
(2019) 03 MP CK 0065

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 27551 Of 2017

M/S Kanti Beverages Pvt. Ltd. And Another

APPELLANT

Vs

Madhya Pradesh Pollution Control Board

RESPONDENT

Date of Decision : 14-03-2019

Acts Referred:

Code of Criminal Procedure, 1973 — Section 200, 245(2), 482
Water (Prevention and Control of Pollution) Act, 1974 — Section 21, 21(5), 25, 26, 44, 47, 47(1), 47(2)

Citation : (2019) 03 MP CK 0065

Hon'ble Judges : Vishnu Pratap Singh Chauhan, J

Bench : Single Bench

Advocate : Sankalp Kochar, V.S. Shroti, Sourabh Kumar Soni

Final Decision : Parlty Allowed

Judgement

The applicants have filed this petition under Section 482 of the Code of Criminal Procedure, 1973 for quashing of criminal complaint filed by the respondent for the offence punishable under Sections 25, 44 and 47 of Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as 'the Act of 1974'). Learned trial Court i.e. learned J.M.F.C., Raisen registered a case being Criminal Case No.1400509/2016 against the applicants.

2. The facts giving rise to this petition, in short, are that applicant No.1 is a company in the name and style of M/s Kanti Beverages Pvt. Ltd. incorporated under the Companies Act, 1956. The factory is situated at Plot No.16-B, New Industrial Area-2, Mandideep, Raisen (M.P.) and applicant No.2 is the Managing Director of that company. Respondent filed a complaint against the applicants for the offence punishable under Sections 25, 44 and 47 of the Act of 1974 alleging therein that on 16/03/2016 authorised officer of the respondent inspected exuding untreated industrial effluent discharging outside the factory. After being taken a sample, the same was sent to the Analyst who, after examination, reported that the water was polluted. In that way, exuding untreated industrial

effluent coming from the factory of the company was found polluted, that was the violation of Section 25 and punishable under Sections 44 and 47 of the Act of 1974. The respondent filed a complaint under Section 200 of Cr.P.C. against the applicants before the JMFC, Raisen. Learned JMFC vide order dated 09/08/2016 registered the complaint and issued notice to the applicants for their appearance before the Court.

3. Applicant No.2 appeared before the trial Court on 24/01/2017 in person and was enlarged on bail, the case was fixed for appearance of applicant No.1 arrayed as a company. Later on, this case was posted for evidence before the charge.

On 29/07/2011 applicants filed an application under Section 245(2) of Cr.P.C. and another application under Section 21 of the Act of 1974. Learned trial Court after hearing both interlocutory applications vide order dated 20/11/2017 dismissed both the applications.

4. Being aggrieved by that dismissal order, the applicants have filed this petition under Section 482 of Cr.P.C. on the ground that the order dated 09/08/2017 passed by the trial Court is cryptic, cavalier and contrary to law. In terms of articles of association, the Board vide resolution dated 04/08/2014 appointed Mr. Pancholi to act as Factory Manager and he was authorized to oversee every aspect of production process and was also authorized to represent the company in any case/prosecution/proceedings concerning factory operation and Mr. Pancholi was authorized to be tried/heard/proceeded. Respondent No.2 is the Managing Director of the company who resides in Indore, had no role in the day-to-day affairs of the company. It is further contended that the company obtained consent order from the Madhya Pradesh Pollution Control Board with reference to discharging exuding untreated industrial effluent into the natural water courses under the provisions of Sections 25 and 26 of the Act of 1974, therefore, the applicants have not violated any provision of the Act of 1974. It is further contended that the respondent has not complied with the procedure laid down in Section 21 of the Act of 1974. The sample was not divided into two parts which is contrary to the provisions of sub-section (5) of Section 21 of the Act of 1974. One part of the sample was not given to the company's representatives. Before taking the sample, no notice has been provided to the company's employees. Respondent No.2 adopted arbitrary and illegal procedure while taking the sample, therefore, prays to quash the complaint filed against the applicants.

5. Learned senior counsel for the respondent submits that applicant No.2, being a Managing Director, is authorized to look after all the affairs of the factory. His duty was to supervise whether exuding untreated industrial effluent was not discharging into the natural water. Before taking sample, notice has already been given to the employee of the company who was present during sampling and not demanded one part of the sample, therefore, on that account, Officers of the respondent had not filled the water in two parts and divided the same into two parts. Had they raised objection of demanding of one part, the sample would

have been taken into two parts. This petition has been filed on the wrong facts, hence, prays for dismissal of the petition.

6. Heard learned counsel for the parties and perused the record.

7. The applicants have filed this petition on the ground that applicant No.2 is not liable to be impleaded as an accused in the complaint because the company has passed a resolution to that effect that Shri Mukesh Pancholi (Factory Manager) has been appointed as the person responsible for day-to-day affairs of the case including Government Department and functionaries that's why he is only the man who is to be impleaded as an accused not applicant No.2 who is residing at Indore and not looking after the day-to-day affairs of the factory. Secondly, on the ground that the officers of the respondent have not adopted legal procedure for taking the sample. Thirdly, the applicants obtained consent order from the M.P. Pollution Control Board with reference of discharging exuding untreated industrial effluent into natural water courses under the provisions of Sections 25 and 26 of the Act of 1974 and the respondent also issued environmental clearance certificate vide letter dated 28/09/2013.

