

Medwln Hospitals and anr. Vs. State of A.P. and anr.

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SooperKanoon Citation : sooperkanoon.com/445274

Court : Andhra Pradesh

Decided On : Jul-21-1998

Reported in : 1999CriLJ782

Judge : B. Sudershan Reddy, J.

Acts : Andhra Pradesh Water (Prevention and Control of Pollution) Act, 1974 - Sections 2, 24, 25, 25(2), 26, 43, 44, 47, 47(1) and 49; Code of Criminal Procedure (CrPC) , 1974 - Sections 190 and 482; Andhra Pradesh Water (Prevention and Control of Pollution) Rules, 1976 - Rules 2, 36 and 37

Appeal No. : Criminal Petition No. 475 of 1998

Appellant : Medwln Hospitals and anr.

Respondent : State of A.P. and anr.

Advocate for Def. : S.V. Bhatt, Public Prosecutor for ;E. Kalyanaram, Adv.

Advocate for Pet/Ap. : B. Mahender Reddi, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

B. Sudershan Reddy, J.

1. This is a petition filed under Section 482 of Cr. P.C. by the accused in C.C. No. 505 of 1996 on the file of the learned IVth Metropolitan Magistrate, Hyderabad. The petitioners pray to quash the said proceedings on the file of the learned Metropolitan Magistrate.

2. The second respondent herein A. P. Pollution Control Board filed complaint under Section 49 of Water (Prevention and Control of Pollution) Act, 1974 (for short 'the Act') for prosecution under Section 43 and 44 for violation of Section 24, 25 and 26 of the said Act. In the complaint, it is inter alia stated that the Government of Andhra Pradesh prescribed standards or safe disposal of wastes generated by the hospital/health care establishments under the rules framed in A.P. Water (Prevention and Control of Pollution) Rules, 1976 (for short 'the said Rules'). Sub-clause (j) of Rule 2 of the said Rules define Health care establishments which mean and include all the Hospital, Nursing Homes, Diagnostic centers and Laboratories irrespective of size/Capacity bed strenghts. Rule 36 of the said Rules says all the Health Care establishments are required to follow the regulatory and promotional guidelines as mentioned in schedule V of the said Rules. Rule 37 mandates that all Health care establishments having bed strength of 25 or more shall have to take consent for establishment and operation which discharge the sewage or trade effluent into a stream or well or sewer or on land under Section 25 of the Act. Health Care wastes are classified into weight main categories i.e., general waste, pathological waste, radio active waste, chemical waste, chemicaltious waste and potentially infectious waste, sharps, pharmaceutical waste and pressurised containers. The other details stated in the complaint are not required to be noticed for the present purpose. There are specific allegations in the complaint against the first petitioner-accused. It is alleged that as on today it is operating with 350 bed strength and carrying its business in the field of Cardiology, Nuclear Medicine, Blood Bank, Dialysis, (Nephrology), Gynaecology, Radiology, Gastroenterlogy, ENT, Neurology, Pediatric, Blood Bank, Out Patent Department etc. It is drawing water from Municipal Water Sources/ Bore well for their use and generating 160 M to 180 M of Waste water. The water is being discharged into sewer line of Municipal drainage system without any treatment which causes ultimate water contamination in the river Musi.

3. In addition to the waste water, the Hospital is alleged to be generating 150 kgs. per day of solid waste. There is no proper disposal system to discharge the solid waste especially infectious solid waste, the Amputated limbs, other operated materials and other infectious solid wastes generated from the Hospital are being disposed through MCH which ultimately dumping at open yard Autonagar, near Vanasthalipuram, Hyderabad which is located within the basin area of river Musi. The mode of disposal is hazardous to human health and Environment. It is an offence under Section 24 of the Act. The accused Hospital is not following the statutory guidelines as prescribed by the Act even after public notice Dt. 15-1-1996 and individual notices dt. 25-1-96 and 4-3-1996 and committing offences by commission as well as omission of the Act which are punishable under Sections 43 and 44 of the said Act.

4. It is also alleged that the petitioner-accused Hospital failed to comply with the statutory requirement and failed to obtain consent as required under the Act and also failed to implement regulatory and promotional guidelines. The omission to have valid consent is punishable under Section 44 of the Act. The commission by act of discharging, polluting, noxious, poisonous matter and water is punishable under Section 43 of the Act.

5. The complaint is presented by the Environmental Engineer, incharge of Regional Office, Hyderabad as an Officer of the Board and authorised through Resolution of the Board dt. 30-3-1996. The learned Magistrate took cognizance of the case by an order dt. 8-7-1996 which is to the following effect:

Perused the complaint. Case is taken on file for the offences under Sections 43 and 44 r/w. Sections 24, 25 and 26 of the Water Prevention and Control of Pollution Act, 1974 against the accused. Issue summons against the accused. Call on 21 -8-1996.

