhibit 21 was filed to quash the proceedings and also to set aside the order issuing process on the ground that no sanction is obtained as provided u/s 197 of Criminal Procedure Code.

6. The learned Chief Judicial Magistrate, who heard the application, dismissed the application Exhibit 21 filed by the accused persons and directed that trial will proceed in accordance with law.

7. The accused persons challenged the order regarding sanction u/s 197 Cri.P.C. by way of revision in the Session Court at Nanded. The learned 3rd Additional Sessions Judge, allowed the revision filed by the accused persons and directed that the order to issue process be quashed. The present revision is filed to challenge the order passed by the 3rd Additional Sessions Judge in revision by which the order to issue process against the respondents-accused persons is quashed.

8. The learned Counsel Mrs. Pratibha Rasal appearing for the petitioner-Board, contended that the provisions of section 197 of Cri.P.C. are not properly appreciated. According to her, sanction u/s 197 Cri.P.C. is not required for proceeding with or for taking cognizance against all or any of the accused persons. She had contended that the respondent No. 2 is Textile Corporation of Marathwada Ltd. while the respondent No. 3 is the Managing Director and General Manager of the Textile Corporation, respondent No. 4 is the Chief Engineer and respondent No. 5 is Production-cum-Planning Manager. She contended that respondent Nos. 3 to 5 are the employees of the Textile Corporation. They are neither appointed nor their office is removable by the State Government nor their services are terminable by the State Government or with the sanction of the State Government. The contention of Mrs. Rasal will have to be accepted having regard to the provisions of section 197 Cri.P.C.

9. Section 197(1) Cri.P.C. provides as follows :

"When any person who is or who was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction---

a)

b) In the case of a person who is employed or as the case may be was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government."

The respondent No. 2 is the Managing Director and General Manager of the

Corporation and respondent Nos. 2 & 3 are the other officers of the Corporation. There is a resolution produced before me being Resolution No. 718 of 1980 passed by the Board of the Corporation respondent No. 1 in connection with the appointment of Dr. Wagle as Managing Director. The resolution recites that it is further resolved that subject to the approval of the Company in general meeting Dr. N.P. Wagle, Additional Director, be and is hereby appointed as Managing Director of the Company with retrospective effect from 16-4-1984 afternoon on the terms and conditions as would be approved by the Board of Directors from time to time. This shows that not only respondent Nos. 3 & 4 Mr. Dua and Mr. Desai but even the Managing Director of the Textile Corporation Dr. Wagle was appointed by the Company. The learned Counsel Shri Murar Deshpande contended that the services of the respondents are removable with the sanction of the State Government only. He further contended that in view of section 617 of the Companies Act, the Textile Corporation of Marathwada Ltd. is a Government Company and the Government Company is a "State" within the meaning of Article 12 of the Constitution of India. Therefore, the protection u/s 197 Cri.P.C. shall be deemed to be extended to the officers of such company, the company being the State. The respondents 3 to 5, therefore, are public servants entitled for protection u/s 197 Cri.P.C. before taking any cognizance by the Court.

10. I am unable to appreciate the contentions of Shri Deshpande. It is no doubt true that the Textile Corporation of Marathwada Ltd. is a Government Company as mentioned in section 617 of the Companies Act. The respondents 3 to 5 may even be public servants for the purposes of section 197 Cri.P.C. but for invoking the provisions of section 197 Cri.P.C. mere public servant or doing official duty is not enough but they must be removable by the State Government or with the sanction of the State Government. In the present case, the resolution which is mentioned earlier shows that the respondents are appointed by the Company. In view of the provisions of the General Clauses Act, the power to appoint generally includes power to remove also. I have gone through memorandum of Association and the Articles of Association of Textile Corporation of Marathwada Ltd. Clause 38 of the Memorandum of the Company speaks as one of the objects of the Company is to employ, select, appoint, engage, retain, dismiss, discharge any individual person, firm, body corporate, institution, company and to remunerate pay re-imburse them for their services. Apart from the provision in the Memorandum, the Articles of Association makes special provision in Article 35 of the Association regarding the Managing Director also and provides that the Company shall appoint a Managing Director in accordance with the provisions of the law for the time being in force and pay him remuneration as per the Act and may delegate him the duties performed as Managing Director. The Managing Director shall have to manage the day-to-day affairs of Directors as directed by the company and the Board of Directors. Having regard to the clear provisions regarding the appointments, the authority to appoint, therefore vests in the company. It nowhere provides that the appointment is subject to the approval or sanction of the State Government. There is no specific provision regarding the

removal pointed out to me but in view of the provisions of the General Clauses Act in the present case also, the power to appoint will include the power to remove its employees by the Company is not restricted by providing that the removal of class of employees or Managing Director or Directors is subject to the sanction of the State Government. In view of this legal position, it is not possible to hold that the respondents 3 to 5 are removable by the State Government or with the sanction of the State Government. The power to remove vests with the Company alone.