8. Now considered the first point raised by learned counsel for the applicants. Applicant No.2, being Managing Director, was not looking after the day-to-day affairs of the factory and Mr. Mukesh Pancholi has been appointed to look after and responsible for the day-to-day affairs of the factory vide resolution dated 04/08/2014 passed by the Board of Directors of the company in terms of articles of association and he was authorized to oversee every aspect of the production process. Copy of that resolution has been filed along with this petition as Annexure-A/2. This resolution was communicated to the Officers of the respondent-Board vide letter dated 5th August, 2014. When this letter has been communicated to the officers of the respondent why respondent arrayed applicant No.2 as an accused. Learned senior counsel appearing on behalf of the respondent has submitted that Managing Director comes under the definition of "every person" who is looking after the affairs of the company as well as the factory where from it was alleged that exuding untreated industrial effluent coming from out the factory was found polluted.

9. Learned counsel for the applicants has submitted copy of order dated 20/06/2016 passed in M.Cr.C. No.13107/2015 (Manu Anand Managing Director Vs. Madhya Pradesh Pollution Control Board) by the Gwalior Bench of this Court. Perused the order passed by the Gwalior Bench of this Court. Gwalior Bench of this Court while deciding the aforesaid case, has referred the judgments passed by Hon'ble the Apex Court in the cases of Pepsi India Holdings (P) Ltd Vs. Food Inspector and another, (2011) 1 SCC 176 (Para-50), Girdhari Lal Gupta Vs. D.H. Mehta and another, AIR 1971 SC 2162 (para-6) and Puja Ravinder Devidasani Vs. State of Maharashtra and another, AIR 2015 SC 675 (paras-18, 19 and 20). In the said case, the petitioner was Managing Director of the Factory. The Board of Directors of the company passed a resolution and authorized Mr. Jai Kumar Nair as Factory Manager to look after the day-to-day work of the factory and

made responsible for any other civil and criminal proceeding, therefore, the Gwalior Bench of this Court after discussing the matter at length concluded that if there is a resolution passed by the Board of Directors of the company authorizing any person to look after the affairs of the factory, Managing Director of the company, as per complaint made by the complainant, neither falls within the terms "every person" mentioned in Section 47(1) nor can be made an accused under Section 47(2) of the Act of 1974 in absence of allegation of consent, connivance or neglect. The facts of that case are identical to the facts of the present case.

10. In the present case, vide resolution dated 4th August, 2014 it was resolved that pursuant to the provisions of the Companies act, 2013 and in terms of Articles of Association of the Company, the Board of Directors appointed Mr. Mukesh Pancholi to act as Factory Manager and he was authorized by the board to oversee every aspect of the production process and also authorized him to represent the company in any prosecution/proceedings. He may be tried/heard/proceeded with and also authorized to sign and file pleadings, appeals, cross-objections, petition, applications, affidavit or other documents as may be deemed necessary or proper for the proceedings. This resolution which is filed with this petition shows that the Managing Director is not covered under the notification of "every person" as defined under Section 47(1) of the Act of 1974 because he is residing at Indore not looking after day-to-day affairs of the factory as per the resolution passed by the Board of Directors of the Company and this resolution has already been communicated to the respondent vide letter dated 5th August, 2014. There is a receiving with seal put on Annexure-A/2 which shows that respondent was well within the knowledge before filing the complaint that Mr. Mukesh Pancholi is responsible for day-to-day affairs of the factory. This Court is of the view that applicant No.2-Vishal Parasram Puriya has wrongly been arrayed as accused No.2.

11. Now considered the second and third points which are raised by learned counsel for the applicants. These objections are pertaining to process of sampling and mode of sampling. Learned counsel for the applicants has submitted that the officers of the respondent have not taken a proper sample as per law and the applicant No.1-company is having consent order issued by the Pollution Board. This Court is of the view that these objections are pertaining to evidence which are to be produced or lead before the trial Court during trial. Applicant No.1 would be having opportunity to lead the evidence on that point or cross-examine of the witness produced by the respondent who prepared samples as alleged not adopted the process of sampling properly. For that reasons. These issues are in gestation stage, this Court is not inclined to invoke the inherent powers envisaged under Section 482 of Cr.P.C. on these issues.

12. Consequently, the petition is partly allowed. The impugned order passed in Criminal Case No.1400509/2016 so far as it relates to applicant No.2 is concerned, the same is hereby quashed. The criminal proceeding so far it relates

to applicant No.2-Vishal Parasram Puriya is concerned, the same is hereby quashed and the respondent is free to initiate proceedings and arrayed the person who is responsible for day-today affairs appointed by the Board of Directors of the Company i.e. Mukesh Pancholi. Learned counsel for the parties submit that respondent has moved an application for arraying Mukesh Pancholi as an accused in the complaint before the trial Court. If that is the position, the trial Court is free to proceed in accordance with law. There shall be no order as to cost.