

(1990) 01 MP CK 0010

In the Madhya Pradesh High Court

Case No : Miscellaneous Cr. Case No. 780 of 1989

N.A. Palkhivala and Another

APPELLANT

Vs

Madhya Pradesh Pradushan Niwaran Mandal

RESPONDENT

Date of Decision : 16-01-1990

Acts Referred:

Air (Prevention and Control of Pollution) Act, 1981 — Section 21, 37, 39, 4, 40

Companies Act, 1956 — Section 10, 175, 252, 291, 292

Criminal Procedure Code, 1973 (CrPC) — Section 482

Essential Commodities Act, 1955 — Section 10, 3, 7

Water (Prevention and Control of Pollution) Act, 1974 — Section 47, 47(1), 47(2)

Citation : (1990) CriLJ 1856 : (1990) ILR (MP) 466

Hon'ble Judges : Gulab C. Gupta, J

Bench : Single Bench

Advocate : Rajendra Singh, for the Appellant; M.V. Tamaskar, General, for the Respondent

Final Decision : Allowed

Judgement

Gulab C. Gupta, J.—This is an application u/s 482, Cr. P.C. invoking inherent jurisdiction of this Court to quash criminal proceedings against the petitioners in Criminal Case No. 2820/1986 pending in the Court of Chief Judicial Magistrate, Durg.

2. The petitioner No. 1 is the Chairman of M/S. Associated Cement Company Limited, a public limited company engaged in manufacture of cement at various places including at Jamul Cement Works, Durg. The petitioner No. 2 is the Deputy Chairman of the said company. The non-applicant-complainant claims to be the Board constituted u/s 4 of the Air (Prevention and Control of Pollution) Act, 1981 (hereinafter referred to as the Act) and filed a complaint against the petitioners and their company alleging offence punishable u/s 37 and 39 read with Section 40 of the Act. It was alleged that the Industry run by the petitioners is covered by the schedule of the Act and uses lime as a raw material. It was also alleged that the Industry obtained consent of the complainant u/s 21 of the Act

on 27-9-1984 for the period from 1-9-1984 to 31-8-1985 on condition that they will strengthen air pollution control devices and will instal such equipments in all polluting sections. The non-applicant, therefore alleged that progress of R.S.P. installation was to be submitted to the complainant-Board regularly and their installation completed within six months. The non-applicant further alleged that the industry failed to comply with the condition of the consent letter resulting in danger to public and plant life. The non-applicant Board had also rejected the application for renewal of consent for the period after 1-5-1985 but in spite of it, the industry was being run in violation of the provisions of Act. It was, therefore, submitted that industry was contravening the provision u/s 21 and was liable to be punished Under Sections 37 and 39 of the Act. It appears that the learned Magistrate took cognizance of the offence disclosed in the said complaint and issue process to the petitioners for their appearance. The petitioners have entered appearance and sought exemption from personal appearance from the learned Magistrate which has been granted.

3. There appears to be no dispute that the consent alleged to have been granted by the non-applicant-Board on 27-9-1984 was granted to the General Manager of Jamul Cement Works who has also been prosecuted along with the petitioners. The present application is not on his behalf and, therefore, even if this application is allowed, the criminal case would proceed against the said General Manager. The petitioners submit that simply because they are Chairman and Dy. Chairman of the Board of Directors of the Company, it cannot be assumed that they have knowledge of the working of the cement plant at Jamul or the violation of the conditions of the consent letter issued by the non-applicant-Board in favour of the General Manager. They, therefore, submit that they are not directly incharge of the conduct of the business of the company and hence not within the purview of Section 40 of the Act. They, therefore, submit that they are not liable to be prosecuted. The lerned Counsel for the non-applicant, however, submits that duties and responsibilities attached to the offices held by the petitioners are sufficient to make them liable u/s 40(1) of the Act and it will be their burden to prove that the offence was committed without their knowledge.

