
(1991) 03 P&H CK 0065

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 6692-M and 6693 of 1988

Radhika Rubber Products (P) Ltd.

APPELLANT

Vs

Haryana State Board

RESPONDENT

Date of Decision : 07-03-1991

Acts Referred:

Citation : (1991) 2 PLR 34 : (1991) 2 RCR(Criminal) 176

Hon'ble Judges : Jai Singh Sekhon, J

Advocate : A.S. Chadha, A. Mohunta, Lakhinder Singh, S.C.Mohunta, Advocates for appearing Parties

Judgement

Jai Singh Sekhon, J

1. The petitioner Company has invoked the inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure for quashing the complaint for offence under Sections 37/38 and 39 of the Air Prevention and Control of Pollution, Act, 1981, as well as the order dated 21.11.1986 of the Cheif Judicial Magistrate, Faridabad summoning the petitioner and order dated 9.6.1988 of the Additional Sessions Judge, Faridabad, dismissing the revision petition, inter alia, on the ground that the petitioner concern being not one of the industries falling in the Schedule appended to the Act, the provisions of this Act are not applicable as the point of time when the offence is alleged to have been committed. It is further maintained that the petitioner concern having shifted its factory from Faridabad to Maharashtra, there was no occasion for continuation of the said offence.

2. Mr. Mohunta appearing for the respondent maintains that as the Company had filed the application for obtaining the consent of the authorities under Section 37 and 38 of the Act, it should be presumed that the petitioner concern had submitted to the rigors of this Act.

3. The unamended relevant provision of Section 21 of the Act read as under :

"21 Restrictions on use of certain industrial Plants : (1) Subject to the provisions

of this section, no person shall without the previous consent of the State Board, operate any industrial Plant for the purposes of any industry specified in the schedule in an air pollution control area.

2. An application for consent of the State Board under subsection (1) shall be accompanied by such fee as may be prescribed and shall be made in the prescribed form and shall contain the particulars of the industrial plant and such other particulars as may be prescribed.

Provided that where any person, immediately before the declaration of any area as an air pollution control area, operates in such area any industrial plant for the purpose shall make the application under this subsection within such period (being not less than three months from the date of such declaration) as may be prescribed and where such person makes such application, he shall be deemed to be operating such industrial plant with the consent of the State Board until the consent applied for has been refused.

xx xx xx

4. The bare glance through the abovereferred provisions leaves no doubt that the previous consent of the Board under this Act for operating any industrial plant for the purpose of any industry, specified in the schedule, in an air pollution control area is required. The perusal of the Schedule appended to the parent Act reveals that rubber industry is not specifically included in the Schedule, although Chemical and Allied industries are mentioned therein at Item No. 4. The petitioner concern recycles rubber from the waste rubber. Thus, this industry cannot be said to be Chemical and Allied Industry by any stretch of imagination. If that is so, the application of the unamended provision of Section 21 would not be attracted in this case because the present complaint was filed on 10.11.1986 and relates to offence committed on 7.9.1986 i.e.. prior to the amendment of the provisions of Section 21 of the Act. Vide Amending Act No. 47 of 1987 whereby the words "any industry specified in the Schedule" have been omitted from subsection (1) of Section 21 besides deleting the Schedule itself in order to make the provisions of this Act applicable to all the industries. Thus, it can be well said that at the relevant time unamended provisions of Section 21 were applicable to those industries only which were included in the Schedule appended to this Act. The rubber industry having not been included therein, it cannot be said by any stretch of imagination that the provisions of that Act would be attracted to such an industry also. Mere application by the concern for obtaining cosent of the Board itself would not amount to inclusion of rubber industry in the Schedule. If that is so, then the petitionerCompany had not committed any offence by violating the provisions of this Act. Moreover, the petitioner Company having shifted its factory or concern out of Faridabad as well as the State of Haryana, there is no scope for continuing the commission of the offence.

5. For the reasons recorded above, the complaint as well as further proceedings resulting therefrom including the ordered of summoning the petitioner is/are

ordered to be quashed by accepting this petition.