

(2008) 10 KAR CK 0033
In the Karnataka High Court
Case No : Writ Petition No. 30610 of 2008

Sri V.C. Chinnappa Goudar

APPELLANT

Vs

Karnataka State Pollution Control Board and State of
Karnataka

RESPONDENT

Date of Decision : 30-10-2008

Acts Referred:

Water (Prevention and Control of Pollution) Act, 1974 — Section 28, 48, 49, 60

Citation : (2009) 9 KarLJ 86 : (2009) 1 KCCR 431

Hon'ble Judges : P.D. Dinakaran, C.J.;V.G. Sabhahit, J

Bench : Division Bench

Advocate : M.S. Bhagwat, for the Appellant; D. Nagaraj, for R-1 and Niloufer Akbar, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

P.D. Dinakaran, C.J.—The petitioner is a Commissioner of Nippani Municipality, Nippani. The Municipal Corporation even though had the approval to put up a treatment plant and then discharge the effluents into the Ambalajhuri river, on the same being refused for a further period by proceedings dated 30.12.2006, preferred an appeal u/s 28 which is pending before the Appellate Authority. In the meanwhile, the Pollution Control Board (hereinafter referred to as the Board¹) had taken legal action against the petitioner before the jurisdictional Magistrate for having committed an offence u/s 48 of the Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as "the Water Act"). Section 48 of the Water Act reads as hereunder:

48. Offences by Government Departments.- Where an offence under this Act has been committed by any Department of Government, the Head of the Department shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this Section shall render such Head of the

Department liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

2. The complaint lodged by the respondent before the jurisdictional Magistrate is also supported by the inspection report, notice of intention, mahazar copy and the analysis report etc. Aggrieved by such legal action initiated by the Board, the petitioner has preferred the above writ petition contending that the action initiated against the petitioner is without jurisdiction for want of previous sanction from the government for taking action against the petitioner who is a public servant as per Section 197 Cr.P.C. Accordingly, the petitioner has prayed for a writ of certiorari to quash the complaint and all proceedings in C.C. No. 728/2008 pending on the file of the JMFC, Nippani and any other order as this Court deems fit.

3. Mr. Bhagwat, learned Counsel for the petitioner invited our attention to Sections 4 and 5 Cr.P.C. that are extracted hereunder:

4. Trial of offences under the Indian Penal Code and other laws

(1) All offences under the Indian Penal Code 1860 (45 of 1860 shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

5. Saving

Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.

(emphasis supplied)

4. Per contra Sri Nagaraj, learned Counsel for the Board placing reliance on Sections 48, 49 and 60 of the Water Act submits that no sanction is required for taking legal action against the petitioner who is alleged to have committed an offence u/s 48 of the Act

5. Ms. Nikmfer Akbar, learned Government Advocate supports the view taken by the Board.

6. Countering the argument of the Board and the Government, Mr. Bhagwat, learned Counsel for the petitioner in reply submits that Section 60 would be attracted only in the event of conflict between the provisions of the Water Act and Criminal Procedure Code. But in the absence of any such conflict, the entire

proceedings are governed by the provisions of the Criminal Procedure Code particularly Section 197 Cr.P.C. and therefore, without previous sanction of the Government, the impugned proceedings initiated is totally without jurisdiction and is liable to be held to be illegal.

