

(2015) 01 P&H CK 0102
In the Punjab And Haryana At Chandigarh
Case No : CRA-D-554-DBA of 1995

Punjab State Board for the Prevention and Control of Water Pollution APPELLANT

Vs

Narindera Paper Mills Pvt. Ltd. and Others RESPONDENT

Date of Decision : 14-01-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 378
Water (Prevention and Control of Pollution) Act, 1974 — Section 25, 25(7), 44, 47

Citation : (2015) 01 P&H CK 0102

Hon'ble Judges : Jitendra Chauhan, J

Bench : Single Bench

Advocate : Ashish Verma, for the Appellant; Atul Goyal, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Jitendra Chauhan, J.—The present appeal filed by the Punjab State Board for the Prevention and Control of Water Pollution (hereinafter referred as the appellant Board) is directed against the judgment of acquittal dated 10.11.1994, recorded in favour of the accused-respondents by the learned Judicial Magistrate Ist Class, Amritsar (for short trial Court) in complaint under Section 44 read with Section 47 of the Water (Prevention and Control of Pollution) Act, 1974.

2. The brief facts of the case noticed in Para 2 of the impugned judgment are being reproduced as under:-

On 16.03.1989, Paramjit Singh Sidhu, Assistant Environmental Engineer of the complainant Board visited the premises of M/s. Charan Kamal Board and Paper Mills (Private) Limited, Tarn Taran Road, Bangrana Sahib, Amritsar and found it discharging 1040 kilo litres per day of trade effluent in Chable drain through Racha drain causing stagnation at various points along the Tarn Taran Road side and back side of the premises of the said industry. It was found that Narinder Singh was the Managing Director of the said industry and was incharge and

responsible for the conduct of the business of the said company. The accused had not obtained prior consent of the complainant Board to discharge the trade effluent into Chabal drain. As such, the accused contravened the provisions of Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 (hereinafter to be called Act). Ultimately, the present complaint under Section 44 read with Section 47 of the Act was filed.

3. After recording the preliminary evidence, the accused were summoned under Section 44 read with Section 47 of the Water(Prevention and Control of Pollution) Act, 1974, by the learned Judicial Magistrate Ist Class, Amritsar.

4. Upon the accused putting in appearance in the Court, the complainant examined Pardeep Kumar as PW-1 and Paramjit Singh Sidhu, Assistant Environmental Engineer as PW-2, who stated that the accused-Company, namely, M/s. Charan Kamal Card Board and Paper Mills (P) Ltd. was found discharging trade effluent to the tune of 1040 kilo litres per day into the Jhabal drain through kacha drain causing stagnation on various points along with Tarn Taran road and back side of the premises and the complainant closed the evidence for the purpose of charge.

5. After hearing the Law Officer on behalf of the complainant- Board and the learned counsel for the accused, a prima facie case was found to be made out against the accused and they were accordingly charged for an offence punishable under Section 44 read with Section 47 of the Water (Prevention and Control of Pollution) Act, 1974 on 29.01.1991, by the learned Judicial Magistrate Ist Class, Amritsar.

6. After framing the charge, the accused opted for further cross- examination of both the PWs. Both the PWs were produced by the complainant for further cross-examination and then the complainant closed the evidence.

7. After closure of the evidence of the complainant, statement of the accused under Section 313 Cr.P.C. was recorded to which they pleaded their false implication and opted to lead defence evidence. Accused-Narinder Singh, moved an application to examine himself with the permission of the Court as defence witness. He was allowed to do so and was examined as DW-1. Thereafter, he closed his defence evidence.

8. After appreciating the evidence on record, the learned trial Court acquitted the accused as the complainant has failed to establish the charge against the accused beyond any shadow of reasonable doubt.

9. Against the acquittal, the Board has filed this appeal which was admitted on 13.11.1995.

10. Learned counsel for the appellant inter alia contended that the finding of the trial Court to the extent that sanction to prosecute the respondent has not been proved; and that it is a case of deemed sanction is erroneous. He further contended that proper sanction was accorded by the Board vide resolution dated

02.06.1989 and has been duly proved.

11. On the other hand, the learned counsel for the respondent contended that there is no infirmity, illegality or perversity in the judgment of acquittal passed by the trial Court.

12. I have heard the learned counsel for the parties and have gone through the record of the case.

13. In " Dr. Sunil Kumar Sambhudayal Gupta and Others Vs. State of Maharashtra, (2011) CriLJ 705 : (2010) 12 JT 287 : (2011) 1 RCR(Criminal) 57 : (2010) 11 SCALE 696 : (2010) 13 SCC 657 : (2011) 2 SCC(Cri) 375 , it has been held as under:-

"Criminal Procedure Code, Section 378- Appeal against acquittal- Guide line for appellate court as to how to deal with appeal:-

1. Appellate Court will interfere with judgment of acquittal if judgment was found to be perverse- The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material- A finding may also be said to be perverse if it is "against the weight of evidence", or if the finding so outrageously defies logic as to suffer from the vice of irrationality. 2009 (4) RCR (Cri.) 638 : 2009 (6) RAJ 349, 2010 (1) RCR (Cri.) 851 relied.

2. Even though the appellate court is entitled to consider, whether in arriving at a finding of fact, the trial Court had placed the burden of proof incorrectly or failed to take into consideration any admissible evidence and/or had taken into consideration evidence brought on record contrary to law; the appellate court should not ordinarily set aside judgment of acquittal in a case where two views are possible, though the view of the appellate court may be the more probable one.

3. Trial Court which has the benefit of watching the demeanor of the witnesses is the best judge of the credibility of the witnesses.

4. Every accused is presumed to be innocent unless his guilt is proved - The presumption of innocence is a human right.

5. The appellate court should bear in mind the presumption of innocence of the accused, and further, that the trial court's acquittal bolsters the presumption of his innocence."

14. The inspection of the premises in question was carried out on 16.03.1989, whereas the establishment came into existence in the year 1988. It applied for consent/approval of the Board in the same year on 12.07.1989 vide Ex.D-2. The accused removed all the objections raised by the officers of the Board. The accused-respondent has submitted feasibility report for installation of the treatment plant and the Board allowed time to the respondent to install

treatment plant by October, 1990 vide letter dated 27.07.1990. Later on, this Court extended the time upto 07.10.1992. Feasibility report was approved by the Board also. It has come in evidence that the respondent has installed effluent treatment plant but no consent was granted by the Board.

15. Section 25(7) of the Water (Prevention and Control of Pollution) Act, 1974, provides as under:-

"(7) The consent referred to in sub-section (1) shall, unless given or refused earlier, be deemed to have been given unconditionally on the expiry of a period of four months of the making of an application in this behalf complete in all respects to the State Board."

16. Admittedly, in this case, the respondent submitted application Ex.D-2, for consent of the Board on 12.07.1988. The Board took no steps in the matter to either grant or refuse the required consent. After the dead line of four months came to an end, as prescribed under Section 25(7) of the Act, it would automatically amount to "deemed permission" as prescribed under sub-section (7) of the Act. After re- appreciating all the oral and documentary evidence, this Court concur with the findings of the trial Magistrate that it is a case where it is presumed that the consent of the Board be deemed to be accorded. The view taken by the trial Court is correct and no other view is possible in this case.

17. Keeping in view the above discussion, there is no merit in this appeal, which is dismissed.