

(1991) 10 OHC CK 0008

In the Orissa High Court

Case No : Criminal Revision No. 685 of 1989

State Prevention and Control of Pollution Board

APPELLANT

Vs

Berhampur Municipality and Another

RESPONDENT

Date of Decision : 28-10-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197(1), 29, 401

Water (Prevention and Control of Pollution) Act, 1974 — Section 25, 26, 44, 49

Citation : (1992) CriLJ 2909

Hon'ble Judges : D.P. Mohapatra, J

Bench : Single Bench

Advocate : B. Ray, S. Das and B. Mohanty, for the Appellant; Y.S.N. Murty, P. Mishra and M.K. Mohanty, for the Respondent

Final Decision : Allowed

Judgement

D.P. Mohapatra, J.—The State Prevention and Control of Pollution Board, an authority constituted under the Water (Prevention and Control of Pollution) Act, 1974 (Act 6 of 1974) filed this revision petition u/s 401 of the Criminal Procedure Code (Cr. P.C.) assailing the order dated 28-9-89 of the Sub-divisional Judicial Magistrate, Berhampur in 2(c) CC No. 162 of 1989 directing it to file the required sanction to proceed against the Berhampur Municipality, Berhampur, opposite party No. 1 and its Executive Officer, opposite party No. 2.

2. The facts relevant for the present purpose may be shortly stated thus:

The petitioner-Board through its Junior Law Officer, Sri Narendra Kumar Khuntia filed the complaint alleging, inter alia, that the opposite parties committed the offence punishable u/s 44 of the Act for contravention of Sections 25 and 26 thereof. It was alleged in the complaint petition that the opposite parties were discharging its sewage effluent on the land without the previous "consent" of the complainant-Board which is a statutory requirement Under Sections 25 and 26 of the Act. Opposite party No. 2, Sri Jamsed Khan as the Executive Officer of the opposite party No. 1, was its occupier within the meaning of Section 2(d) read

with Section 87, 87(I-a) as well as under Sections 121, 211 and 212 of the Orissa Municipal Act, 1950. Though the last date specified under the Act for obtaining consent (15-6-84), expired long since and the complainant Board by various letters/notices made the accused persons aware of the provisions of the Act and the Rules, but the opposite parties did not M/s. Berhampur Municipality Cri. L. J. care to take steps in the matter and thus wilfully and deliberately contravened the provisions of Sections 25 and 26 of the Act. It was further alleged in the complaint that on 10-2-88 a notice u/s 25(5) read with Section 26 of the Act was served on the accused Municipality directing it not to discharge any effluent without meeting the standard prescribed by the Board; in spite of the said directions the accused Municipality and its occupier did not agree to comply with the directions and continued to contravene the provisions of the Act. Thus, they committed offences punishable u/s 44 of the Act.

3. The complainant Board in its XVIIth meeting held on 21-6-88, resolved to take legal action against the accused persons under the provisions of Section 49 of the Act. In pursuance of the said decision the complaint petition was filed before the learned Magistrate.

4. The learned Magistrate by the impugned order held, inter alia, that the actions complained of were acts purported to have been done by the opposite parties in discharge of their official duty. Therefore, the sanction of the State Government u/s 197(1)(b) Cr. P.C. was necessary for initiating a proceeding in the case.

5. The contention raised on behalf of the petitioner in the revision petition which is reiterated by the learned counsel appearing for it is that in view of the specific provisions in Section 49 of the Act, Section 197(1)(b), Cr. P.C. has no application to the case and, therefore, the learned S.D. J.M. was in error in directing the petitioner to comply with the said provision. The sole question that arises for consideration in this case is whether Section 197(1)(b) Cr. P.C. applies to the case initiated on the complaint filed by the petitioner Board against the opposite parties.

6. Section 49 of the Act on which much reliance has been placed by the counsel for the petitioner reads as follows:--

49. Cognizance of offences : (1) 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 to court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

(2) Notwithstanding anything contained in Section 29 of the Code of Criminal Procedure, 1973 (2 of 1974), it shall be lawful for any Judicial Magistrate of the First Class or for any Metropolitan Magistrate to pass a sentence of imprisonment for a term exceeding two years or of fine exceeding two thousand rupees on any person convicted of an offence punishable under this Act.

Concededly the provisions in Sub-section (1) of Section 49 of the Act requiring the complaint to be made by or with the previous sanction in writing of the State Board has been complied with in the present case.

7. Section 197(1)(b) Cr. P.C., the compliance of which has been insisted upon by the learned Magistrate reads as follows:

Section 197. Prosecution of Judges and public servants :-- (1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no court shall take cognizance of such offence except with the previous sanction --

(a) xx xx xx xx xx xx xx (b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, or the State Government.

