

(2012) 01 PAT CK 0048

In the Patna High Court

Case No : Criminal Miscellaneous No. 55763 of 2006

Om Prakash Dhanuka

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 04-01-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 11(1), 202, 204, 277, 278
Environment (Protection) Act, 1986 — Section 15, 19
Penal Code, 1860 (IPC) — Section 277, 278
Water (Prevention and Control of Pollution) Act, 1974 — Section 24, 43, 49

Citation : (2012) 2 PLJR 379

Hon'ble Judges : Rajendra Kumar Mishra, J

Bench : Single Bench

Advocate : Y.V. Giri and V.R. Bharti, for the Appellant; Tejendra Sinha (in person) for the O.P. No. 2, for the Respondent

Final Decision : Allowed

Judgement

R.K. Mishra, J.—The petitioner has approached this Court u/s 482 of the Code of Criminal Procedure to quash the order dated 28.11.2006 passed in Complaint Case No. C1/43072004, T.R. No. 2483 of 2006, by the Court of Sri Ashok Kumar Gupta, Judicial Magistrate, First Class, Sitamarhi, summoning the petitioner u/s 204 of the Code of Criminal Procedure, on inquiry, finding prima facie case under Sections 277 and 278 of the Indian Penal Code. In brief, the case is that opposite party no. 2, Tejendra Sinha, filed the complaint petition, numbered as Complaint Case No. C1/430/2004 against the petitioner, Om Prakash Dhanuka, Managing Director, Riga Distillery, Riga, Sitamarhi, V.N. Pandey, President, Riga Sugar Company Limited, Riga, Sitamarhi and Shankar Lal Waheti, Vice-President, Riga Sugar Company Limited, Riga, Sitamarhi, with the allegation that Riga Distillery was established in the year 2002 and since then Alcohol Mixed Water is being discharged by the Company through Village-Welsand and his Village Dayanagar, due to which his entire crops are getting destroyed, the trees and plants are drying up and the agricultural land has become barren. It is also alleged that due

to that reason the fishery industry has also been closed and even the normal life of the human beings and animals is also being affected due to environmental pollution causing the diseases like Malaria, Cholera and other serious diseases dangerous to life.

After filing of the aforesaid complaint petition, the Court of Sri Ashok Kumar Gupta, Judicial Magistrate, First Class, Sitamarhi, on inquiry, u/s 202 of the Code of Criminal Procedure, summoned only the accused-petitioner finding prima facie case under Sections 277 and 278 of the Code of Criminal Procedure (sic--Indian Penal Code ?) for fouling water of public spring or reservoir and making the atmosphere noxious to health.

2. Learned counsel appearing on behalf of the petitioner made submission that there are special Act for the water pollution and environment pollution, viz., The Water (Prevention and Control of Pollution) Act, 1974 and The Environment (Protection) Act, 1986 and through Notification No. 2993 dated 31.5.1991, issued by the Law (Justice) Department, Government of Bihar, Patna, as contained in Annexure-"7/A" to this application, the Sub-Divisional Judicial Magistrate of the concerned district headquarter has been authorized to take the cognizance of the offence and trial. As such, summoning the accused-petitioner for the offence under Sections 277 and 278 of the Indian Penal Code for fouling water of public spring or reservoir and making the atmosphere noxious to health by the Court of Judicial Magistrate, First Class, Sitamarhi, amounts to an abuse of the process of the Court. It has further been submitted that in the summoning order dated 28.11.2006, the learned Judicial Magistrate has considered the letter dated 19.2.2001 of Sanghmitra Institute of Human Resources, which is prior to alleged time of occurrence, in response to which the President of the Company had replied vide letter dated 9.3.2001 clarifying the entire position. The recommendation, given by the Joint team constituted in the light of the letter no. 16/04/ 1738 dated 17.6.2004 of the Environment and Forest Department, Bihar, Patna, as contained in Annexure-"8" to this application, was followed by the petitioner's Company and in consequence thereof Discharge Consent Order under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981, by the Bihar State Pollution Control Board was granted, which would appear from Annexures-"10", "10/A", "11", "11/A", "12" and "12/A" to this application.

