

(1992) 09 P&H CK 0053
In the Punjab And Haryana At Chandigarh
Case No : Criminal Revision No. 126 of 1991

Shiroga International (P) Ltd.

APPELLANT

Vs

Punjab State Board for the Prevention and Control of Water
Pollution

RESPONDENT

Date of Decision : 28-09-1992

Acts Referred:

Citation : (1993) 1 RCR(Criminal) 628

Hon'ble Judges : S.K.Jain, J

Advocate : Aman Kashyap, Yogesh Goel, Ashok Aggarwal, Advocates for
appearing Parties

Judgement

S.K. Jain, J.

1. Punjab State Board for Prevention and Control of Water Pollution through its Environmental Engineer, instituted a complaint under Section 44 read with Section 47 of the Water (Prevention and Control of Pollution) Act, 1974 against the petitioners on account of their having not obtained the requisite sanction under Sections 25 and 26 of the Act from the Board.
2. The learned Magistrate Ist Class, Ludhiana, vide his judgment of April 3, 1989 dismissed the complaint and discharged the accused.
3. Feeling aggrieved, the Board filed a revision petition which was accepted against respondent No. 1 and 2 but dismissed against respondent No. 3 by learned Additional Sessions Judge, Ludhiana, vide his judgment dated 26.11.1990 which has been challenged in this revision petition under Section 412 of the Code of Criminal Procedure.
4. Learned Counsel for the petitioners has argued that the learned Sessions Judge had illegally erred in setting aside the well reasoned judgment passed by the Judicial Magistrate Ist Class, Ludhiana, inasmuch as the Board had not at any stage decided to institute a complaint against the petitioners.

5. On the other hand, learned Counsel for the Board vehemently argued that in view of the provisions of Section 49 of the Act, the complaint was competent even without any sanction because the same has been filed by the Board. Following facts are not in dispute :

(i) that the petitioner industry was established in 1983;

(ii) that the complaint had been filed by the Board through its Environmental Engineer on the strength of item No. 40.25 of the resolution passed in the 4th meeting of the Board which reads as under :

"Item No. 40.23. Violation of provisions of Section 26 read with Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 by the industries on account of their failure to apply for the consent of the Board on or before 30.6.1980.

After consideration of cases the Board resolved that the complaints be filed against the following industrial units in the Courts of Law under the provisions of the Water (Prevention and Control of Water Pollution) Act, 1974 for not playing for the consent of the Board thereby contravening the provisions of the Act. Prosecutions should be launched against the owners/officers directly responsible for day-to-day business of the concerned industry/factory in the Court of competent jurisdiction after completing the legal formalities :

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2. x x x x x x x x x x x x x x x x

3. x x x x x x x x x x x x x x x x

17. M/s. Shiroga International Pvt. Ltd., 6A, Phase V, Focal Point, Ludhiana."

(iii) that the petitioners were discharging their trade effluent, which was causing pollution, into the municipal sewer; and

(iv) that the petitioner industry has not applied for any consent of the Board as required under Sections 25 and 27 of the Act.

6. Now on to the arguments Section 49 of the Act is in the following terms :

"No Court shall take cognizance of any offence under this Act except on a complaint made by or with the previous sanction in writing of the State Board 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."

7. Learned trial Magistrate has not taken into consideration the words "on a complaint made by", occurring in the abovesaid provisions. He had completely overlooked the same as is evident from para No. 7 of his judgment, wherein he has stated :

"The careful perusal of this section clearly shows that no Court can take

cognizance of offence under this Act without the previous sanction of the State Board."

8. Thereafter he had proceeded to examine sanction Ex. PA, which has been reproduced in para No. (ii) above with a view to find out as to whether it was legal or not. He was misled by the subject of heading of item No. 40.23 of the resolution referred to above and has totally ignored the body of the said resolution. Had he read the whole of it together he would have not misconstrued and misinterpreted the same. No doubt, the subject or the heading of item No. 40.23 was :

"Violation of provisions of Section 26 read with Section 25 of the Water (Prevention and Control of Water Pollution) Act, 1974 by the industries on account of their failure to apply for the consent of the Board on or before 30.6.1990."

but from the main body of the said item of the resolution it clearly emerges that the Board had directed that the complaints be filed against the industrial units mentioned therein the Court of Law under the provisions of the Act for not applying for the consent of the Board thereby contravening the provisions of the Act. On serial No. 17 in the list appended under the said resolution, M/s. Shiroga International Pvt. Ltd., 6A, Phase V, Focal Point, Ludhiana petitioner No. 1, has been shown. Therefore, the interpretation grafted by the learned Magistrate on the above said item of the resolution is misconceived. The conclusion arrived at by the learned Magistrate is based on conjectures and surmises which is apparent from the latter part of Para No. 7 of his order which is reproduced below :

"It seems that the board granted blanket sanction for the prosecution of the accused without any material before it and without application of mind and this seems to be the reason that sanction Ex. PA was granted against industry which as per record of the Board did (sic) in existence 30.6.1980. This mistake on the part of the Board in granting blanket sanction to its officers for the prosecution of the accused must be deprecated as it is likely to motivate such officers to exploit and harass the accused by filing a complaints for which no legal sanction has been earlier accorded by the Board. Due to above infirmities in sanction accorded by the complainant board, I must hold that it is no sanction in the eyes of law and this the prosecution launched against the accused stands vitiated, and court cannot take cognizance of the alleged offence on the basis of above said sanction."

9. Provisions of Sections 25 and 26 are mandatory in nature and contravention thereof entails penalty under Section 44 read with Section 47 of the Act and cognizance of such an offence is to be taken on a complaint made by or without the previous sanction in writing in the State Board by a Magistrate of the Ist Class.

10. In the present case, the complaint was filed by the Board through its

Environment Engineer after it had resolved vide Ex. PA to file complaints against industrial units, list whereof had been appended to the said resolution, for not applying for the consent of the Board. No default can be found with the Resolution Ex. PA or the complaint.

In view of the above discussion, I do not find any fault with the judgment dated 26.11.1990 passed by Additional Sessions Judge, Ludhiana, which is confirmed. Resultantly, this revision petition fails and is hereby dismissed.

Revision dismissed.