8. There is no dispute that the provisions of the Cr. P.C. in the absence of any other provisions expressly or impliedly making provisions to the contrary also apply to offences prescribed under the Special Act. The moot point is whether in view of the specific provision in Section 49 of the Act requiring sanction of the Board constituted under the statute to be obtained before filing a complaint, further sanction u/s 197 Cr. P.C. can be insisted upon. It is stated at the Bar that there is no direct authority on the point. The position is accepted that the provisions for sanction u/s 197, Cr. P.C. are meant to protect certain categories of public servants, against false, frivolous and mala fide criminal cases. Therefore, the section requires that before the Magistrate takes cognizance of any offence alleged to have been committed by such a public servant, the State Government or a competent officer authorised on its behalf should apply his mind to the facts and circumstances of the case, the material collected during investigation/enquiry and be satisfied that the case is not a frivolous one. This provision acts as a check on initiation of criminal cases which ordinarily can be set in motion by any person by lodging a report with a police or by filing a complaint before the Magistrate. Reading Section 49 of the Act, it appears to me that this purpose is amply served by the provisions in the section since the Board statutorily constituted comprising of experienced knowledgeable and high ranking officers with expert knowledge in the field is to scrutinise every case before a complaint is filed before the Magistrate. Therefore, in a case where Section 49 has been complied with, it is not necessary to insist upon a second sanction from the State Government before proceeding in the criminal case. Accepting the contrary view will, in my opinion, cause unnecessary restriction on the jurisdiction of competent court to take cognizance of offence committed within its territorial limits and may throttle bona fide criminal prosecution. Further, Section 197, Cr. P.C. in the nature of general provision applicable to offences prescribed under the Penal Code as well as special statutes; but Section 49 of the Act is a special provision applicable to offences committed under Act 6

of 1974. It is accepted principle of interpretation that if a special provision is applicable to a case, a general provision relating to the same matter will not apply to that case. The case can also be approached from another angle. It is this the opposite party No. 2, the Executive Officer of the Berhampur Municipality was on deputation during the relevant period from the State Government to the Municipality. He was at the time of commission of the alleged offences not employed in connection with the affairs of the State Government. Therefore, the State Government has little role to play in the matter and to insist upon its sanction for proceeding with the criminal case is unnecessary, irrelevant and extraneous to the purpose for which the provision regarding sanction is made in the Cr. P.C.

9. At this stage I may notice two decisions which tend to support the above view. The Calcutta High Court in the case of Upendra Nath Banerjee v. State, reported in ILR (1957) 1 Cal 95, construing the provisions of Section 13 of the West Bengal Local Bodies (Electoral Offences and Miscellaneous) Act 1952, West Bengal Act X of 1952 and Section 197, Cr. P.C. observed as follows:

Section 13 of this Act protects the petitioners against irresponsible frivolous and vexatious prosecutions to the same extent as Section 197, Cr. P.C. It is difficult to hold that it was the intention of the Legislature to provide for a double protection in respect of offences defined by West Bengal Act X of 1952. Mr. Dutt has, however, invited my attention to Section 1(2), Criminal Procedure Code, which provides that:

"In the absence of any specific provision to the contrary nothing contained in the Code of Criminal Procedure shall affect... any special form of procedure prescribed by any other law for the time being in force."

To my mind, Section 13 of the West Bengal Act "X of 1952 prescribes a special form of procedure for the initiation of prosecutions under that Act and to that extent it excludes the operation of Section 197, Cr. P.C.

9A. The Patna High Court in the case of Dr. Z. Kotasek and Another Vs. The State of Bihar and Another, , interpreting Section 49 of the Act made the following observations:

Therefore, perusal of Section 49 of the Act will make it clear that a complaint is to be made by or with previous sanction in writing of the Board. It will mean that a complaint made by the Board will be a valid complaint regarding its maintainability even taking into consideration the element of sanction. Further, it will mean that if the complaint is made by some one else, meaning thereby, any Officer of the Board, in that situation that complaint can be said to be valid considering the element of sanction only when prior to making a complaint, sanction has been accorded in writing by the Board.

10. As noted earlier, there is no dispute in the present case that the provision of Section 49 of the Act was duly complied with before filing of the complaint before

the Magistrate and no illegality or infirmity except want of sanction u/s 197, Cr. P.C. was found in the complaint filed on behalf of the petitioner.

11. In the result, the revision petition is allowed; the order dated 28-9-89 in 2(c)CC 162 of 1989 passed by the learned Sub-divisional Judicial Magistrate, Berhampur, Ganjam, is set aside and the learned Magistrate is directed to proceed with the case and dispose it of in accordance with law.