
(2000) 09 BOM CK 0079

In the Bombay High Court

Case No : Criminal Application No. 1592 of 1995

Pulgaon Cotton Mills Ltd. and Others

APPELLANT

Vs

Maharashtra Pollution Control Board

RESPONDENT

Date of Decision : 22-09-2000

Acts Referred:

Constitution of India, 1950 — Article 12, 72
Criminal Procedure Code, 1973 (CrPC) — Section 197, 205, 482
Foreign Exchange Regulation Act, 1973 — Section 23C
Prevention of Food Adulteration Act, 1954 — Section 17
Water (Prevention and Control of Pollution) Act, 1974 — Section 25, 25(1), 26, 44, 47(1)

Citation : (2001) ALLMR(Cri) 95 : (2001) CriLJ 610 : (2001) 2 MhLj 546 : (2001) 3 RCR(Criminal) 473

Hon'ble Judges : S.S. Parkar, J

Bench : Single Bench

Advocate : V.M. Deshpande, for the Appellant; I.A. Mohta, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Parkar, J.—By this application the applicants have challenged the order dated 10-5-1994 passed by the Judicial Magistrate, First Class, Pulgaon, framing the charges under Sections 25 and 26 read with Section 44 of the Water (Prevention and Control of Pollution) Act, 1974 (for short "the Act"), confirmed by the 2nd Additional Sessions Judge, Wardha, in Criminal Application No. 75/94 by the Judgment and the Order dated 7-9-1995.

2. Applicant No. 1 is a unit of the Maharashtra State Textile Corporation, Bombay (for short "the Corporation"), which is a Government of Maharashtra undertaking. Applicant No. 2 is the Chairman of the said Corporation. Applicant No. 3 is the General Manager and applicant No. 4 is the Factory Manager of applicant No. 1 Pulgaon Cotton Mills (for short the "Mill").

3. A private complaint was filed by respondent No. 1 Maharashtra Pollution

Control Board (for short "the Board"), in the Court of the JMFC, Pulgaon, being Criminal Case No. 992/90 against the applicants, alleging that the applicants failed to provide adequate arrangements for treatment of industrial effluents to satisfy the standards prescribed by the Board. The staff of the complainant collected samples from time to time to check the quality of effluent discharged by applicant No. 1. From the report of the analysis it was noticed that the applicants failed to achieve the standard prescribed by the Board and, therefore, show cause notice was issued to the applicant which was followed by the complaint filed in the Court. The applicants had filed the application for quashing the proceedings on the ground that the complaint was not maintainable for want of requisite sanction u/s 197, Cr.P. C. The said application was allowed by the Magistrate but the said order was reversed in Criminal Revision No. 45/89 filed before the Sessions Court by the complainant-Board. Thereafter, the evidence on behalf of the complainant was led in the Court of the JMFC. The learned JMFC, after considering the complaint and the evidence of the complainant framed the charges under Sections 25 and 26 read with Section 44 of the Act. The order framing the charge was challenged by the applicants unsuccessfully before the Sessions Court in Criminal Revision No. 75/94. The said orders are challenged in the present application filed u/s 482, Cr.P.C.

4. Shri Deshpande, learned Counsel appearing on behalf of the applicants raised three contentions before me. Firstly, he contended that the applicants Nos. 2, 3 and 4 are the public servants and, therefore, the provisions of sanction u/s 197, Cr.P.C. are attracted and in the absence of requisite sanction the prosecution against them is not maintainable. In order to show that the applicants are public servants he relied on two factors : one is that the applicant Mill's parent Company, that is, the Corporation is wholly run by the Government of Maharashtra and secondly, the Memorandum of Articles of Association of Pulgaon Cotton Mills Ltd.; and the Maharashtra Textile Corporation Ltd. Clause 71(1) of the Memorandum of Articles of Association of applicant No. 1 states that the Governor shall have right to appoint Directors on the Board of Directors of the said Company. Clause (iv) of the said Article states that the Governor shall have power to remove any Director including the Chairman or Vice Chairman of the Company at any time in his absolute discretion. Similarly, Sub-clauses (iv) and (vi) of Article 72 of the Articles of Association of the Corporation is relied on whereby it is the Governor who has power to appoint and remove the Directors including the Chairman and the Vice-Chairman. Although, this point was raised in the earlier application made by the applicants before the trial Court, after issue of process and though allowed by the learned Magistrate, was turned down by the Sessions Court in the criminal revision. Though the said order was not challenged before this Court earlier the said point was allowed to be argued by me in the second round of litigation in view of the fact that it went to the root of the jurisdiction of the trial Court.

