
(1992) 08 P&H CK 0050

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 10559-M of 1991

New Masco Industry, Amloh

APPELLANT

Vs

Punjab State Pollution Control Board, Patiala

RESPONDENT

Date of Decision : 03-08-1992

Acts Referred:

Citation : (1992) 3 AICLR 361 : (1992) 2 RCR(Criminal) 572

Hon'ble Judges : B.S.Nehra, J

Advocate : Aman Kashyap, Joginder Singh Toor, Advocates for appearing Parties

Judgement

B.S. Nehra, J.

1. Punjab State Pollution Control Board, Patiala, has filed this complaint under Section 37 read with section 40 of the Air (Prevention and Control of Pollution) Act, 1981 against the petitioners for violating the provisions of Section 21 of the Act. The learned trial Magistrate passed the impugned order dated February 1, 1991, summoning the petitioners in this complaint. The petitioners have not filed the petition under Section 482 of the Code of Criminal Procedure for quashing the complaint Annexure P1 and the summoning order dated February 1, 1991, Annexure P2 and the consequent proceedings.

2. It is not necessary to discuss the detailed facts of the case. Suffice it to refer to the summoning order passed by the learned trial Magistrate dated February 1, 1991, which reads as follows :

"This complaint has been presented by Sh. R.P. Gupta, Assistant Environment Engineer. He has also moved an application that his presence be exempted as he cannot attend the Court on every date of hearing due to his official assignments. Therefore, his presence is exempted and Sh. C.S. Sekhon, Additional P.P. should appear in the court on his behalf Complaint be registered. Now accused be summoned vide P.F. and list of witnesses and copies of complaint for 4.8.1991."

It will, thus appear that the learned trial Magistrate, has passed the summoning

order dated February 1, 1991, without applying his mind on the merits of the case and has proceeded to summon the petitioners for August 4, 1991, in a routine manner. In Messrs Vedson (P) Limited and others v. Chief Judicial Magistrate, Chandigarh and others, 1988(1) Recent Criminal Reports 119, Punjab and Haryana High Court had quashed the summoning order issued by the Magistrate inasmuch as the learned Magistrate in that case, had proceeded to summon the accused without examining the complaint and the evidence and without applying his mind.

3. Learned counsel for the petitioners relying on the ratio of this judgment submitted that the summoning order in the instant case, which has been reproduced above, suffers from same infirmities, as were noticed by Punjab and Haryana High Court in Messrs Vedson's case (supra).

4. On careful consideration the contention of learned counsel appears to be well founded as the summoning order dated February 1, 1991 has been passed by the trial Magistrate, in this case, in routine without applying its mind. This does not satisfy the provisions of Section 204 of the Code of Criminal Procedure which provide that if in the opinion of the Magistrate, taking the cognizance of an offence there is sufficient ground for proceedings and the case appears to be a summon case, he shall issue summon for the attendance of the accused or if the case appears to be a warrant case, he may issue warrant etc. The impugned summoning order does not at all show whether the trial Court applied its mind to the fact mentioned in the complaint. Therefore, the order does not fulfil the mandatory provisions of Section 204 of the Code of Criminal Procedure.

5. For the reasons recorded above, the petition is partly allowed to the extent that the impugned summoning order dated February 1, 1991, passed by the learned Magistrate, is quashed and the case the case is remitted back to that court for proceedings, to pass a fresh summoning order in accordance with law. The respondent is directed to appear in the trial Court on September 3, 1992.