4. The complaint, a certificate copy of which has been filed on record, does not make any specific allegation against the petitioners. In fact, the main body of the complaint does not even mention that two petitioners are Chairman and Dy. Chairman of the Company though they are mentioned as such in the cause title of the complaint. There is, therefore, not even a whisper about the duties and responsibilities of the petitioners. In such a situation, the duties and responsibility of the petitioners will have to be ascertained from the provisions of the Companies Act under which company is admittedly registered. As regards Companies Act, 1956 the Chairman is mentioned in Section 175 thereof in relation to Annual General Meeting of the Company indicating that the meeting cannot proceed to transact any business without a Chairman. This provision does not confer any power on the Chairman in relation to the management of the Company. As regards management and administration of the company, Section

291 of the Companies Act may be referred to as it provides that the Board of Directors of a company shall be entitled to exercise such powers and to do all such actions or things as the company is authorised to exercise and do. Section 292 provides that certain powers of the company shall be exercised by the Board of Directors only by means of resolution passed at the meetings of the Board. The constitution of the Board is provided in Section 252 of the said Act. The Companies Act also provides for appointment of the Managing Director, Secretary and Treasurer and prescribes their duties and responsibilities. The provisions regarding Board of Directors, however, do not provide for appointment of a Chairman. It may, therefore, be inferred that the provisions of the Companies Act, 1956 would not help the non-applicant-complainant or this Court in ascertaining whether, by virtue of the offices held by the petitioners, they are directly incharge of the conduct of the business of the company. May be the duties and responsibilities of the petitioners are prescribed in the Memorandum and Articles of Association of the Company. It was, however, for the non-applicant-complainant to refer to those provisions and satisfy this Court with reference thereto that they would prima facie show that the petitioners are directly incharge of the business of the company.

5. The complaint as noticed earlier, alleges criminal offence by the company and makes the petitioners responsible for the same in view of the Section 40 of the Act. Section 40 of the Act reads as under:--

"40. Offences by Companies.--

(1) Where an offence under this Act has been committed by a company, every person who at the time of the offence was committed was directly incharge of and responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly;

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due deligence to prevent the commission of such offence."

A bare reading of this provision shows that| every person who at the time the offence was committed, was directly, in charge of and responsible to the company for the conduct of the business of the company, would also be liable to be punished for the said offence. The words "Directly incharge of" are significant in this regard and exclude persons who are indirectly responsible for the business of the company. Under the circumstances, it was the obligation of the non-applicant to allege by making specific averments in the complaint that the petitioners, by virtue of the offices held by them, remain directly incharge of and responsible to the Company for the conduct of the business of the company. In State of Madras Vs. C.V. Parekh and Another, the Supreme Court considered in somewhat similar situation, the liability of the Directors of the Company u/s 10 of

the Essential Commodities Act, which, except for the word "Direct", is *pari materia* with the provision under consideration. In the said case two partners of a firm had sold pig-iron in violation of Iron and Steel Control Order, 1956 and were convicted and sentenced by the Magistrate. The High Court set aside the conviction on the ground that there was no material on the basis of which a finding could be recorded. That the respondents knew about the disposal of pig-iron. According to the High Court, in order to justify conviction evidence was needed to show that they include the sale and were parties to it. The Supreme Court affirmed this view holding that "no evidence on the record has been pointed out from which it can be inferred that the two respondents had any knowledge of the sale which was manoeuvred by Kamdar and Vallabhadas Thacker nor does there evidence show that they took any part in negotiating the sale or sale itself". This was, however, not a case of a company registered under the Companies Act, 1956. The Supreme Court, therefore, considered the same in *Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others*, It was a case where Toffees manufactured by the Company were found to be adulterated and hence the Manager and Directors of the Company were prosecuted under the provisions of Prevention of Food Adulteration Act. A prayer was made to the High Court to quash the complaint which was granted on a finding that it did not disclose any material to connect them with the offence. In appeal to the Supreme Court the order of the High Court was set aside. In so far as the Manager was concerned taking the view that "from the very nature of his duties, it can be safely inferred that he would be undoubtedly vicariously liable for the offence". As regards Directors, the Supreme Court held that "there is not even a whisper nor a shred of evidence nor anything to show, apart from the presumption drawn by the complainant that there is any act committed by the Directors from which reasonable inference can be drawn that they could also be vicariously liable". It would, therefore, appear that the Supreme Court distinguished between persons directly in charge of the business of the company and the Directors who were responsible for the management of the company. The Court required something on record on the basis of which a reasonable inference could be drawn for connecting the Directors with the offence. This decision would, therefore, establish that only those who by virtue of offices held by them can be treated to be in charge of the business of the company, can be prosecuted for the offences committed by the company. This case also establishes that persons not directly incharge of and responsible for the business of the company can be prosecuted for the offence committed by the company only if there be some material on record from which it could be reasonably inferred that they were incharge of and responsible for company's business. Application of this principle to the present factual situation would indicate that the petitioners cannot be prosecuted in the absence of anything on record to connect them directly with the business of the company. The learned Counsel for the non-applicant-complainant. however, relied upon *U. P. Pollution Control Board v. M/s. Modi Distillery*, : AIR 1988 SC 1128 : (1988 Cri LJ 1112), to submit that the Chairman and Dy. Chairman would be liable. This was a case under Water