5. This contention was, however, fairly given up by Shri Deshpande, in view of the latest decision of the Supreme Court in Mohd. Hadi Raja Vs. State of Bihar

and Another, , in which the Apex Court has held that the sanction u/s 197 of the Cr.P.C. is not required for prosecution of the officers of the Government Companies or public undertakings, even if such Companies or the undertakings fall within the definition of the State under Article 12 of the Constitution.

6. The next contention raised on behalf of the applicants is that the complaint does not show that the applicants Nos. 2 to 4 are incharge of the affairs of the Company and were responsible to the Company for the conduct of the business of the Company. In this respect he refers to Section 47 of the Act, which is as follows :

(1) Where an offence under this Act has been committed by a company every person who at the time the offence was committed was incharge of, and was responsible to the Company for the conduct of 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 diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in Sub-section (1) where an offence under this Act has been committed by a Company and it is proved that the offence has been committed with the consent or connivance or is attributable to any neglect on the part of any Director, Manager, Secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation- For the purpose of this section-

(a) "company" means any body corporate, and includes a firm or other association of individuals, and

(b) "director" in relation to a firm means a partner in the firm.

7. According to the learned Counsel it was obligatory on the part of the complainant to point out that it was the primary responsibility of applicant Nos. 2 to 4 to comply with the provisions of law and in the absence of any material on record, the process could not have been issued. Shri Deshpande relied on the decision of the Supreme Court in the case of Girdhari Lal Gupta Vs. D.H. Mehta and Another, , in which it was held that the expression "person in charge" occurring in the section means a person who is in overall control of the day to day business. That was the case where the Supreme Court was concerned with the partner of the firm who had himself stated that he alone looks after the affairs of the firm and, therefore, was held liable for contravention of Section 23-C of the FERA. It was held that such a partner did not cease to be "incharge" merely because he went abroad, unless there was evidence that he handed over the charge to another person. In that case the appellant though was not

physically present in Calcutta at the time of the commission of the offence as he had gone abroad, it was held by the Apex Court that unless there is evidence led on behalf of the firm, that he gave up charge in favour of another person, he did not cease to be in charge of the business of the firm. Secondly, Shri Deshpande relied on the decision of the Calcutta High Court in the case of *Naktala v. State* 1978 Lab IC 899. In that case the prosecution was launched against the Director of the Company who had no role in the management. In the complaint it was only stated that the accused were Directors of the Company and, therefore, responsible for the conduct of the business and management of the Company. Without there being any further material before the Court, it was held that in the absence of averments that the Directors took part in the running of the business of the Company, the cognizance taken by the Magistrate was bad in law. It cannot be disputed that the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, are in pari materia with Section 47 of the present enactment. In my view this decision does not assist the applicants either, inasmuch as, the Calcutta High Court was considering the case of the Directors who normally do not conduct the day to day business of the Company. Ordinarily Company is run by the Managing Director, Chairman and the other Executive Officers of the Company. The complaint itself implicated the Directors by simply stating that the accused being the Directors as such were responsible for the conduct of the business, without mentioning whether they had taken part in actual running of the business of the Company.

8. So far as the present complaint is concerned paragraph 2 of the complaint mentions that accused No. 2 is the Chairman of the Maharashtra State Textile Corporation, Bombay, accused No. 3 is the General Manager while accused No. 4 is the Factory Manager of accused No. 1. It is further stated as follows :-

They are the persons incharge of and responsible for accused No. 1 to the conduct of its day to day business and in that capacity are liable to fulfil and carry out the legal obligation and conditions imposed by the complainant-Board in the consent order in regard to the treatment and disposal of the effluent emanating from their factory and in that capacity they are liable for the offence committed by the accused No. 1.

