
(1991) 03 AHC CK 0111

In the Allahabad High Court

Case No : Criminal Miscellaneous Case No. 77 of 1991

Trans Asia Carpets Ltd. and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 11-03-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 245, 245(2), 482
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 16, 22
Water (Prevention and Control of Pollution) Act, 1974 — Section 25, 26, 44, 47

Citation : (1992) CriLJ 673

Hon'ble Judges : J.K. Mathur, J

Bench : Single Bench

Advocate : N.K. Agarwal, for the Appellant; Govt. Advocate and J. Bhalla (3), for the Respondent

Final Decision : Dismissed

Judgement

J.K. Mathur, J.—The petitioners seek quashing of proceedings in Criminal Misc. Case No. 2153 of 1989 pending in the court of Special Judicial Magistrate (Pollution Control), Lucknow by this application u/s 482 Cr.P.C.

2. According to the petitioners the petitioner No. 1 is a public limited company. It has entered into a technical collaboration with M/s. Besmer Tephic Fabric Martens K.G., a German Company for manufacture of carpets. It became sick in December, 1990 and applied to the Board of Industrial and Financial Reconstruction. The trade effluence from the petitioners' manufacturing unit is being scientifically treated to make it free from pollution and a part of it is used by the land owners and cultivators for agricultural purposes. The Water (Prevention and Control of Pollution) Act, 1974 prohibits discharge of trade effluence in the stream. The river Karve is connected only through a U.P.S.I.D.C. drain which also (sic) toxic materials from other neighbouring units. A complaint has, however, been filed by the U. P. Pollution Control Board (hereinafter referred to as the "Board" for short) against the applicants in the court of Chief Judicial

Magistrate, Bulandshahar which was subsequently transferred to the court of the Special Judicial Magistrate at Lucknow. This complaint is based on a sample taken on 6-1-1986 the inspection report, copy of which is Annexure 1 stating that the effluence is discharged in U.P.S.I.D.C. drain which reaches river Karve through Nizampur drain. According to the petitioner, the drain is not a stream under the aforesaid Act. The applicants themselves got a sample taken on 3-3-1986. It was examined by Shri Ram Institute for Industrial Research, Delhi as specified by U. P. Pollution Control Board. The BOD found to be 22, within the limits prescribed. The applicants were not supplied its report by the Board. The complaint was filed against all the Directors. The applicants 7 and 8 are Directors only because of collaboration. The complaint does not show that there was any connection of the directors with the alleged breach. The President and the Executive Vice-President are the other persons responsible for the affairs of the company and not all the Directors. The Board of Directors has delegated their powers. The applicants have also started treating the effluence and have also started using it for eucalyptus plantation. Non-bailable warrants have been issued against the applicants. The applicant No. 2 has already died in a plane crash in February, 1950.

3. The complaint copy of which is Annexure 4 to the application, has been challenged firstly on the ground that no complaint could be filed against the Directors under the provisions of law, secondly on the ground that the petitioner having applied for protection under the Sick Industrial Companies (Special Provisions) Act, 1985, no legal proceedings can be instituted. It was also urged that the analysis got done by the authorised laboratory shows the BOD within the prescribed limits and, therefore, there was no pollution being caused and lastly on the ground that in any view of the matter the effluence was not being discharged in any stream.

4. An offence u/s 44 of the Water (Prevention and Control of Pollution) Act, 1974 is committed when the provisions of Section 25 or 26 are violated.

5. Section 25 of the said Act provides for the consent of the State Board to be obtained before bringing into use any new or altered outlet for the discharge of sewage or trade effluent into a stream or well. Section 26 is violated when such consent is not obtained by a person who was discharging any sewage or trade effluence into a stream or well immediately before commencement of this Act, to discharge such effluence.

6. The petitioners are alleged not to have obtained the consent of the Board for discharge of the trade effluence into a stream.

