
(2022) 04 RAJ CK 0075

In the Rajasthan High Court

Case No : S.B. Criminal Appeal No. 1 Of 1990, 723 Of 2001, 142 Of 2002, 226, 352, 811, 940, 1198 Of 2004

Raj. Board Of Prevention And Control Of Pollution And Others **APPELLANT**

Vs

M/s Parveen Dying Works And Others **RESPONDENT**

Date of Decision : 19-04-2022

Acts Referred:

Citation : (2022) 04 RAJ CK 0075

Hon'ble Judges : Dr. Pushpendra Singh Bhati, J

Bench : Single Bench

Advocate : ?Manish Shishodia, Yash Parihar, Arun Kumar, B.S. Charan

Final Decision : Dismissed

Judgement

Dr Pushpendra Singh Bhati, J

1. In the wake of instant surge in COVID – 19 cases and spread of its highly infectious Omicron variant, abundant caution is being maintained, while hearing the matters in the Court, for the safety of all concerned.

2. These criminal appeals have been preferred against the impugned judgments dated 09.08.1989, 19.10.2000, 19.08.2002 and 03.12.2002, whereby the learned courts below have acquitted the accused-respondents from the charges levelled against them.

3. Since all the present appeals involve a common issue, therefore, for the sake of brevity, the present adjudication is being made while treating S.B. Criminal Appeal No.01/1990, as a lead case.

4. Mr. Manish Shishodia, learned Senior Counsel assisted by Mr.Yash Parihar appearing on behalf of the appellant-Board submits that the appellant is a body corporate and having its perpetual succession under the law. As per learned Senior Counsel, since the complaint has been filed by the Board, therefore, there was no requirement of any prior sanction for doing so.

5. Learned Senior Counsel for the appellant-Board further submits that the criminal complaint was filed for the violation of the provisions of the Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as 'Act of 1974'), alleging therein the accused-respondents were discharging trade-effluent into the Bandi River without the prior consent of the appellant-Board, thus constituting the offence under the Act of 1974.

6. Learned Senior Counsel for the appellant-Board also submits that the accused-respondents were also discharging poisonous noxious and polluting substance in excess of the standards laid down by the appellant-Board, which also constituted an offence under the provisions of the Act of 1974.

7. Learned Senior Counsel for the appellant-Board further submits that the complaint was filed through an authorized person, samples in question were taken by the authorized person, samples were sent for necessary analysis in a sealed condition and the same were analyzed and examined by the authorized and competent analyst, and thus, the same was done strictly in accordance with law; hence, it cannot be said that any deviation from the provisions of any law has been made.

8. Learned Senior Counsel for the appellant-Board also submits that the appellant-Board in its meeting held in the year 1979, being competent authority, resolved to launch criminal prosecution against the accused-respondents, in consequence of continued and deliberate violations of the provisions of law by them.

9. Learned Senior Counsel for the appellant-Board further submits that the learned courts below have misinterpreted the provisions of law, while passing the impugned order, as the question of prior sanction is irrelevant when the complaint had been filed by the Board itself, through its authorized representative in his official capacity. As per learned Senior Counsel, the question of sanction arises only when a complaint of like nature is to be filed by a person other than the Board for the violations of the provisions of law, which is not so in the present case.

10. Learned Senior Counsel for the appellant-Board also submits that the learned courts below also erred in law while drawing a conclusion that while resolving to launch the criminal prosecution against the accused-respondents (various industries), the appellant-Board has not made due application of mind; whereas, as per learned Senior Counsel, the appellant-Board in its aforementioned meeting has made due application of mind and made due deliberations, and only upon finding a prima facie case of violations of the provisions of law on the part of the accused-respondents to be made out, the criminal prosecution in question has been initiated against the accused-respondents; such a conscious decision taken by the appellant-Board ought not be interfered with by the learned courts below, particularly, in light of the illegal activities of the accused-respondents and the fact that while initiating the prosecution, strict adherence to the provisions of

law has been made.

11. Learned Senior Counsel for the appellant-Board harped upon the fact that the learned courts below fell into error, while holding that the appointment of the Board Analyst, pursuant to the Notification dated 26.04.1979, was invalid. As per learned Senior Counsel, the prescriptions of the aforementioned notification were directory in nature, which is amply clear from a conjoint reading of the relevant provisions of the Act of 1974, more particularly, when such appointment did not prejudice the rights and interest of the accused persons.

12. Learned Senior Counsel for the appellant-Board thus submits that in the aforesaid factual and legal backdrop, the learned courts below were not justified in acquitting the accused-respondents of the serious charges levelled against them, and thus, the impugned judgments deserve to be interfered with by this Court.

13. On the other hand, learned counsel for the respondents, while opposing the aforementioned submissions made on behalf of the appellant-Board submits that it is clear from the record that the appellant-Board has launched the criminal prosecution against various industries, including the accused-respondents, without prior sanction as per law. Learned counsel further submits that before approving the decision for prosecuting the various industries, the appellant-Board, under the law, was required to obtain separate sanction for each prosecution, which has not been done so in the present case. Learned counsel further submits that even the decision of initiating the criminal prosecution against the respondents suffers from due application of mind, and thus, the same cannot be sustained in the eye of law.

14. Learned counsel for the respondents also submits that the record also clearly reveals absence of due application of mind by the appellant-Board before initiating the prosecution against the respondents, as it is required under law that before approving such action, the criminal action of each of the industry is required to be duly considered and examined; thus, on that count also, the non-application of mind on the part of the appellant-Board is discernible on the face of the record.

15. Learned counsel thus submits that the learned courts below have duly considered and appreciated all the material placed on record before it, while also considering the overall facts and circumstances of the case; hence, the well reasoned conclusion of acquittal of the respondents, as drawn by the learned courts below in the impugned judgments cannot be faulted with on any count.

16. Heard learned counsel for the parties as well as perused the record of the case.

17. This Court finds that while collecting the samples in question, the requisite specimen impression was not taken; the evidence on record does not prove that the samples reached the Analyst in a condition, in which the same were taken

and thus, it could not be proved that no tampering of the samples was done. Thus, the deficiencies, as above, cast a doubt upon the case of the prosecution; hence, the learned courts below were justified in passing the impugned judgments.

18. This Court also finds that the learned courts below were right in passing the impugned judgments of acquittal, as the prosecution had failed to prove its case beyond all reasonable doubts and thus, no document as produced by the prosecution could be said to be admissible in evidence.

19. As regards the approval of the prosecution sanction, this Court finds that before doing so, the appellant-Board has not made due application of mind, as it is apparent on the face of the record that while approving the prosecution sanction, it was the legal obligation of the appellant-Board to consider and keep in mind the criminal action on the part of each of the industries; whereas the record reveals that as many as 51 industries were made to face the prosecution, merely in a cyclostyled manner, which clearly caste a serious doubt upon such prosecution and the grounds taken therefor.

20. The record also clearly reveals that the action of approving/sanctioning the prosecution is null and void in the eye of law, in light of the discrepancies/deficiencies, as above, in the process so adopted.

21. This Court further finds that the requisite terms and conditions, as mentioned in a cyclostyled paper by the appellant-Board, are not at all relevant, more so when the same does not bear the signatures of any authorized person or competent authority.

22. This Court further finds that the action of the appellant-Board is also unsustainable in the eye of the law, as the same was done without giving the respondents the opportunity as mandatorily provided under the law.

23. Thus, this Court finds that the impugned judgments passed by the learned courts below are well reasoned speaking judgments, and hence, the same require no interference by this Court.

24. Consequently, the present appeals are dismissed. All pending applications stand disposed of.