

(2002) 03 P&H CK 0079

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 646-M of 1997

Ram Avtar Sharma

APPELLANT

Vs

Haryana State Board for Prevention and Control of Water
Pollution

RESPONDENT

Date of Decision : 15-03-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197, 482

Water (Prevention and Control of Pollution) Act, 1974 — Section 33, 43, 44

Citation : (2002) 3 CriminalCC 448 : (2002) 3 RCR(Criminal) 462

Hon'ble Judges : V.M. Jain, J

Bench : Single Bench

Advocate : Rameshwar Malik, for the Appellant; C.B. Goel and Mr. Sushil Jain, for the Respondent

Final Decision : Allowed

Judgement

V.M. Jain, J.—This is a petition u/s 482 Cr. P.C. filed by the accused petitioners seeking quashment of the Criminal complaint under the provisions of the Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as the Act) and all subsequent proceedings taken thereon.

2. The facts, in brief, are that Haryana State Board for the Prevention and Control of Water Pollution, had filed a criminal complaint under Sections 33,43 and 44 of the said Act against the Municipal Committees as accused no.1 and also against the President, Vice-President and Secretary of the Municipal Committee, as accused No.2 to 4 (by name), for having violated the provisions of the said Act. The learned Judicial Magistrate summoned the accused and fixed the case for pre-charge evidence.

3. The accused petitioners i.e. Ex-President, Ex-Vice President and Ex-Secretary of the Municipal Committee (by name) filed the present petition u/s 482 Cr. P.C, in this Court seeking quashment of the aforesaid criminal complaint and all subsequent proceedings taken thereon, against them, on the ground that

petitioners are public servants, not removable, save with the previous sanction of the State Government and no sanction had been obtained before prosecution accused petitioners.

4. In the written reply filed on behalf of the Board, it has been alleged that the petitioners were not public servants, who could be removed from their offices by or with the sanction of the State Government. It was further alleged that no sanction was required to prosecute the accused petitioners.

5. Learned counsel for the accused petitioners has submitted before me that even though the petitioners ceased to be President, Vice-President and Secretary of the Municipal Committee, still they could be prosecuted only after the sanction was obtained from the State Government to prosecute them, considering that they were public servants and could not be removed except with the consent of the State Government. Reliance has been placed on the law laid down, in the cases reported as Punjab State Board for Prevention and Control of Water Pollution V. Raghu Nath, 2001 (1) RCR (Cri) 4 and R. Balakrishna Pillai V. State of Kerala and another, .

6. In R. Balakrishna Pillai Vs. State of Kerala, , it has been held by the Hon''ble Supreme Court that the sanction required u/s 197 Cr. P.C. would be applicable even in the cases where a retired public servant is sought to be prosecuted. From a combined reading of the provisions of the Indian Penal Code, it would be clear that the President, Vice-President and Secretary of the Municipal Committee are not only public servants but they cannot be removed except with the sanction of the State Government. Furthermore, whatever act was committed by them, was done on behalf of the Municipal Committee, in discharge of their official duties. Under these circumstances, in my opinion, they could not be prosecuted except with the sanction of the State Government, fn 2001(1) RCR (Cri) 4 (supra), this Court had upheld the decision of the Judicial Magistrate in discharging the accused (Vice-President of the Municipal Committee) for want of the sanction u/s 197 Cr PC. This case was also tinder the Water (Prevention and Control of Pollution) Act, 1974. Case of the petitioner is similar to the reported case.

7. For the reasons recorded above, the present petition is allowed and the criminal complaint and all subsequent proceedings taken thereon against the present petitioners are hereby quashed for the want of sanction. However, it is made clear that it would be open to the complaint Board to proceed against the petitioners, if so advised, in accordance with law. after obtaining necessary sanction.