9. In paragraph No. 10 of the complaint it is stated that accused No. 3 by his letter of 16th September, 1985 admitted that due to difficult financial condition of the company during the last 3 years they could not take up the work of execution of the effluent treatment plant and that the papers regarding the execution of the effluent treatment plants were already sent to the Head Office of accused No. 1 at Mumbai, that is the Maharashtra State Textile Corporation Ltd., Mumbai, of which applicant No. 2 was the Chairman. It is further averred in the said paragraph that accused No. 3, that is, the General Manager of applicant No. 1 vide his letter dated 10-10-1985 informed the complainant-Board that the Head Office of accused No. 1 had already submitted a time bound programme to the complainant-Board. It is further averred that the said letter indicated the date on

which the same will come into force.

10. From the above it is clear that the complaint does make averments that applicants Nos. 2 to 4 were incharge of the affairs of the Company and were responsible to the Company for the conduct of the business of the Company and by virtue of Section 47 of the Act these applicants were impleaded as accused in the complaint. So far as applicants Nos. 3 and 4 are concerned namely, the General Manager and Factory Manager of applicant No. 1 Company, there could be little doubt that they were the persons incharge of and responsible to the Company for the conduct of its business. So far as applicant No. 2 the Chairman of the Company is concerned, it is not disputed that applicant No. 1 Company is headed by the Chairman of the parent Corporation and as such responsible for the conduct of the business of the Mill. There is reference in the complaint to the letter addressed by applicant No. 3 to the complainant. It does show that the work of the applicant No. 1 Company is controlled by the MSTC headed by its Chairman applicant No. 2.

11. Shri Mohta learned Counsel appearing on behalf of the respondent has relied on certain decisions to which reference may be made here. He relied on the decision of the Full Bench of the Patna High Court in the case of Mahmud Ali Vs. State of Bihar and Another, . In that case offences were committed by the Company and the complaints were filed against the Chairman and Managing Director and General Manager of the Company. It was held in the said decision that the allegations that the offence was committed with the consent or connivance or was attributable to the neglect: on the part of the Chairman. Director or General Manager of the Company need not be incorporated in the complaint itself when the offence or neglect of the Principal Officer of the Company was proved. The categorical statement made by the prosecution witness that the person was the Managing Director of the Company was considered sufficient to justify or warrant cognizance of the complaint.

12. Secondly, Shri L.A. Mohta relied on the decision of the Supreme Court reported in the case of U.P. Pollution Control Board Vs. M/s. Mohan Meaking Ltd. and Others, . In that case the process was issued under Sections 24, 25, 26, 43, 44 and 47 of the Water Pollution Act which is the subject-matter in this petition. It was held that when the offence under the Act has been committed by the Company every person who was incharge of and responsible for the conduct of the business of the Company is also guilty of the offence and, therefore any Director, Manager or other officer of the Company who has consented to or connived in the commission of the said offence is liable for the punishment of the offence. In that case the Supreme Court was interpreting the provision of Section 47 of the said enactment. This decision approves the view taken by the Full Bench of the Patna High Court which was referred to earlier.

13. In my view the complaint does make out prima facie case to proceed against the applicants for the offences under Sections 25 and 26 of the Act.

