

(1995) 12 BOM CK 0049

In the Bombay High Court

Case No : Criminal Application No. 1284 of 1989

S.M. Dubash and others

APPELLANT

Vs

V.V.M. Bhosale and others

RESPONDENT

Date of Decision : 04-12-1995

Acts Referred:

Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (1996) 5 BomCR 214 : (1996) CriLJ 2136 : (1996) 2 MhLj 312

Hon'ble Judges : R.G. Vaidyanatha, J

Bench : Single Bench

Advocate : D.A. Nalawade, V.P. Vashi and P.D. Desai, for the Appellant;

Judgement

1. This is a petition u/s 482 Cr.P.C. and under Article 227 of the Constitution of India challenging the issue of process against the petitioners in Criminal Case No. 307 of 1988 on the file of Chief Judicial Magistrate, Thane. Heard both the sides.
2. The first respondent-complainant filed a complaint against the third respondent and the petitioners for offences under the Air (Prevention and Control of Pollution) Act, 1981, the allegation of the complainant is that the accused No. 1 (respondent No. 3) is a company and accused Nos. 2 to 5, the present petitioners are the Chairman, Managing Director, Director and Factory Manager of the said company. That the company is having a factory where it is using lead press, lead oxide, etc. as raw materials. That the accused have failed to provide suitable arrangements to protect emission to satisfy standards prescribed under the Act and the rules. Hence it is alleged that the accused have violated many of the provisions of the Act and the rules and thereby they have committed an offence punishable u/s 39 of the Act.
3. The accused Nos. 2 to 4 challenged the issue of process before the learned Sessions Judge in Criminal Revision Application No. 170 of 1988. The learned Sessions Judge dismissed the revision application. Hence the petitioners have approached this Court. The learned Counsel for the petitioners contended that

the prosecution is bad since there is no sanction to prosecute them. On the other hand, the learned Additional Public Prosecutor appearing for the respondents contended that sanction for prosecution against the company includes all the persons who are responsible for day to day affairs of the said company and the sanction against the petitioners deemed to have been granted.

4. The short point for consideration is whether the prosecution of the petitioners is sustainable in the absence of specific sanction against them ?

5. The provision for sanction is found in Section 43 of the Act which reads as follows :-

"Section 43 :- 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 Judicial Magistrate of the first class shall try any offence punishable under this Act."

It is, therefore, seen that the State Board has to give sanction for prosecution under the Act. In this case no doubt, the Board has given a sanction and the sanction reads as follows :-

"RESOLVED THAT the Board approves to file prosecution against M/s. Indian Lead Pvt. Ltd., Majiwada, Thane for breach of consent conditions. The Board further authorises the Air Pollution Control Officer/Sub Regional Officers to file the complaint in the appropriate Court on behalf of the Board, subject to the directions of Central Government in the matter."

The above resolution of the Board approves the sanction of prosecution against M/s. Indian Lead Pvt. Ltd., which is the company, which is accused No. 1 in the complaint and respondent No. 3 in the present petition.

The question is whether sanction for prosecution the company is sufficient to include all or any of the directors of the company as may be chosen by the complainant.

6. The complaint is filed by Air Pollution Officer. He cannot be delegated the power to pick and choose the directors and officers of the company. The statutory power of giving sanction is given to the Board. The Board has to apply its mind to all the materials placed before it and then sanction prosecution against the company, its officers and directors who are responsible for the day to day affairs of the company. The authority and power of the Board cannot be delegated to an officer to pick and choose the accused against whom the prosecution can be launched.

7. The learned Counsel for the petitioners invited attention of the Court to decisions of Rajasthan High Court.

In 1980 Cri LJ 93 , Lacchi Ram v. Inspector Insecticides, it was a case of sanction of prosecution for an offence under the Insecticides Act. In that case the sanction was to prosecute the firm. The question was whether the individual partners can

be prosecuted when the sanction was against the firm only. It was held by the Rajasthan High Court that the sanction obtained against the firm cannot be used to prosecute individual partners of the firm. It was further point out that in such a case the High Court can exercise inherent powers u/s 482 of Cr.P.C. and quash the proceedings.

The above view was again reiterated by the Rajasthan High Court in P.R. Neelkantham and Others etc. Vs. State of Rajasthan and Others, . That was a case under the Prevention of Food Adulteration Act. That was also a case where the sanction was to prosecute the company for committing an offence under the Act. It was held that the said sanction to prosecute the company cannot be availed for prosecuting the directors and salesmen of the company.

I am in respectful agreement with the two decisions of the Rajasthan High Court mentioned above.

8. The object of the Act is to avoid frivolous prosecutions. That is why the statutory Board has been given the authority to grant sanction. The Board is expected to consider the materials placed before it and take a decision as to who are to be prosecuted. It is not an empty formality. The Board has a statutory duty to consider the material placed before it by the investigating agency and then decide whether prosecution is necessary and if so who are all to be prosecuted. It cannot be left to the whims and fancy of the Investigating Officer or Inspector or Air Pollution Officer to file complaint against anybody he chooses from the directors and officers of the company. It is the Board alone which has to take a decision as to who amongst the directors of the company and who amongst the officers of the Company are responsible for the alleged violation under the Act.

In this case, admittedly the Board has not passed any resolution and has not taken any decision to prosecute any of the directors or officers of the company. As per the Board resolution the company alone can be prosecuted. Unfortunately, the learned Sessions Judge has not considered this aspect and has proceeded on wrong premises for rejecting the petition filed by the accused.

It may be that as argued by the learned P.P. that u/s 40 of the Act, directors and officers of the company who are incharge and responsible for the affairs of the company are liable to be prosecuted when an offence is committed by the company. In my view, the said question as to who are responsible and who are liable on behalf of the company has to be decided by the Board and the Board alone. It cannot be decided by any Officer of the Board as to who should be prosecuted. In this case, the Board should have taken a decision u/s 40 of the Act as to who amongst the directors and officers of the company should be prosecuted. But the Board has taken no such action. The Board has sanctioned prosecution only against the company. Hence in my view, the prosecution of the directors and the factory manager cannot be sustained without proper sanction under the Act. Hence the petition is entitled to succeed.

9. In the result, the petition is allowed. The impugned criminal proceedings against the petitioners are hereby quashed. However, the learned Magistrate can proceed to try accused No. 1, the company, according to law.

10. Petition allowed.