
(2009) 02 MP CK 0014
In the Madhya Pradesh High Court

Sudhir Garg

APPELLANT

Vs

M.P. Pollution Control Board

RESPONDENT

Date of Decision : 16-02-2009

Acts Referred:

Water (Prevention and Control of Pollution) Act, 1974 — Section 25, 47

Citation : (2009) ILR (MP) 37 : (2009) 3 MPHT 471

Hon'ble Judges : N.K. Mody, J

Bench : Single Bench

Judgement

N.K. Mody, J.—Arguments heard.

The prayer in the petitions is for quashment of the complaint filed by the respondent/Board against the petitioner u/s 25 of Water (Prevention and Control of Pollution) Act, 1974 (which shall be referred as the "Act").

2. Short facts of the case are that the respondent filed a complaint against the petitioner wherein it was alleged that the petitioner is the Director of M/s. Kalyan Nav Nirman Limited and the construction being raised by the petitioner without the consent of the Board by which there are possibilities of pollution of domestic/commercial water which is restricted u/s 25 of the Act. It was alleged that the act of petitioner is in violation of the provisions of the Act. It was alleged that after taking cognizance the petitioner be convicted. Upon the complaint filed by the respondent the cognizance was taken by the learned Court below and the notices were sent to the petitioner. Against the order whereby the cognizance was taken, present petition has been filed.

3. Shri Shekhar Bhargav, Senior Advocate appearing for the petitioner submits that the impugned order whereby the cognizance has been taken by the learned Court below is illegal, incorrect and deserves to be quashed. It is submitted that the alleged offence has been committed by the Company but the Company has not been impleaded as accused by the respondent. It is further submitted that from perusal of the entire complaint it cannot be said that any case is made out

against the petitioner as there is no specific allegation against the petitioner. It is submitted that in the facts and circumstances of the case, the petition filed by the petitioner be allowed and the complaint filed by the respondent be quashed.

4. Smt. Preeti Waghmare, learned Counsel appearing on behalf of the respondent submits that no illegality has been committed by the learned Court below in taking cognizance of the offence against the petitioner. It is submitted that each and every Director of the Company is responsible for committing the offence. Learned Counsel submits that even if the Company has not been made accused, then too, the respondent is entitled to prosecute the petitioner. It is submitted that the petition filed by the petitioner be dismissed.

5. As per Section 47 of the Act where an offence under this Act has been committed by a Company, every person who at the time the offence was committed was in charge of, and was responsible to the Company for the conduct of, the business of the Company, as well as the Company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

6. In the present case, from the complaint it is evident that the alleged offence has been committed by the Company but, for the reasons best known to the respondent the Company has not been impleaded as accused. Undoubtedly the Directors can be impleaded as accused but at the same time it was obligatory on the part of the respondent to implead Company as accused. Without impleading the Company as accused the complaint cannot be filed only against the Director.

7. In the complaint also, it is nowhere stated that at the time of commitment of the alleged offence the petitioner was in charge and was responsible to the Company for the conduct of the business of the Company which was the essential ingredient for constituting an offence u/s 25 of the Act.

8. For lodging the complaint u/s 25 of the Water Act it is necessary on the part of the complainant to plead that the accused person, without previous consent of the Board is establishing or taking any step to establish any industry. In the present case, it is alleged by the respondent that the petitioner is constructing a colony for which no consent has been taken from the Board and construction work has been started. It is nowhere stated by the respondent that how establishing of a colony is a step to establish any industry.

9. Keeping in view all the facts and circumstances of the case, this Court is of the view that the learned Court below committed error in taking cognizance of the offence against the petitioner, in view of this, the petition filed by the petitioner is allowed and the impugned or whereby the cognizance has been taken against the petitioner for offence u/s 25 of the Water Act stands quashed. Consequently, the complaint filed by the respondent also stands quashed. However, it is made clear that the respondent/Board shall be at liberty to file a fresh complaint with all the material allegations. If such a complaint is filed then the same shall be decided by the Court below.