3. On the other hand, the complainant-opposite party no. 2, Tejendra Sinha, who has appeared in person, made submission that the learned Judicial Magistrate on perusal of the complaint petition, his solemn affirmation, the statements of the witnesses, as recorded in course of inquiry, and the other documents available on record has rightly summoned the petitioner for the offences under Sections 277 and 278 of the Indian Penal Code.

4. From the complaint petition, it appears that the allegation of opposite party no. 2 is about destroying his crops and also the trees and plants due to discharge of alcoholic water by the company of the petitioner and there is also allegation of

becoming the agricultural land a barren land and affecting the normal life of the human beings and animals through diseases like malaria, cholera and other serious diseases dangerous to life due to environmental pollution created by the company of the petitioner discharging the alcoholic water. The Judicial Magistrate, First Class, Sitamarhi, on perusal of the complaint petition, solemn affirmation of the complainant-opposite party no. 2, statements of the witnesses, as recorded in course of inquiry, and the report dated 20.6.2004 of the Joint team constituted in the light of the letter no. 16/04/1738 dated 17.6.2004 of the Environment and Forest Department, Bihar, Patna, as contained in Annexure-"8" to this application, arrived at the conclusion that prima facie case under Sections 277 and 278 of the Indian Penal Code is made out against the petitioner and, accordingly, ordered to issue summon against him.

5 There are special enactments for Protection of Environment and Prevention of Water, viz., The Environment (Protection) Act, 1986 and The Water (Prevention and Control of Pollution) Act, 1974.

Section 15 of the Environment (Protection) Act, 1986, provides the penalty for the offence for contravention of the provisions of the Act and the Rules made or orders or directions given thereunder and Section 19 of the said Act bars the court to take cognizance of offences under the Act except on a complaint made by the Central Government or any authority or officer authorized in this behalf by that Government; or any person who has given notice of not less than sixty days, in the manner prescribed, of the alleged offence and of his intention to make a complaint, to the Central Government or the authority or officer as authorized.

Similarly, Section 43 of the Water (Prevention and Control of Pollution) Act, 1974, provides the penalty for contravention of provisions of Section 24 in which prohibition on use of stream or well for disposal of polluting matter etc. is detailed. Section 49 of the said Act, creates bar on the court to take cognizance of any offence under this Act except on a complaint made by a Board or any officer authorized in this behalf by it; or any person who has given notice of not less than sixty days, in the manner prescribed, of the alleged offence and of his intention to make a complaint, to the Board or officer as authorized.

6. Since there are special enactments viz., The Environment (Protection) Act, 1986, for protection of environment, and The Water (Prevention and Control of Pollution) Act, 1974, for prevention of pollution of water and there are penal provisions for any contravention of the provisions of the aforesaid Acts and the Sub-Divisional Judicial Magistrate of the concerned district headquarter has been authorized as Special Judicial Magistrate for taking cognizance of the offence and trial through Notification No. 2993 dated 31.5.1991 issued u/s 11(1) of the Code of Criminal Procedure, 1973, by the Law (Justice) Department, Government of Bihar, Patna, as contained in Annexure-7/A" to this application, therefore, the impugned order dated 28.11.2006, passed by the Court of Sri Ashok Kumar Gupta, Judicial Magistrate, First Class, Sitamarhi, in Complaint Case No.

C1/430/2004, T.R. No. 2483 of 2006, summoning the petitioner for the offence under Sections 277 and 278 of the Indian Penal Code for fouling water of public spring or reservoir and making the atmosphere noxious to health, appears to be an abuse of the process of the Court. Accordingly, the impugned order dated 28.11.2006 passed by the Court of Sri Ashok Kumar Gupta, Judicial Magistrate, First Class, Sitamarhi, in Complaint Case No. C1/430/2004, T.R. No. 2483 of 2006, is hereby quashed and the application is allowed.