In this application, the petitioners-accused contend that the first petitioner is not a company by itself and it is one of the institutions running under Jaya Diagnostic and Research Centre Ltd. Petitioner No. 2 is the Managing Director (Finance) of the said Research Centre. There is no Managing Director whatsoever so far as it concerned the Medwin Hospital. It is also contended that there are no specific

allegations either against petitioner No. 1 or petitioner No. 2 and at any rate, petitioner No. 2 is not incharge or responsible for the conduct of the business of Medwin Hospital. Since there is no allegation as such against the second petitioner, he cannot be impleaded as one of the accused.

6. It is also the case of the petitioners that the learned Magistrate has not examined the nature of allegation or recorded any preliminary evidence oral or documentary and issued summons to the petitioners. Sri K. Ramakrishna Reddy, learned Senior Counsel appearing on behalf of the petitioners submit that the learned Magistrate has not applied his mind to the facts of the case and law applicable thereto. The learned Magistrate directed to issue summons without advertng to the contents of the complaint and without considering as to whether there is any sufficient material for the complainant to succeed in bringing the charge home as against the accused. It is also submitted that Section 49 of the Act contemplates that no Court shall take cognizance of any of-fence under the Act except on a complaint made by the Board or its authorised Officer. The A.P. Pollution Control Board in the instant case, authorised to prosecute the persons in charge of M/s Medwin Hospital. But the complaint was made against Medwin Hospital a corporate or-ganisation. Hence the complaint itself is unauthorised.

7. During the course of the submissions, it is urged by the learned Senior Counsel for the petitioners that the second petitioner herein is wrongly impleaded as one of the petitioners, though he is not arrayed as one of the accused in the complaint and therefore, the same may be deleted from the petition as not being a necessary party. Learned standing counsel for the Pollution Board has no objection for the said submission. Therefore, now the petition shall be treated to have been filed only by the first petitioner who is an accused in the complaint.

8. Learned standing counsel for the Board contends that the learned Magistrate has taken the complaint on file and issued summons to the accused on 21-1-1996 after complying with the mandatory provisions of Section 190, Cr. P.C. The evidence of the complainant is over on 13-6-1997 and in spite of the complainant attending the Court, the accused have not chosen to cross-examine the complainant. It is a part heard matter. The accused had been prolonging the

matter in one way or the other. The learned Magistrate finally directed the matter to be listed on 4-2-1998 for cross-examination or to report as to whether there will be no cross-examination of the complainant. It is at that stage, the petitioner had come forward with the present application to quash the proceedings.

9. Section 47 of the said Act deals with the offence by companies. It envisages that '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 along with the company.' Learned Senior Counsel submits that Medwin Hospital itself is neither a company nor B. Kameshwara Rao is its Managing Director. He was not in charge of or responsible for the conduct of the business of Medwin Hospital. Therefore, the prosecution launched against the first petitioner suffers from incurable and inherent lack of jurisdiction. The argument proceeded on the basis that the company and its Managing Director is being prosecuted. It is not as if Kameshwara Rao is being prosecuted in the capacity as the Managing Director of Medwin Hospital by treating it as a company. Such is not the case on hand. It is not as if only a company or its Managing Director alone could be prosecuted for the offence under the provisions of the Act. If it is not a company which is being prosecuted, the application of Section 47 would have no bearing. Section 24 and 25 of the Act prohibits use of stream or well for disposal of polluting matter and restriction on new outlets and new discharges. Section 26 of the Act mandates that any person discharging in sewage or trade effluent before the commencement of the Act shall apply for consent to be made in Sub-section (2) of Section 25 of the Act, and the same shall be made on or before such date as may be specified by the State Government by notification. Section 2(d) of the Act defines 'occupier' and it says that occupier in relation to any factory or premises means the person who has control over the affairs of the factory or the premises. Section 43 of the Act says that whoever contravenes the provisions of Section 24 shall be punishable with imprisonment for a term which shall not be less than one year and six months but which may extend to six years and with fine, whereas Section 44 prescribes penalty for contravention of Section 25 or Section 26 and it says that whoever contravenes the provisions of Section 25 or Section 26 shall be

punishable with imprisonment for a term which shall not be less than one year and six months, but which may extend to six years and with fine. Sections 43 and 44 of the Act are very wide in their sphere and amplitude. It says, whoever contravenes the provisions of Section 24, 25 and 26 shall be punishable. It can be a person, a firm, a company, an individual, or an occupier in relation to any factory or premises. A comprehensive reading of Section 2(d), 24, 25, 26, 43, 44 and 47 would indicate that whoever contravenes the provisions of Section 24, 25, 26 are punishable under the provisions of the Act. Therefore, the petitioner cannot imagine that a company is being prosecuted and then contend that such prosecution is not in conformity with Section 47 of the Act. In the case on hand, Section 47 may not have any application at all.