7. We have given our careful consideration to the contentions urged by the learned Counsel for the parties. A bare reading of Section 48 of the Water Act which is a special enactment intended to avoid all pollution which results from industries and increasing tendency of organisation and creates problems to the public at large, particularly causing pollution to the rivers and streams which had assumed considerable importance. The State having felt it essential to ensure that domestic and industrial effluents should not be allowed to be discharged into the water course without adequate treatment envisaged as a condition precedent for obtaining consent before such effluents could be let into a water course. The consequences of not adhering to this precondition are worse as it will pollute the source of drinking water and also cause immense damage to the marine life and render the natural water unfit for drinking and irrigation purposes which in turn would adversely affect our very economy. It is for this very object the Parliament enacted the Pollution Control Act for prevention and control of water pollution and for maintaining and restoring wholesomeness of water for drinking and irrigation purposes with a view to achieve the aforesaid object the States have constituted Boards for the prevention and control of water pollution and conferring and assigning to such Board powers and functions relating thereto and for the matters concerning jurisdiction. In discharge of such function, the statute has created an offence which is otherwise not a statutory offence u/s 48 of the Act referred to above. It is settled law that an offence under the IPC is different from an offence made out under the statute. While the former requires mens rea unless excluded therein, latter excludes the mens rea for having made it statutory offence. It is for that reason Section 4(2) of the Cr.P.C. makes it clear that when a said Act makes a special offence which also provides a special procedure, an offence under it must be dealt with under such Act by itself. Again Section 5 of the Cr.P.C. which in our considered opinion has got only limited scope, makes it clear that Section 5 saves any special law or special jurisdiction or power and that they may remain unaffected by the Code unless there is any special provision to the contrary. Such special provision may be in Cr.P.C. or the special or local laws. It is only in this context, learned Counsel for the petitioner made an earnest attempt to persuade us that there is no conflict between the provisions of Water Act and the Cr.P.C. to attract Section 60. The provisions of the Water Act has overriding effect as any enactment other than Water Pollution Act in the instant case the provisions of Cr.P.C. But we are not able to appreciate the argument of Sri Bhagwat, learned Counsel for the petitioner that no Court, shall take cognizance of such offence except with the previous sanction as per Section 197(1) Cr.P.C. On the other hand, Section 49(1) reads that no Court shall take cognizance of any offence only on a complaint made. While enacting the Water Act, a special enactment the Parliament dispensed with the previous

sanction for taking cognisance of the offence made out u/s 48 of the Water Act. Now analysing the ingredients of Section 48 it is clear that where any department of the Government commits an offence u/s 48 of the Act, the head of the department shall be liable to be prosecuted and punished accordingly (emphasis supplied); because the head of the department shall be deemed to be guilty of such offence. The words "shall be deemed to be*" as rightly contended by the learned Counsel for the petitioner creates a legal fiction and thereby takes an exception from the general law which requires mens rea to make out an offence under the general law particularly for the offence under the IPC and that apart, once a legal fiction is created holding that the head of the department is deemed to be guilty of the offence, the burden is shifted on the head of the department to prove that he did not commit the offence attracting Section 48.

8. Once the burden itself is shifted on the head of the department the procedure contemplated u/s 197 requiring a previous sanction from the Government for taking cognisance of such offence becomes redundant, that weighed with the Parliament for dispensing with such a previous consent u/s 49(1) of the Water Act (emphasis supplied). However, the proviso u/s 48 again provides a defence to the officer to prove (1) that the offence was committed without his knowledge, (2) he had exercised due diligence to prevent the commission of the offence giving a very limited scope for mens rea creating a burden on such head of the department to prove that he had no knowledge, while under general law it is for the prosecution to prove that he had knowledge to commit offence i.e., he had mens rea. Except these two defence the head of the department had no other defence to contend either that the prosecution failed to prove that the officer concerned had any mens rea or the Board has failed to obtain the previous sanction before taking legal action against him or that the officer concerned had not taken due diligence to prevent the commission of offence. The proviso to Section 49(1) therefore shifts the entire burden on the officer concerned and discharges the Board from proving the said proviso. To this extent there is apparent conflict with reference to Sections 4, 5 and 197 Cr.P.C. contrary to Sections 48 and 49 of the Water Act. Once there is a contravention, Section 60 comes into play whereby the provisions of the Water Act has got overriding effect than the provisions of Cr.P.C.

9. For these reasons in our considered opinion no previous sanction is required for initiating the legal action by the Board for the offence contravening Section 48 of the Act.