
(2017) 04 MP CK 0154
In the Madhya Pradesh High Court
Case No : 13852 of 2016

Mahendra S/o Ramkishan Prajapat

APPELLANT

Vs

State of Madhya Pradesh and another

RESPONDENT

Date of Decision : 11-04-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 482](#), [Section 200](#) - Saving of inherent powers of High Court - Examination of complainant
[Air \(Prevention and Control of Pollution\) Act](#)

Citation : (2017) 04 MP CK 0154

Hon'ble Judges : Rajendra Mahajan

Bench : Single Bench

Advocate : Surendra Singh, Avinash Zargar, Ashish Shroti

Judgement

1. The petitioners have invoked the extraordinary jurisdiction and powers of this court by filing this petition under Section 482 of the Cr.P.C. to quash the complaint registered at the instance of the respondent against them and one Manish Kumar in the court of Chief Judicial Magistrate, Raisen being R.C.T. No.00938/2015 and subsequent proceedings in the case.

2. The brief facts which are necessary for adjudication of this petition are infra:-

(2.1) On 30.07.2014, on behalf of respondent M.P. Pollution Control Board (for short the "Board") its officer Dr. N.K. Verma filed the complaint under Section 200 of the Cr.P.C. r/w Section 43 of the Air (Prevention and Control of Pollution) Act, 1981 (for short the "Air Act") and 49 of the Water (Prevention and Control of Pollution) Act, 1974 (for short the "Water Act") against the petitioners and one Manish Kumar. The sum and substance of the complaint is that the Board is constituted under Sections 4 of the Air Act and the Water Act. As per the provisions of Sections 44 of the Air Act and 50 of the Water Act, its members, officers and employees are public servants. The Regional Officer of the Board at Bhopal has authorized Dr. N.K. Verma to file this complaint. Petitioner No.1

company has its factory at the address given in the complaint. Petitioner No.2 Ashok Bhawe is the occupier of the factory and one Manish Kumar is the plant manager of it. They are responsible for the conduct and the business of the factory as per the provisions of Sections 47 and 40 of the Water Act and the Air Act respectively.

(2.2) The further case of the respondent is that it has given the consent to petitioner No.1 to run the factory, upon the mandatory compliance of the following conditions in addition to other conditions mentioned in the consent letters.

(i) It shall not discharge any effluent outside the premises of the factory in any circumstance and zero discharge condition shall be maintained.

(ii) It shall install all necessary devices to regulate air pollution in the factory.

(iii) It shall obtain consent for renewal in advance from the respondent before the expiry of existing consent.

(2.3) The still further case of the respondent is that on 03.02.2014 and 19.04.2014, its officers had carried out the spot inspections of the factory. In the course of inspections, it is found that petitioner No.1 does not possess the valid permission to run the factory. It is being run in violation of the aforesaid conditions. It is also found that the Effluent Treatment Plant (ETP) was not in operation, the emergency response center was not established, the house keeping was also not put in place and ETP log book was not maintained. Thus, the factory is being run by them in violation of provisions of Sections 25 and 26 of the Water Act punishable under Sections 44, 45(A) and 47 of the Act and 21 of the Air Act punishable under Sections 37 and 39 of the Act. Hence, they are liable to be punished for which this complaint is filed.

3. The complaint being filed in the court of Chief Judicial Magistrate, Raisen, the learned Chief Judicial Magistrate by order dated 11.08.2015 directed to register the complaint which is registered after the order as R.C.T. No. 00938/15, and issue notices to the accused persons, who are petitioner No.1 and 2 and Manish Kumar, for their presence in the court.

4. Feeling grieved by the aforesaid order, the petitioners filed criminal revision being No.100123/15 before the Sessions Court, Raisen. The learned Sessions Judge dismissed the revision vide the order dated 25.05.2016, affirming the order dated 11.08.2015 passed by the learned Chief Judicial Magistrate.

5. Now, the petitioners have filed this petition for quashment of the complaint and the subsequent proceedings being held thereunder.