10. The cases cited by the learned senior counsel for the petitioner in *Municipal Corporation of Delhi v. Ram Kishan Rohtagi* : 1983 CriLJ159 and *N.A. Palkhivala v. Madhya Pradesh Pradushan Niwaran Mandal, Bhopal* 1990 Cri LJ 1856 have no bearing what-so-ever. The word 'person' including both a natural person or an artificial person includes a company or association or body of individuals whether incorporated or not. It need not be necessarily a incorporated company or a firm. For the purpose of that Act, a person includes an occupier in, relation to any factory or premises. Viewed from that angle, it cannot be said that the first accused cannot be said to be an occupier carrying on business in the field of Health care. In fact, it is described in the complaint as Health Care establishment/Hospital. Under those circumstances. Medwin Hospital itself could be prosecuted under the provisions of the Act without having any regard as to whether it is a company or a firm as the case may be.

11. However, the next question that would arise for consideration is as to whether it has any Managing Director and as to whether B. Kameshwara Rao could be said to be its Managing Director. Whether the said B. Kameshwara Rao represents the Medwin Hospital and as to whether he is the Managing Director and as to whether there is any person holding the office of any Managing Director of the Medwin Hospital is a question of fact which cannot be decided by this Court in this petition under Section 482 of Cr. P.C. Learned Senior counsel however, made an attempt to invite my attention to certain documents in support of his submission that the

said B. Kameshwar Rao is not the Managing Director of Medwin Hospital and there is no Managing Director, inasmuch as Medwin Hospital is not a company. I cannot peruse the documents for the first time in Section 482 proceedings which are not marked in the Court below and arrive at any conclusion as such. It may be open to the petitioners to take the same as the defence in the proceedings in whatever manner the petitioners may consider it appropriate. Therefore, the complaint cannot be thrown out on the ground that Medwin Hospital is not a company and B. Kameshwar Rao cannot represent the said Hospital as its Managing Director.

12. The second point urged by the learned Senior counsel relates to the authorisation-given to the Environmental Engineer to prosecute the first accused. It is urged that Section 47 of the Act contemplates that no Court shall take cognizance of an offence under the Act except on a complaint made by the Board or its authorised Officer. It is urged that the Board passed resolution vide Memo No. 19-4-1996 authorising the Environmental Engineer to prosecute 'persons incharge of M/s Medwin Hospital'. Learned senior counsel would urge that prosecution of Medwin Hospital is contrary to the resolution of the Board and there is no authorisation whatsoever to prosecute Medwin Hospital itself. According to the learned Senior counsel, taking cognizance of the complaint at the instance of the Board without proper authorisation is contrary to Section 47 of the Act. The sum and substance of the submission is that, if at all the Environmental Engineer could file complaint only to prosecute 'persons in charge of M/s Medwin Hospital' but not the Medwin Hospital itself. It is difficult to accede to the submission made by the learned counsel for (he petitioners. The argument is really a hypertechnical one. Learned Standing Counsel for the Board how-ever, made an attempt to submit that said B. Kameshwar Rao used to receive the notices from the Board and he is the person who is actually incharge of the management of Medwin Hospital. I do not propose to express any opinion whatsoever on this aspect. Suffice it to hold that the authorisation .to prosecute the persons in charge of M/s Medwin Hospital would include the authorisation to prosecute Medwin Hospital. It is not as if only persons incharge of Medwin Hospital could be prosecuted and not the Hospital itself. After all the Hospital itself in the event of the prosecution establishing the case, could not be punished under the provisions of the Act and in

that context the expression in the Board's resolution to prosecute the persons in charge of M/s Medwin Hospital is required to be construed. Courts cannot resort to have such hyper-technical view as suggested by the learned Senior counsel to shoot at sight the prosecution even at the threshold. Such a course is not permissible. The decision cited by the learned Senior Counsel in S.M. Dubash v. V.M. Bhosale 1996 Cri LJ 2136 does not shed any light on this aspect which we are concerned in the instant case.

13. It is however, urged that there is no material and nothing on record to suggest that B. Kameshwar Rao is the person in charge of the Hospital. It is a question of fact and the same can be decided only after the enquiry and trial. If the said B. Kameshwar Rao is not the in charge of the Hospital for its management, the inevitable consequence may follow. But the prosecution itself cannot be quashed on that ground. The observations made by a Full Bench of Patna High Court in Mahmud Ali v. State of Bihar : AIR1986 Pat133 are apt to be recalled (at page 139):

Analysed as above, Section 47(1) spells out a deeming fiction of vicarious liability and a rule of evidence laying the burden of proof on persons in charge of and responsible to the company for the conduct of its business.

