

(2005) 07 MP CK 0065

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 730 of 2005

Rairu Distillers Limited and Others

APPELLANT

Vs

M.P. Pollution Control Board

RESPONDENT

Date of Decision : 22-07-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 29, 482

Prevention of Food Adulteration Act, 1954 — Section 20

Water (Prevention and Control of Pollution) Act, 1974 — Section 12, 12(3), 33, 41, 43

Citation : (2005) CriLJ 4413 : (2005) 4 MPHT 43 : (2005) 4 MPLJ 91 : (2005) 4 RCR(Criminal) 748

Hon'ble Judges : Shravan Shanker Jha, J

Bench : Single Bench

Advocate : J.P. Gupta and Sanjay Gupta, for the Appellant; Harish Dixit, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Jha, J.

This petition is filed u/s 482 of the Code of Criminal Procedure for quashing the complaint filed under Sections 33, 41 and 43 of the Water (Prevention and Control of Pollution) Act, 1974 (hereinafter, referred to as "the Act").

Counsel for the petitioners submitted that the Trial Court has committed an error in taking cognizance against the petitioners. He submitted that the complaint could not be filed by Shri R.K. Gupta, Regional Officer, M.P. Pollution Control Board on behalf of the Pollution Control Board unless the Pollution Control Board has specifically designated Shri R.K. Gupta to file complaint on behalf of the Board. He invited attention to Section 49 of the Act and submitted that the language of Section 49 of is clear and specific and it prohibits Courts from taking cognizance of any offence under the Act except on a complaint made by Board or any officer authorised in this behalf by it. Counsel for the petitioners submitted that in the absence of authorisation by the Board to Shri R.K. Gupta to file

complaint, complaint is not maintainable and should be dismissed. To impress upon his case, Counsel for the petitioners referred to similar provision in Section 20 of the Prevention of Food Adulteration Act, 1954. There is a difference in the language of Prevention of Food Adulteration Act and the Act. Section 20 of the Prevention of Food Adulteration Act provides that no prosecution shall be instituted except by or with the written consent of the Central Government or the State Government or a person authorised in this behalf, by general or special order, by the Central Government or the State Government. He submitted that in Section 20 of the Prevention of Food Adulteration Act, specific language is written that the person is authorised in this behalf by the Central Government or the State Government for lodging the prosecution in Court. He submitted that whereas in Section 49 of the Act complaint must be filed by the Board or any officer authorised in his behalf by it. He submitted that until and unless the Board has authorised Shri R.K. Gupta for filing complaint in this case, he can not file complaint treating the authorisation as a general authorisation. Authorisation should be for a particular case and general authorisation is not permissible.

Counsel for the respondents invited attention to Section 12 of the Act and submitted that under sub-section (3) of Section 12 the Board may appoint such officers and employees as it considered necessary for the efficient performance of its functions. He submitted that u/s 12 of the Act, officers so appointed can perform on behalf of the Board.

Section 49 of the Act is reproduced below :-

"49. Cognizance of offences.- (1) No Court shall take cognizance of any offence under this Act, except on a complaint made by-

- (a) a Board or any officer authorised in this behalf by it; or
- (b) 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 authorised as aforesaid,

and no Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

(2) Where a complaint has been made under clause (b) of subsection (1), the Board shall, on demand by such person, make available the relevant reports in its possession to that person :

Provided that the Board may refuse to make any such report available to such person if the same is, in its opinion, against the public interest.

(3) Notwithstanding anything contained in Section 29 of the Code of Criminal Procedure, 1973 (2 of 1974) it, shall be lawful for any Judicial Magistrate of the first class or for any Metropolitan Magistrate to pass a sentence of imprisonment for a term exceeding two years or of fine exceeding two thousand rupees on any person convicted of an offence punishable under this Act.

It clearly specifies that cognizance can be taken by Court on the complaint made by the Board or any officer authorised in this behalf by it.

Respondents have filed a copy of resolution of the Board of meeting dated 18-4-1991 whereby the Board has authorised and empowered the Chairman, Member-Secretary, Zonal Officer and the Regional Officer for initiating judicial proceedings. As per the resolution of the Board, these officers are competent to file complaint on behalf of the Board.

Once the resolution is passed, question is whether by such resolution, powers can be conferred. Section 49 of the Act is very clear. It provides that complaint can be filed by the Board or a person or officer authorised by it. Authorisation can be general or specific. Board has passed a resolution and issued general authorisation to its officers to file complaint on its behalf. Since Regional Officers have been authorised by the Board to file complaint on behalf of the Board, complaint filed before the Trial Court is maintainable. Prayer of the petitioners to quash the complaint has no force.

In the result, petition has no merit and is dismissed. Trial Court is directed to proceed with the trial. Record of the Trial Court be sent back immediately so as to reach the Trial Court on or before 8th August, 2005. Parties are directed to appear before the Trial Court on 8th August, 2005.