14. Third contention raised by Shri Deshpande is that the accused were not named in the complaint but were impleaded by their designations only. In my view, it may be irregularity which can be cured by giving the names of the persons who at the relevant time held that position. Shri Mohta rightly placed reliance in this connection on the decision of the Supreme Court in the case of *U.P. Pollution Control Board v. M/s. Modi Distillery*, . In the said case *M/s. Modi Industries Ltd.*, which is a large business organisation having diversified business activities had prior to the commencement of the Act established an industrial unit called *M/s. Modi Distillery* at Modi Nagar, Gaziabad engaged in the business of manufacture and sale of industrial alcohol. During the process of manufacture of such industrial alcohol, the said industrial unit was discharging highly noxious and polluted trade effluents into the Kali river through the Kadrabad drain which is a stream and thereby causing continuous pollution of the said stream without the consent of the Board and therefore the complaint was lodged. It was observed by the Apex Court that on plain reading of Sub-section (1) of Section 47 of the Act, where the offence has been committed by the Company, every person who at the time of commission of the offence was in charge and responsible to the act or the conduct of the business of the Company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Under the proviso to Sub-section (1) of Section 47 of the Act, it was open for such person to prove that the offence was committed without his knowledge that he exercised due diligence to prevent commission of such offence. While interpreting the said provision the Supreme Court has held that the proviso to Sub-section (1) of Section 47 of the Act shifts burden on the delinquent officer or servant of the Company to prove that he was not incharge of and not responsible to the Company for the conduct of the business of the Company. It was further held that the burden was on such officer to prove that he did not know of such offence and did not connive in it or that he had exercised due diligence to prevent the commission of such offence. The reference was also made by the Supreme Court to Sub-section (2) of the said section and it was held in paragraph 6 of the Judgment as follows :

On a combined reading of the provisions contained in Sub-sections (1) and (2) we have no doubt, whatever that the Chairman, Vice-Chairman, Managing Director and members of the Board of Directors of *M/s. Modi Industries Ltd.*; the Company owning the industrial unit *M/s. Modi Distillery* could be prosecuted as having been incharge of and responsible to the Company, for the business of industrial unit *M/s. Modi Distillery* owned by it and could be deemed to be guilty of the offence with which they are charged.

Shri L.A. Mohta, therefore, rightly placed reliance on the decision of the Apex Court and stressed that prima facie the applicants Nos. 2 to 4 are liable to be prosecuted for the offences punishable under Sections 25, 26, 44 read with Section 47 of the aforesaid Act.

15. Shri Deshpande also placed reliance on the decision of the Supreme Court in

the case of Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, , for the purpose of quashing this prosecution. I do not think that decision of the Apex Court in the above case is of any assistance to the applicant. That was a case where it was found by the Supreme Court that there was no material to show that the appellants were either manufacturers or holding licence for manufacture of offending beverages. The charge was for adulteration of food u/s 17 of the Prevention of Food Adulteration Act and that the complainant sold the bottles of beverages under the brand name Lehar Pepsi which was adulterated. It was found that the complaint and the preliminary evidence did not make out any case against the accused and, therefore, it was held that the complaint was liable to be quashed.

16. Reliance by Shri Deshpande on the observations of the Sessions Court in paragraph 7 of the impugned order wherein it is observed, "It further appears that petitioners Nos. 3 and 4 are actually connected with the working of the petitioner No. 1 and, therefore, it cannot be said that there is no prima facie case made out by the complainant against them", will be of no assistance to him to contend that applicant No. 2 the Chairman has been absolved by the learned Sessions Judge. As stated earlier the very designations of applicants Nos. 3 and 4 show that they were concerned with the management of the applicant-Company being the General Manager and the Factory Manager. The same point has been emphasized by the Sessions Court when it made the aforesaid observations in paragraph 7 of the impugned order. Nowhere in the impugned order the Sessions Court has given a clean chit to applicant No. 2 the Chairman of the parent Company. Applicant No. 1 is the industrial unit of the Corporation of which applicant No. 2 was the Chairman. In the absence of any person heading applicant No. 1 Company, surely the Chairman of the parent Corporation can be held to be prima facie liable for the said offences, unless by virtue of the proviso to Sub-section (1) of Section 47, the Chairman is able to satisfy the trial Court that he was not responsible for the management of the affairs of applicant No. 1 Company. This can be done only at the stage of trial. In the aforesaid case of Modi Distillery the name of the Company itself was wrongly mentioned. In that case the persons impleaded as the accused were the Chairman, Vice-Chairman and members of the Board of Directors of M/s. Modi Industries Ltd., that is the parent Company. In paragraph 7 the Supreme Court has observed as follows :

It cannot be doubted that in such capacity they were incharge 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. It would be travesty of justice if the big business house of M/s. Modi Industries Ltd. is allowed to defeat the prosecution launched and avoid facing the trial on a technical flaw which is not incurable for their alleged deliberate and wilful breach of the provisions contained in Sections 25(1) and 26 made punishable u/s 44 read with Section 47 of the Act.