11. The approach of the learned Additional Sessions Judge in this case is not justified. The learned Additional Sessions Judge has not dealt with this aspect all. He has proceeded on the footing that cognizance of offence alleged to have been committed by a public servant simplicitor cannot be taken into consideration unless sanction is obtained under the provisions of Section 197 Cri.P.C. The learned Judge lost sight of the fact that section 197 Cri.P.C. does not provide for obtaining sanction in regard to each and every public servant but the protection is extended to only such public servants whose services are removable by the State Government or with the sanction of the State Government. The essential ingredients of section 197 Cri.P.C. was, therefore, lost sight of by the learned Judge.

12. Shri Deshpande, appearing for the respondents 3 to 5, contended that the Textile Corporation of Marathwada Ltd. is a Government Company and is a "State" within the meaning of Article 12 of the Constitution of India. The respondents 3 to 5 are, therefore, public servants and their services shall be denied to be services for doing the work of the Government activity and as such they shall be deemed to be removable by the Government or with the sanction of the Government. This contention has no force in view of the provisions of Article 12 of the Constitution of India itself. Article 12 is to the following effect :---

"In this part, unless the context otherwise requires "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India."

The definition of the "the State" in Article 12, therefore, has to be considered while dealing with the question arising out of Part III regarding the rights guaranteed under the Constitution. The definition of "State" in Article 12 cannot be considered while considering the provisions of Section 197 Cri.P.C. Apart from that, the requirement of section 197 Cri.P.C. is not merely that the person must be a public servant but that his services must be terminable by the State or with the sanction of the State. The provisions u/s 197 Cri.P.C. are not attracted merely because a persons is a public servant or a servant of the State but the further condition that the service must be terminable by the Government or with the sanction of Government must be satisfied. In this view of the matter, the contention of Shri Deshpande is required to be negated.

13. Certain authorities were brought to my notice. While construing the provisions of section 197 Cri.P.C., this Court has held in H.G. Vartak v. State 1970 Mh.L.J. 662 that the scope of section 197 Cri.P.C. cannot be widened without bearing in mind the limits and restrictions imposed by the Constitution. The ratio laid down in that decision is to the effect that a public servant must be removable only by the State Government. In that case only the question of sanction u/s 197 Cri.P.C. will arise and not otherwise.

14. The decision of the Supreme Court in K. Ch. Prasad Vs. Smt. J. Vanalatha Devi and Others, wherein it is held that officer of nationalised bank even if a public servant is removable by a competent authority which is not Government. Hence, sanction u/s 197 Cri.P.C. for launching prosecution against such an officer not required. In that case also, it was argued that the competent authority who can remove the officers of the bank derive their power under regulations and those regulations ultimately derive their authority from the Act of Parliament. Regulations are also framed with the approval of the Central Government but it does not mean that the appellant (in that case) cannot be removed from service by anyone except by the Government or with the sanction of the Government. The ratio laid down by the Supreme Court in this decision applies squarely in the present case also and no sanction is necessary u/s 197 Cri.P.C. for taking cognizance in the present complaint respondents 3 to 5 and also the Corporation.

15. A reference was also made to the decision of Andhra Pradesh High Court in Dr. A.N. Rao v. C.N.N. Kutty & another, 1978(2) Cri L J NOC 65 , but the decision in that case is not applicable to the facts of present case. There admittedly the accused person was removable by the President. Such is not the case with present accused.

16. In the result, I set aside the order passed by the 3rd Additional Sessions Judge dated 5-12-1987 quashing the order to issue process against the accused persons. The order of the learned Chief Judicial Magistrate, Nanded, dated 7-8-1985 is restored. Revision allowed accordingly.