Once it is held as above, the argument of the learned counsel for the petitioner falls in its place and stands conclusively repelled. It is settled beyond cavil that rules of evidence and deeming fictions are not to be expressly spelt out and pleaded. They are matters which are for consideration and application in the course of the trial. To require that the complaint itself must plead a rule of evidence or, in terms, spell out a deeming fiction provided by the statute therein is an argument bordering on hypertechnicality. One must always keep in mind the broader perspective that the administration of criminal law is more a matter of substance than of form and should not be allowed to be obscured by pettifogging technicality.

It is however, urged by the learned senior counsel that there is no allegation in the complaint that the petitioner herein has committed any offence as such and if there is no allegation in the complaint involving the petitioner accused in the commission

of the crime, the Magistrate cannot proceed with the enquiry. It is urged that in such view of the matter, the Magistrate would have no jurisdiction to proceed against the accused. The learned Senior counsel is supported by a decision of the Apex Court in *K.M. Mathew v. State of Kerala* : 1992 CriLJ3779 . There is no difficulty to agree with the proposition. But the question is its application to the facts on hand. Specific, clear and unambiguous allegations are levelled against the Hospital about its commission and omission under the provisions of the Act. Whether the allegations are true or not is a different question.

14. The learned senior counsel for the petitioners, however, very strenuously contend that the criminal law proceedings are set in motion against the petitioner accused in a casual and mechanical manner without application of mind by the learned Magistrate. Reamed senior counsel submits there is nothing on record suggesting the application of mind by the learned Magistrate. Reliance is placed upon a decision of the Apex Court in *Pepsi Foods Ltd. v. Special Judicial Magistrate* : 1998 CriLJ1 and another decision of the Sikkim High Court in *A.K. Jain v. State of Sikkim* 1992 Cri LJ 843 : AIR 1992 Sikkim 20. The Apex Court observed as follows (at page 8 of Cri LJ):

Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course.-It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion, the order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise ,and then examine if any offence is prima facie committed by all or any of the accused.

The decision of the Sikkim High Court *supra* says that the learned Magistrate has to consider whether the complaint discloses all the essential ingredients of an offence. If the complaint does not disclose any essential ingredient of an, of fence, that will be a case where the complaint, taken on its face value, does not make out.-any case for issue of a process.

15. There is absolutely no doubt whatsoever to hold that criminal law cannot be set in motion against an accused person in a very casual and mechanical manner. The Magistrate before taking cognizance is duty bound to meticulously peruse the contents of the complaint so as, to satisfy himself that such contents do reveal the commission of offence as alleged. The question of issuing a process does not arise without the learned Magistrate forming an opinion based on the material available at the time of taking cognizance. The learned Magistrate is required to not only look into the contents of the complaint but also statement of the complainant and the witnesses, if any, examined and other material including the documents made available by the complainant. Such application of mind is a condition precedent for issuing a process against the accused. It is well settled that issuing process in a criminal case against an accused itself is fraught with serious consequence. But in my considered opinion, it is not necessary for the learned Magistrate to pass an elaborate order disclosing as to why he intends to take cognizance of a case. It would meet the requirement of law, if the proceedings on the file of the learned Magistrate would disclose the application of mind. After all the learned Magistrate is not deciding any case at that stage. All that is required is that he has to satisfy himself with the contents of the complaint *prima facie* reveal the commission of the alleged offence. The learned Magistrate in the instant case passed the following order:

Perused the complaint. Case is taken on file for the offence 43 & 44 r/w. 24, 25 and 26 of the Water(Prevention and Control of Pollution) Act, 1974 against the accused. Issue summons against the accused. Call on 21-8-1996.

The same would disclose application of mind, though it would have been available for the learned Magistrate to indicate that the complaint discloses the commission of the alleged offence. However, it is required to observe that the learned

Magistrate could have been somewhat articulate in recording his satisfaction.

16. Yet another ground as to why this Court at this stage does not propose; to interfere and quash the proceedings. It is brought to my notice that the learned Magistrate had taken the complaint on file on 8-7-1996 and issued summons to the accused on 21 -1 -1996. The complainant had already been examined and the petitioner has chosen not to cross-examine the complainant. It is stated that the evidence of the complainant is over by 13-6-1997 and the matter was finally posted on 4-2-1998 for cross-examination of the complainant or to report as to whether there is no cross-examination. It is at this stage, the petitioner moved this Court and obtained an order on 3-2-1998 staying the further proceedings in C.C. No. 505 of 1996.

17. For all the aforesaid reasons, I am not inclined to interfere in exercise of jurisdiction under Section 482 of the Code of Criminal Procedure.

18. However, the trial Court shall proceed with the enquiry and trial in accordance with law uninfluenced by the observations made in this order, as this Court has not expressed any opinion on the merits of the case.

19. Petition fails and is accordingly dismissed