
(1997) 08 P&H CK 0003
In the Punjab And Haryana At Chandigarh
Case No : Criminal Revision No. 767 of 1987

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

Vs

Vinod Paper Mills Ltd. and Others RESPONDENT

Date of Decision : 20-08-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 244, 245(4)
Water (Prevention and Control of Pollution) Act, 1974 — Section 2, 21, 22, 25, 25(4)

Citation : (1998) CriLJ 2235 : (1997) 4 RCR(Criminal) 363

Hon'ble Judges : S.C. Malte, J

Bench : Single Bench

Advocate : S.C. Sibal and Sandeep Kumar, for the Appellant;

Final Decision : Allowed

Judgement

S.C. Malte, J.—This revision is filed by the original complainant-Punjab State Board for the Prevention and Control of Water Pollution. By this revision exception is taken to the order dated 28-4-1987 by which the Judicial Magistrate, 1st Class, Malerkotla, discharged the accused-respondents.

2. Briefly stated, the case against the accused-respondent is as follows :-

Accused-respondent 1 is the Paper Mills instituted under the Companies Act. Accused-respondents 2 and 3 are the Directors of the said Paper Mills at the relevant time. As per the complaint, respondent 1 was allowed to construct and function the Paper Mills on certain conditions imposed u/s 25 of the Water Prevention and Control of Pollution) Act, 1974 hereinafter briefly referred to as the WPCP Act). These conditions were :- (i) The Paper Mills will submit a copy of the design and drawing of the proposed treatment plant for the treatment of their effluent, so as to conform to the standard as mentioned in the conditions; (ii) The industry will construct and commission the treatment plant to treat their effluents simultaneously along with the main project and they will submit a monthly progress report to the office of the Board; (iii) The industry will get their

untreated and treated effluents tested from the laboratory of this Board within one month from the date of the starting of discharge of effluents; (iv) The industry will treat their effluents to as to conform the standard as mentioned in that condition. The complaint indicates that the respondents did not comply with any one of these conditions despite repeated letters and reminders sent to it. Ultimately on 21-7-1983 Mr. G. S. Gill, Environmental Engineer of the Board visited the said Paper Mill and made a report that without constructing any treatment plant for treating the effluent, the industry is still discharging the trade effluent into the Lassara drain. It was followed by visit on 26-7-1983 by one Joginder Singh, A.E.E., WPC Board. He took the sample of the trade effluent discharged by the accused-Mill, and after following the procedure sent it to the Analyst as per Section 21 of the said Act. The report indicated that the trade effluent thus discharged by the Mill has far exceeded the tolerance limits permissible. Therefore, complaint was filed by the Board through its Environmental Engineer, Patiala, as an authorised officer to file the complaint. It was alleged that the accused by contravening the provisions of Sections 25 and 26 have committed an offence under Sections 43 and 44 read with Section 47 of the WPCP Act, 1974.

3. Since the offence is punishable to the extent of six years" imprisonment and fine, the procedure meant for warrant case on private complaint as per Chapter XIX, Part B of the Code of Criminal Procedure was adopted. Evidence before charge was led as per Section 244 of the Code of Criminal Procedure. The trial Court was of the view that the complainant failed to spell out the case which would result into conviction of the accused if the evidence led remain unrebutted, the Magistrate discharged the accused. Against that order this revision is filed.

