

(1993) 08 MAD CK 0028
In the Madras High Court
Case No : C.A. No's. 818 to 821 of 1986

The State

APPELLANT

Vs

Arumugam and etc.

RESPONDENT

Date of Decision : 16-08-1993

Acts Referred:

Air (Prevention and Control of Pollution) Act, 1981 — Section 2, 21, 22, 37
Criminal Procedure Code, 1973 (CrPC) — Section 255, 313, 378

Citation : (1994) CriLJ 2968

Hon'ble Judges : N. Arumugham, J

Bench : Single Bench

Advocate : S. Shanmughavelayutham, app, for the Appellant; B.S. Gnanadesikan and N.S. Sivam, for the Respondent

Judgement

N. Arumugham, J.

1. All the above four criminal appeals have been preferred by the State u/s 378 of the Code of Criminal Procedure challenging the legality and

correctness of the Judgments rendered by the then Additional Judicial First Class Magistrate, Coimbatore in S.T.R. Nos. 48, 51, 52 and 53 of

1985 dated 30th January 1986, finding the accused/respondents herein, not guilty u/s 21(2) read with Section 37 of the Air (Prevention and

Control of Pollution) Act, 1981 and accordingly, acquitting them u/s 255(1) of the Code of Criminal Procedure.

2. Since all the above four appeals have been preferred by the State challenging the legality and correctness of the judgments rendered by the

learned trial Magistrate in different cases involving different parties, namely different respondents as accused but the complainant, the appellants

herein namely, the Member-Secretary, Tamil Nadu Pollution Control Board being

the same and the offences alleged against all the respondents

herein are one u/s 21(2) read with 37 of the Air (Prevention and Control of Pollution) Act, 1981 and a common question of law is involved, I have

proposed to dispose of the four appeals as consented to by the Bar, by rendering this common judgment.

3. Brief facts of the prosecution case as culled out from the records of the court below and the impugned judgments are stated as follows :

The four respondents herein respectively accused in the above four cases are having and running different factories in Pollachi Main Road near

Echanari Railway Gate, a sub-urban place of Coimbatore town. P.W. 1, the Regional Officer of the appellant herein inspected the respective

factories of the respondents herein during the months of June, 1984 and found that they were running the said factories and that they had not filed

the application to the Tamil Nadu Pollution Control Board, for according the sanction and permission to run the factory as contemplated under the

Act. According to P.W. 1, G.O. Ms. 4 Environment Control Department dated 28-9-1983 issued by the Government of Tamil Nadu provides

that within a period of six months from the date of publication of the same, those who are running the factory must apply to the Tamil Nadu

Pollution Control Board and get the sanction and permission to run the factory and then only they are entitled to run the same. Accordingly, all the

respondents herein ought to have applied to the Board on or before 31-3-1984 as their respective factories have been shown in the schedule

appended to the Government Order above referred. But however, according to P.W. 1 none of the respondents had sent any application on or

before 31-3-1984 to the Board and that therefore, all the respondents herein had violated Section 21(2) of the Act which is punishable u/s 37 of

the Act. He would further claim that in a meeting held by the appellant Board on 19-10-1984, by passing a resolution with regard to 120 factories

inclusive of the respondents herein also, the Board had permitted P.W. 1 to launch Criminal Prosecutions against them. The authorisation given to

file Criminal Prosecution have been marked as Ex. P. 1, Copy of G.O. Ms. No. 4 Environment Control Department dated 28-9-1993 has been

marked as Ex. P. 2; Paper publications have been marked as Ex. P. 3; Copy of the Resolution of the Tamil Nadu Pollution Control Board passed

in the 10th Board Meeting held on 19-10-1984 has been marked as Ex. P. 4; Complaints have been marked as Ex. P. 5; Gazette publication has been marked as Ex. P. 6 in all the four cases.

4. When the respondents/accused were examined u/s 313 of the Code of Criminal Procedure with regard to the incriminating circumstances appearing against them in evidence, they have denied their complicity and pleaded not guilty. But they did not choose to examine any witness on their behalf.

5. On recording the oral evidence of P.W. 1 to the extent of the facts above referred and the documentary evidence Ex. P. 1 to Ex. P. 6, the learned trial Magistrate after having considered and assessed everything in the context of the plea taken on behalf of the accused/respondents found them not guilty for the offence for which they were tried and acquitted them. Aggrieved at this, State has preferred the above four appeals.