(Prevention and Control of Pollution) Act, 1974. It appears that offence had been committed by the company who was not a party to the complaint. However, the Chairman, Vice-Chairman, Managing Director and Members of the Board of Directors were prosecuted for the offence committed by the Company. The question for consideration of the Supreme Court was whether these officers could be prosecuted without prosecuting the Company? The Court held that, "although as a pure proposition of law in the abstract the learned single Judge's view that there can be no vicarious liability of the Chairman, Vice-Chairman, Managing Directors and Members of the Board of Directors under Sub-section (1) or (2) of Section 47 of the Act unless there was a prosecution against Messrs Modi Industries Limited, the company owning the industrial unit, can be termed as correct, the objection raised by the petitioners before the High Court ought to have been viewed not in isolation but in the conspectus of facts and events and not in vacuum". The Supreme Court ultimately held that the flaw in the complaint was technical and could be correct by permitting amendment of the plaint. It is, in this context that the Supreme Court observed that Chairman, Vice-Chairman could be prosecuted. It also appears that there were averments in paragraphs 17, 18 and 19 of the complaint that Chairman, Vice-Chairman, Managing Director and Members of the Board of Directors were also liable for the alleged offence committed by the company. It was in this context that the Court observed that, "it cannot be doubted that in such capacity they were in charge of and responsible; for the conduct of the business of the Company and were therefore deemed to be guilty of the said offence and liable to be proceeded against and punished u/s 47 of the Act". (Para 7). This case is, therefore, not the authority for the proposition that even without making any factual allegation against the Chairman and Vice-Chairman in the complaint, they can be held vicariously liable for the act of the Company by virtue of the offices held by them. Then the Supreme Court was considering a provision which did not have the word "Directly", affixed to the word "In charge". It is well settled principle of interpretation of statute that every word of a statute has to be given meaning and no word has to be treated superfluous. Considered in this context the decision in M/s. Modi Distillery case () (SC) (supra) would be of no help to the non-applicant. Reliance was also placed by the non-applicant on a decision of this Court in B. K. Bhargava v. State of M. P., Misc. Cr. Case No. 3172 of 1989 decided on 6-12-1989, wherein this Court had refused to interfere with the prosecution of the Chairman of a Public Limited Company for an offence punishable u/s 3/7 of the Essential Commodities Act. In the aforesaid case the question for consideration was whether the Chairman was liable for the offence which consisted of selling the purchased oil seed in contravention of the provision of the Act. It appeared that the store of oil seed was linked directly with the expansion of plant for which machineries were to be imported. This was taken to be a matter involving policy decision and, therefore, this Court felt that the possibility of Chairman being involved in it could not be ruled out. It therefore, refused to quash his prosecution. If the facts of the present case also revealed involvement of policy decision, this decision might have helped the non-applicant. That facts