4. In this case I find that the learned Magistrate failed to take into consideration certain documents and legal position. The Magistrate observed that the copy of the report of the Public Analyst was required to be sent to the accused as per Section 22 of the CWPC Act but there was no material to show that such mandatory provision had been complied with. This observation by the (trial Court was totally erroneous. In the evidence of PW-3 Sant Kumar Sharma, Assistant Chemist, it has come that the copy of the report of the Analyst had been sent to the accused No. 1 (Paper Mill) as per Exhibit PW-3/B vide No. 4040 dated 1-8-1983. The trial Court committed error in observing that the prosecution has not led evidence to establish the despatch of such letter by producing evidence in the nature of acknowledgment receipt or some despatch of such letter. The Magistrate, however, then did not realise that since the matter was at the stage of framing the charge, a prima facie case at that stage had to be spelt out. It may be noted that the prosecution was yet to lead evidence after framing the charge. The bare perusal of Exhibit PW-3/B indicates that at the left hand corner an outward number of the letter sent to accused 1 (Paper Mill) is noted, and below that the date of despatch is also mentioned. That piece of evidence was sufficient for framing charge against the accused. As regards the proof of despatch of that letter, the prosecution could be in a position to lead further

evidence as per Sub-section (4) of Section 245, which provides that after the framing of charge, further evidence shall be recorded and the evidence of the remaining witnesses with the prosecution shall be taken on record.

5. The Magistrate further observed that the complainant in this case had not been examined. According to him, it was necessary for him to prove the complaint by examining the complainant. It appears that the Magistrate is under total misconception in this respect. As such the complaint is filed by the Punjab State Board for the Prevention and Control of Water Pollution. The said Board has filed the complaint through its Environmental Engineer, Patiala. The complaint in such cases are filed as per the provisions of Section 49 of the WPCP Act. It provides that cognizance of the offences can be taken by the Court only on the complaint made to it, or, with the previous sanction in writing of the State Board. The Board in this case is being represented through the Environmental Engineer as per the resolution passed by the Board from time to time. As per those resolutions, of which copies are on record, an Environmental Engineer is the person authorised to file the complaint on behalf of the Board.

In such cases the filing of the complaint by authorised person/officer is in compliance with Section 49 of the said Act. A formal proof of complaint in such cases is not necessary. What is required to prove is to establish the facts which would spell out the offence charged. That exercise is to be done by leading the evidence of such persons who would be in a position to testify regarding the facts. In this case the evidence was led to show that the Board has passed the necessary resolutions to authorise a particular officer to file a complaint on its behalf. The evidence of PW-5 Amarjit Singh in that respect has been totally ignored by the trial Court. The evidence of PW-1 Mr. G. S. Gill is led. It may be recalled that he is the person who had visited the said Paper Mill on 21-7-1983. He testifies in that respect. That factual aspect has been spelt out by PW-2 Joginder Singh who collected the sample on 26-7-1983. The report of the Public Analyst has also been placed on record. Therefore, the witnesses who from their personal knowledge were able to testify regarding the factual position to spell out the offence, have already been examined. The examination of the complainant in such cases is only a matter of formality, and in a given case even the formal examination of the complainant may be unnecessary. The complaint filed by the officer in this case is more in nature of compliance with the legal requirement as regards the person who would be in a position to file the complaint in the Court so as to enable the Court to take cognizance. Such provision is made with the primary object that the initiation of complaint in such cases should be done after due consideration by a responsible officer so that there should not be any vexatious litigation.

6. The trial Court also committed an error in observing that the discharge of the trade effluent water in drain would not be covered by the definition of term "stream" as defined under the Act. On that premise, he further observed that the discharge in a drain which is known as Lassara drain would not be covered by the

Act. The term "stream" has been defined in clause (j) of Section 2 of the WPCP Act. It also covers the watercourse whether flowing, or, for the time being dry, and inland water natural or artificial. Moreover, Section 25(4) which controls in respect of the discharge of the effluent by a newly started industries, covers the cases in which the trade effluent is discharged into a stream, well or sewer or on land. The provisions of Section 25 were thus broadly made applicable by an Amending Act of 1978.

7. I thus find that the order passed by the trial Court cannot be sustained. Hence this revision is allowed. The order dated 28-4-1987 passed by the Judicial Magistrate, 1st Class, Malerkotla, is hereby set aside and the matter is remanded back to that Court for proceeding further after framing the charge against the accused. The trial Court is directed to expedite the hearing of the case" as it is an old matter.