6. Mr. S. Shanmughavelayutham, learned Additional Public Prosecutor, during the course of his argument pointed out that the non-obtaining of the permission or sanction from the Tamil Nadu Pollution Control Board by the respondents herein, itself is a clear violation of Section 21(2) of Air (Prevention and Control of Pollution) Act, 1981 hereinafter referred to as the "Act", and that as such, it is an offence punishable u/s 37 of the Act

and that therefore, the respondents are liable to be punished accordingly, and that instead, acquitting them all by the learned trial Magistrate, is

clearly erroneous. He would further contend, that as per the claim of P.W. 1, the respondents were running the respective, factories and they had

not obtained permission or sanction from the Board on or before 31-3-1984 as per the notification issued by the Government of Tamil Nadu. The

failure to obtain the permission to run the factory from the appellant/Board per se amounts to violation of Section 21(2) of the Act, according to

the contentions put forward on behalf of the appellant. But it was argued on behalf of the respondents by the learned counsel of Mr. Anbumani in

all the appeals, that there was no ground available to interfere with the impugned order passed by the learned trial Magistrate by this Court, for the

simple reason, that the appellant had first failed to establish that the respondents are running the industries, which find a place or are specified in the

Schedule appended to the notification and secondly, that the failure to apply for

sanction from the appellant/Board as contemplated by the notification under Ex. P. 2 which is only a Government Order and the violation of the same cannot be deemed to be an offence punishable u/s 37 of the Act itself.

7. In the context of the above rival contentions, the question that arises for consideration in these appeals is whether the prosecution has established the guilt and complicity of the respondents beyond all reasonable doubts as contemplated by law ?

8. I have carefully gone through the recorded evidence both oral and documentary and the documents filed on behalf of the appellant herein and the various findings given the learned trial Magistrate in the impugned judgments. It was the specific finding of the learned Magistrate that the proviso to Section 21(2) of the Act clinches the fact that there was an exception available for those who are not able to obtain permission from the

Board on or before 31-3-1984. The proviso to Section 21(2) reads like this :

Provided that where any person, immediately before the declaration of any area as an air pollution control area, operates in such area any

industrial plant for the purpose of any industry specified in the Schedule such person shall make the application under this sub-section within such

period (being not less than three months from the date of such declaration) as may be prescribed and where such person makes such application,

he shall be deemed to be operating such industrial plant with the content of the State Board until the consent applied for has been refused.

According to the learned trial Magistrate the word "Industrial Plants" as defined in Section 2(2)(a) of the Act does not find a place or is defined

nor specifically stated in the Schedule appended to the notification published by the Government. Therefore, he found that there was a doubt as to

whether the factory run by the respondents could come within the purview of Section 21(2) of the Act and that the Industrial Plants as referred to,

belongs to which category according to the schedule which applies to the factories run by the respondents, is still a mystery, which P.W. 1 namely,

the Regional Officer of the Tamil Nadu Pollution Control Board was bound to prove before the court of law during trial.

9. While construing Section 37 of the Act, it is seen that it is a penal provision for the violations of the provisions of Sections 21(5) and 22 of the

Act and not for the violations coming u/s 21(2) of the Act. In short, it was the specific finding of the learned Magistrate that the punitive Section 37

cannot be invoked for any other offences except the violation of Sections 21(5) and 22 of the Act.

10. The admitted case of P.W. 1 though is that the respondent had not obtained the permission from the appellant/Board as was provided in the

notification under the Act and it was detected during the inspection of P.W. 1, it is significant to note that no show-cause notice has been sent to

the respondents seeking their explanation and that subsequent to the prosecution, covering the period subsequent to 31-3-1984, respondents had

obtained permission from the Board as contemplated by law, as represented by the Bar but for the previous period alone, they failed to comply

with the same. It is pertinent to note that P.W. 1 has failed to give the date of inspection and produce his inspection note prepared on that day with

the object of proving the violation of the respondents. Looking into the very gamut of Section 21(2) and its proviso, I am of the view that the

interpretation and consequent finding by the learned trial Magistrate that the Government Order, is only an Executive Order and that therefore,

none of the respondents could be mulcted with criminal liability has to be accepted. No other evidence has been let in by the prosecution through

P.W. 1 on behalf of the appellant before the trial court. In short, firstly, the appellant has virtually failed to prove that respondents were running

"Industrial Plants" that would come within the purview of the schedule appended to the notification; secondly, Section 37 of the Act, a penal

provision in built in the Act is not applicable to the violation of Section 21(2) of the Act; thirdly, the proviso to the above Section does not provide

any criminal liability on the respondents and above all, the evidence of P.W. 1 does not render any help or assistance in establishing the guilt and

complicity of the respondents; as has been clearly and categorically held by the learned trial Magistrate. After having gone through the various

findings recorded by the learned Magistrate. I am satisfied to hold that he has appreciated the tendered evidence, both oral and documentary in

their correct legal perspective and has arrived a proper conclusion on his part with the law and procedure and has rightly acquitted all the

respondents. I do not come across any misappreciation of the tendered oral and documentary evidence either on facts or in the interpretation of

the law. In my considered view, these appeals have no merits and lack the lien material ingredients.

11. In the result, all the appeals fail and accordingly, they are dismissed.

12. Appeals dismissed.