17. In the case cited above the name of the Company itself was given wrongly.

Yet, the Supreme Court has held that technical flaw in describing the name of the Company can be rectified by amending the complaint itself.

18. Shri Deshpande also contended that the complaint was lodged in the year 1986 and for 14 years the matter has not proceeded further. But, for this the applicants themselves must be held responsible. This is the second round of litigation which is being fought on behalf of the applicants, firstly challenging the issue of process where the Sessions Court had rejected the application for quashing the process on the ground of want of sanction u/s 197, Cr.P.C. Thereafter, the trial Court framed the charges. The learned JMFC vide its order dated 10-5-1994 held that there is prima facie case made out against the accused persons for framing charges under Sections 25 and 26 read with Section 47 of the Act. But, that order came to be challenged by filing Criminal Revision No. 75/94 in the Sessions Court again on the ground of want of sanction. When the Sessions Court negated the contention of the applicants, the said orders are challenged in this petition. Initially, the complaint was numbered as 1/ 86 and thereafter renumbered as 992/90.

19. The answer to the contention of delay can also be found in the aforesaid judgment of the Apex Court in the case of U.P. Pollution Control Board (cited supra). That was a case where 17 years had passed after the complaint was filed and yet the trial had not commenced when the Supreme Court observed that that cannot be a factor for quashing the prosecution. Similar question raised before the Apex Court was answered in the case of U.P. Pollution Control Board Vs. M/s. Mohan Meaking Ltd. and Others, . In that case also contention was raised that there was lapse of long time of 17 years since the institution of the complaint. However, the Court had held in paragraph 13 of the Judgment that the lapse of such long period cannot be a reason to absolve the respondents from the trial and the Board was not the least to be blamed for it. The Supreme Court turned down this plea without probing into the cause which contributed for such long delay.

20. In this case delay has occurred on account of the applications made by the applicants for quashing the proceedings on the same ground twice.

21. Shri Deshpande also contended that the offences are technical and therefore, they should be quashed by this Court. He calls them technical because, subsequently, the applicants had taken steps to comply with the direction of the Board. But, the fact remains that the offence had been prima facie already committed during the relevant period. These contentions are also discussed in paragraph 5 of the impugned order of the Sessions Court where it was observed that subsequently the treatment plant was constructed by the applicants, and for which regular sanction was given to the accused persons. However, this contention was turned down by the Sessions Court observing that breach of condition of the sanction was committed by the applicants and, therefore, there was prima facie case to proceed against the applicants. This can be a factor which could be considered while imposing the sentence or punishment and not

for the purpose of quashing the trial.

22. Shri Deshpande lastly submitted that the office of the Chairman is situate at Bombay and he will have to attend the trial by going to Pulgaon. But, that cannot be an excuse for quashing the complaint as against him. The learned Sessions Judge has already dealt with this aspect in last paragraph of his order dated 7-9-1995 and observed that the Chairman could apply to the learned Magistrate for exemption u/s 205, Cr.P.C. In my opinion it would not be desirable to make the Chairman attend the Court on all the dates of hearing except when effective trial takes place. As observed by the Supreme Court in U.P. Pollution Control Board Vs. M/s. Mohan Meaking Ltd. and Others, , if the accused applies for dispensing his presence in the Court after making first appearance, the trial Court can exempt him from appearance in the Court by imposing conditions which are deemed fit. In this case the trial Court may consider to exempt the accused, after making first appearance, on certain conditions, inter alia, that the Advocate of the accused remains present. In any case the accused shall have to remain present when the trial commences and on the other dates when the trial Court requires his presence.

23. In the result this petition is dismissed. Since there is already delay, the trial is expedited and the trial Court is directed to take up the matter for trial as soon as possible after receipt of the writ of this Court. Writ is expedited. The interim order of the stay granted by this Court is vacated.