7. Section 47 of this Act specifically refers to the offences by the companies and runs as follows:--

47. Offences by companies.-- (1) 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:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act 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) Notwithstanding anything contained in Sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

8. Thus when a company is to be prosecuted the company and such persons who at the time of offence were in charge and were responsible to the company for the conduct of the business of the company can be prosecuted. However, any one of them can show that the offence was committed without, his knowledge or that he exercised all due diligence to prevent commission of such offence, in which case he would not be liable to be punished.

9. Thus according to the Act if a trade effluence was discharged by the petitioners' company, in addition to the company the persons who were responsible for the conduct of the business of the company would be liable to be prosecuted.

10. In this context a reference may be made to the case of U.P. Pollution Control Board v. M/s. Modi Distillery , in which case it has been held (para 6):

On a combined reading of the provisions contained in Sub-sections (1) and (2), we have no doubt whatever that the Chairman, Vice-Chairman, Managing Director and Members of the Board of Director of Messrs Modi Industries Limited, the Company owning the industrial unit Messrs Modi Distillery could . be prosecuted as having been in charge of and responsible to the company, for the business of the industrial unit Messrs Modi Distillery owned by it and could be deemed to be guilty of the offence with which they are charged.

In view of this the Directors of the company would be liable to be prosecuted per se if there is an allegation that they are also the persons liable for the conduct of the business of the company. It will, however, be possible for them to exculpate themselves by saying that the offence was committed without their knowledge or even after the exercise of due diligence to prevent the commission of offence.

11. It may be pointed out that the complaint filed against them does contain specific allegation that all the applicants were in-charge of the business of the company and were responsible for the working of the company and for conduct

of its business in para 19. The complaint cannot be said to be bad on this score.

12. As far as protection u/s 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 is concerned, even if it be assumed that proceedings u/s 16 is pending or a scheme is under preparation, only the proceedings for winding up or for execution or the like against all or any of the members of the industrial company or for the appointment of the Receiver in respect thereto shall not be proceeded with further or entertained except with the consent of the Board.

13. Being prosecuted for an offence is not one of acts against which protection has been afforded by Section 22 of the aforesaid Act.

14. The remaining arguments relate to the extent of pollution and the factum of discharge of effluence into a stream.

15. For this the proper forum to decide these matters in the first instance is the Judicial Magistrate concerned.

16. Section 482, Cr. P.C. does not permit running of a parallel criminal proceedings and consideration of all those facts which can be considered by the Magistrate who is seized of the proceedings by virtue of the complaint filed in his court. It is not that any person can come to this court directly under the cloak of Section 482 and ask this court to decide all questions relating to the merit of the case instead of appearing before the Magistrate and raising those pleas in that forum. If the provisions of Section 482 are used for this purpose, the procedure in a criminal trial will stand divided in two distinct streams, one for the persons to undergo a regular trial under the normal procedure in the court and other for the persons who can afford to come to this court and get these questions determined without subjecting themselves to the normal procedure in a criminal court. This would be utter disregard of the rule of law and could not possibly be intended by the provisions of Section 482, Cr. P.C.

17. In this regard reference may also be made to the case of Willard India Ltd. v. State of U.P. (Writ Petn. No. 8889 of 1989 decided by a Division Bench of this court on 29-11-1989 (Reported in 1990 All LJ 531)). In that case also certain questions of fact had been raised about the extent of pollution. This court after referring to the provisions of Section 245, Cr. P.C. was of the opinion that in case any preliminary objections to the maintainability of complaint are to be raised, it could well be done under the provisions of Section 245(2), Cr. P.C. which has clothed the Magistrate with ample power to discharge the accused at any stage for reasons to be recorded by him. The court was also of the view that the petitioner could not be permitted to ignore hierarchy of the judicial process and come to this court at the very first instance.

18. In view of this, this court cannot go into the question of extent of pollution or whether the effluence is being discharged in stream or well or being used otherwise. It is open for the petitioners to raise all the aforesaid pleas before the Magistrate concerned and to obtain his orders.

As a result, this application cannot be allowed and is liable to be dismissed. The application is hereby dismissed.