of the instant case, however, point to be contrary. The contravention, in the instant case involves non-compliance of condition of permission granted to the General Manager and there is nothing on record to point that the said violation was even remotely connected with any policy matter. Indeed if the inference is to be drawn, it will have to be drawn against the non-applicant. Every company running a factory will be presumed to be doing so because it was willing to abide by all statutory obligations. It will, therefore, be difficult to put the blame on the Chairman and Dy. Chairman for any such non-compliance. This Court is, therefore, unable to give the benefit of S. K. Bhargava's case to the non-applicant. The decisions in K.K. Nandi Vs. Amitabha Banerjee, (Cal) and Dr. Z. Kotasek and Another Vs. The State of Bihar and Another, (Pat), were also cited to justify prosecution of the petitioners. Both these cases deal with the liability of the Manager of the Company and say nothing about the Chairman and Dy. Chairman. The Manager of the company would be liable even on the basis of decision in Delhi Municipality's case (supra). The duties and responsibilities of the Manager have no resemblance to the duties and responsibilities of the Chairman and Dy. Chairman and hence these decisions would also not help the non-applicant. It is, therefore, possible to hold that the Chairman and Dy. Chairman of the Company by virtue of office held by them cannot be prosecuted for offences committed by the company as they are not the persons directly in charge of, and responsible to the company for the conduct of its business as required u/s 40 of the Act. It was therefore, the obligation of the non-applicant-complainant to specifically allege facts from which it could be reasonably inferred that the Chairman and Dy. Chairman of the Company were directly incharge of, and responsible for the conduct of the business of the company.

6. Application of these legal principles to the present factual situation would lead to one and the only result i.e. the prosecution of the petitioners for the alleged violation of the provisions of Act is not in accordance with law. Must this prosecution be, therefore, quashed in exercise of powers u/s 482, Cr.P.C.?

7. The scope and ambit of powers of this Court u/s 482, Cr. P.C. in cases where the prayer is to quash criminal proceedings, have been considered by the Supreme Court in Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others, wherein four specific circumstances were identified where exercise of this power would be justified. The following passage of the judgment being relevant is reproduced hereunder for ready reference :

"Thus it may be safely held that in the following cases an order of the Magistrate issuing process against the accused can be quashed or set aside :

- (1) Where the allegations made in the complaint or the statement of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complainant does not disclose the essential ingredients of an offence which is alleged against the accused;
- (2) Where the allegations made in the complaint are potently absurd and

inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) Where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or inadmissible; and

(4) Where the complaint suffers from fundamental legal defects such as want of sanction, or absence of a complaint by legally competent authority and the like.

The cases mentioned by us are purely illustrative and provide sufficient guidelines to indicate contingencies where the High Court can quash proceedings."

The same view was taken in the later decision of the Supreme Court in *Dr. Sharda Prasad Sinha Vs. State of Bihar, In Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others*, the decision relied upon by the learned Counsel for the petitioners, the Supreme Court reaffirmed the aforesaid principles and held as under:

"It is, therefore, manifestly clear that proceedings against an accused in the initial stages can be quashed only if on the face of the complaint or the papers accompanying the same, no offence is constituted. In other words; the test is that taking the allegations and the complaint as they are, without adding or subtracting anything, if no offence is made out then the High Court will be justified in quashing the proceedings in exercise of its powers u/s 482 of the present Code."

The broad language of Section 482, Cr. P.C. would also justify this view and suggest that this Court has all the powers to prevent misuse of the process of the Court or secure ends of justice. Indeed the decision in *Delhi Municipality case (supra)* would suggest that it would be the obligation to this Court to quash proceedings in a case like the present one.

8. The application succeeds and is allowed. Proceedings in Cr. Case No. 2820/86 pending in the Court, of Chief Judicial Magistrate, Durg are hereby quashed so far as the two petitioners are concerned. Case shall however, proceed and be disposed of against the other accused persons in accordance with law.

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