6. It is submitted on behalf of the petitioners by Shri Surendra Singh learned senior counsel that petitioner No.1 applied to the respondent for grant of consent in both the Acts submitting online application No. 64201 dated 05.08.2013. Thereupon, the respondent granted online consent No. AWH-42822 dated

24.12.2013, which is valid upto 31.10.2014. Thus, on the inspection-dates i.e. 03.02.2014 and 19.04.2014, the factory is being run on valid consent. Prior to the said consent, petitioner No.1 had obtained permission under the Water Act and the Air Act for the period of one year i.e. 01.01.2013 to 31.12.2013 vide consent letters dated 06.04.2013 (Annexures P/9 and P/10). It is submitted that vide letter dated 29.09.2014 (Annexure P/4) the respondent acknowledged that its officers inspected the factory on 31.07.2014 and found that ETP has been installed of proper capacity and units, that ETP is found in operation and that treated effluent water is being reused for washing and in toilets. It is submitted that the respondent took the Bank guarantee of Rs.5,00,000/- (five lacs) from petitioner No.1 to comply with the condition enumerated by respondent in its letter dated 29.09.2014 (Ex. P/4). It is submitted that petitioner No.1 furnished the Bank guarantee on 16.12.2014, which was provided by Kotak Mahindra Bank Ltd. The respondent released the Bank guarantee vide letter dated 05.01.2016 (Ex. P/18) certifying that petitioner No.1 had carried out in time the action plan in the factory as submitted by it. It is submitted that since petitioner No.1 has complied with all the directions and conditions imposed by the respondent, the prosecution against the petitioners and co-accused Manish Kumar has become infructuous, and it is also against the law.

7. It is also submitted by Shri Surendra Singh learned senior counsel that petitioner No.2 Ashok Bhawe is the Director of the petitioner No.1 and that he is not concerned with day to day functions of the factory for which co-accused Manish Kumar, who is the plant manager, is solely responsible. Hence, his prosecution in the case is against the law. It is submitted that the respondent has authority to cancel the license of petitioner No.1. Therefore, instead of launching the prosecution against the petitioners and co-accused Manish Kumar, the respondent should have cancelled the license. Upon these submissions, it is prayed by him to quash the complaint and the subsequent proceedings in the case.

8. In reply, learned counsel for the respondent Shri Ashish Shrotri has conceded that the respondent had granted consent to petitioner No.1 to run the factory vide consent No. AWH-42822 from 24.12.2013 to 31.10.2014. However, he has contended that on the dates of inspections i.e. 03.02.2014 and 19.04.2014, the officers of the respondent found violations of the provisions of the Acts, which are mentioned in paras-9 and 10 of the complaint, for which the prosecution is launched against the petitioners and co-accused Manish Kumar. The respondent sent in the inspection notes (Annexures Ex.P/4 and Ex.P/8) to the occupier of the factory with covering letters dated 11.04.2014 and 29.09.2014, which were acknowledged on behalf of the petitioner No.1 vide letters dated 29.04.2014 and 14.10.2014 (Annexures P/7 and Ex.P/15). Therefore, the subsequent compliance of the conditions by petitioner No.1 will not wipe out the offences having been committed by the petitioners No. 1, 2 and co-accused Manish Kumar. It is submitted that the status of petitioner No.2 Ashok Bhawe in the case is an occupier as defined in clause (d) of Section 2 of the Water Act and clause

(m) of Section 2 of the Air Act. Therefore, he is also responsible for violations of the provisions of the Acts as mentioned in the complaint. It is submitted that the respondent has no Authority to cancel the license of petitioner No1. It has only power to prosecute the petitioners and co- accused Manish Kumar for the violations of the provisions of the Acts. Upon these submissions, it is prayed by him that this petition deserves to be dismissed being devoid of merits and substance.

9. I have considered the rival submissions made by the learned counsel for the parties across the Bar and perused the entire materials on record.

10. Upon the perusal of the provisions of the Water Act and the Air Act, I have found that no provisions are there whereby the subsequent compliance of the provisions of the Act having already been violated would wipe out the offence(s). Therefore, the prosecution against the petitioners cannot be quashed on the sole ground that later petitioner No.1 has complied with the conditions imposed upon it in the consent letters issued by the respondent.

11. From the material on record, it is manifest that on the basis of inspections dated 03.02.2014 and 19.04.2014, the respondent issued notices to the occupier of the factory. The acts of giving notices prima-facie prove the violations of the provisions of the Acts by the petitioners and co-accused Manish Kumar as stated in the complaint.

12. Upon the meticulous reading of provisions of the Acts and the rules made thereunder, I have found that the respondent has no authority to cancel the license of petitioner No.1. It has only power to prosecute the violator(s).

13. Now, I refer to some illuminating decisions of the Supreme Court wherein the parameters of quashment of the FIR/complaint and subsequent proceedings thereunder are laid down in exercise of the power under Section 482 Cr.P.C.

14. In the case of Zandu Pharmaceutical Works Ltd. Vs. Mohd. Sharful Haque and another [(2005) 1 SCC 122], the Supreme Court has laid down that the High Court may exercise extraordinary power conferred under Section 482 of the Cr.P.C. in the following three circumstances namely:-

- (i) to give effect to an order under the Cr.P.C.,
- (ii) to prevent abuse of the process of the court.
- (iii) to secure the ends of justice.

In view of the above propositions of law, I have examined the entire record and found that none of the above circumstances exists in the instant case, warranting the exercise of power by me under Section 482 of the Cr.P.C. to quash the complaint and the subsequent proceedings.

15. In the case of MCD Vs. Ram Kishan Rohtagi [(1983) 1 SCC 1], the Supreme Court has held thus:-

"The inherent power should not be exercised to stifle a legitimate prosecution. The High Court should refrain from giving a prima facie decision unless there are compelling circumstances to do so. Taking the allegations and the complaint as they were, without adding or subtracting anything, if no offence was made out, only then the High Court would be justified in quashing the proceedings in the exercise of its power under Section 482 Cr.P.C."

Upon the examination of the complainant in the light of the aforesaid ratio, I have found that the complaint prima facie discloses the offences committed by the petitioners, which are punishable under the Acts. Hence, the complaint cannot be quashed.

16. In the case of Taramani Parakh Vs. State of M.P. and ors., (2015 Cr.L.J. (SC) 2031) the Supreme Court has held as under:-

"27.1. Though there are no limits of the power of this Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of the rare cases.

"27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie."

As already stated the learned C.J.M. has taken the cognizance against the petitioners and co-accused Manish Kumar vide the order dated 11.08.2015 and the revision filed by the petitioners against the said cognizance was dismissed by the learned Sessions Judge vide the order dated 25.05.2016 passed in criminal revision No. 100123/2015. Therefore, in the light of the aforesaid parameters the complaint cannot be quashed.

17. The Supreme Court in the cases of Indian Oil Corporation Vs. NEPC India Limited [(2009) 1 SCC

516)], R. Kalyani Vs. Janak C. Mehta (AIR 1992 SCW

237), State of Haryana Vs. Bhajanlal (AIR 1992 SCW

237) and Prashant Bharti Vs. State of NCT of Delhi (AIR 2013 SC 275) has laid down certain principles of law for quashing the FIRs/Complaints/Investigations and subsequent criminal proceedings. After testing the contentions raised on behalf of the petitioners on the touchstone of the said principles of law, I have found that not a single ground is made out by the petitioners to quash the complaint and the subsequent proceedings in the case.

18. Thus, in the totality of circumstances, the legal position and the fact situation of the case, no ground is made out by the petitioners for interference under Section 482 Cr.P.C.

19. In the result, this petition must fail and is hereby dismissed. The interim order dated 17.08.2016 passed by this court in the instant case stands vacated. It is made clear that the status of petitioner No.2 as the occupier of the factory is not decided finally in this order. Therefore, he has a liberty to challenge his said status in the course of trial of the case.

20. Accordingly, this petition is finally disposed of.