

Rajasthan Board for Prevention and Control of Pollution Vs. Man Processors and ors.

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Court : Rajasthan

Decided On : Aug-14-1996

Reported in : 1996WLC(Raj)UC402; 1996(2)WLN665

Judge : Amaresh Ku. Singh, J.

Appeal No. : S.B. Criminal Revision Petition No. 238 of 1989

Appellant : Rajasthan Board for Prevention and Control of Pollution

Respondent : Man Processors and ors.

Judgement :

Amaresh Ku. Singh, J.

1. Heard the learned Counsel for the petitioner and the learned Counsel appearing for the non-petitioners.

2. This revision petition under Section 397 Cr.P.C. has been filed against the order dated 29.6.1989 passed by the learned Chief Judicial Magistrate, Pali-Marwar in Criminal Complaint No. 980/79. By this order dated 29.6.1989 the learned Chief Judicial Magistrate, Pali discharged the accused non-petitioners of the offences punishable under Sections 49, 53 and 21 of the Water (Prevention and Control of

Pollution) Act, 1974 (referred to hereinafter as 'the Act of 1974') and purporting to act under Section 33 of the Act of 1974 directed that the non-petitioner No. 1 shall conduct its functions in such a manner so as not to pollute against law.

3. The facts necessary for the disposal of this revision petition may be described as below--On 7.8.1979 Shri Nawal Kishore Vyas, Advocate counsel for Rajasthan Rajya Jal Pradushan Niwaran Avam Niyamtran Mandal submitted a complaint before the learned Chief Judicial Magistrate, Pali on behalf of the petitioner and against the non-petitioners alleging the commission of offences punishable under Sections 43 and 44 read with Sections 24, 25 and 26 of the Act No. 6 of 1974. According to the complaint, the non-petitioner No. 1, namely, M/s. Man Processors is an industrial unit carrying on dying and bleaching of textiles within the municipal limits of Pali since 1972 and 26,000 ltrs. of industrial waste which is produced by the said industrial unit every day is poured in the Bandi river through the 'Nalis' constructed by the Municipal Council. The non-petitioner No. 1 had filed an application under Section 26 of the Act of 1974 for the purpose of obtaining consent for disposal of industrial waste. The application was filed on 19.8.1976 whereas the application should have been filed within 3 months of the constitution of the Board under the Act of 1974. It was alleged in the complaint that the non-petitioner No. 1 disposed of its industrial waste without permission from 7.2.1975 to 12.11.1976 and thereby violated the provisions of Section 26 of the Act of 1974. It was further alleged in the complaint that the disposal of industrial waste by pouring the same in the river or a well could not be done by the non-petitioner No. 1 without the permission of the Board and since the non-petitioner No. 1 did not obtain the prior permission of the Board there was violation of Section 25 of the Act of 1974. Regarding the permission to be given by the Board under the Act of 1974 it was alleged in the complaint that on 12.11.1976 the Board granted permission to the non-petitioner No. 1 for the period ending in May, 1977 and according to the terms and conditions laid down in the permission granted by the Board the quantity of industrial waste which could be disposed of by the non-petitioner No. 1 shall not exceed 10,000 ltrs. a day and the manner of disposal was to conform to I.S. 2490-Part I of 1974 which was adopted by the Board and the non-petitioner No. 1 was further required to submit its designs to the Board. In addition to the above mentioned special conditions the general conditions were

also required to be complied with and it was alleged that since the non-petitioner No. 1 disposed of the industrial waste without permission, there was violation of Section 24 of the Act of 1974. It was also alleged that on 22.3.1979 the premises of the non-petitioner No. 1 were inspected by Shri A.K. Rohtaki, who was authorised by the Board to inspect and Shri Rohtaki found that the non-petitioner No. 1 had no treatment plant and 26000 ltrs. of industrial waste was being disposed of by pouring the same in the Bandi river without prior treatment. It was further stated that the Board had granted permission to file complaint vide decision taken in the meeting dated 26.5.1979 and the Member Secretary of the Board was authorised by the decision taken in the meeting dated 18.4.1979 to file a complaint on behalf of the Board.

4. After submission of the complaint before the learned Chief Judicial Magistrate, Pali, a case was registered under Sections 43 and 44 read with Sections 24, 25 and 26 of the Act of 1974 and non-petitioners No. 2 and 3 who were alleged to be responsible for carrying out the functions of non-petitioner No. 1 were directed to be summoned by issue of bailable warrants. After the appearance of the accused persons, the prosecution evidence was recorded before charge. On complainant side Shri A.K. Rohtaki P.W. 1 was examined. He stated on oath that he was in the employment of the Pollution Board from August, 1977 to July, 1979 and he inspected the premises of respondent No. 1 on 22nd March, 1979 and before inspection he served the notice Ex.P. 1, which was served on Shri Fateh Raj who put his signatures on Ex.P. 1. Shri Rohtaki told that after inspection which was conducted between 10 A.M. to 12 noon, he took samples and after inspecting them he prepared the report Ex.P.2 and that he served the notice Ex.P.3 before taking the sample and after taking the sample deposited the same in the Laboratory of the Board. He proved the signatures of Shri K.L. Goyal on Ex.P.4. During the examination Shri Rohtaki P.W. 1 the documents Ex P.5 to P.7 were also exhibited and Shri Rohtaki proved the signatures of Shri K.L. Goyal Member Secretary of the Board on these documents. Ex.P. 8 was also got exhibited and on this document also the signatures of Shri K.L. Goyal were also proved by Shri Rohtaki.

5. After recording the evidence of the complainant the learned Chief Judicial Magistrate heard the arguments on charge. It appears that some legal objections to the maintainability of the complaint were also raised before him. It was urged before the learned Chief Judicial Magistrate that the complaint was not filed by an authorised person and sanction for prosecution was also not obtained in accordance with law nor sanction was given after application of mind and the documentary evidence produced for proving the general and special conditions for disposal of industrial waste, were neither certified copies of the originals nor they were proved to contain the signatures and they are not admissible in evidence and that Shri A.K. Rohtaki P.W.I who had taken the sample was neither empowered to take the sample nor he divided the samples into two parts and Shri S.C. Saxena who conducted the chemical examination of the samples taken by Shri Rohtaki was not empowered to conduct the chemical examination and, therefore, his report was not in accordance with law. The learned Chief Judicial Magistrate after hearing the counsel for the parties and considering the evidence produced by the complainant came to the conclusion that the sanction for prosecution was granted without application of mind and that the documents produced by the complainant to prove the general and special conditions were not proved in accordance with law and, therefore, it could not be said that the complainant had proved the general and special conditions subject to which the non-petitioner was permitted to dispose of the industrial waste. Regarding the authority of Shri A.K. Rahtaki P.W. 1 to take the samples, the learned Chief Judicial Magistrate came to the conclusion that Ex.P.1 authorised him to take the sample. Regarding the objection that Shri Rohtaki did not divide the sample into 2 parts in accordance with the provisions of Section 52, the learned Chief Judicial Magistrate held that the provisions of Section 21(3)(b) had been violated and this has caused prejudice to the accused persons. Regarding the competence of Shri S.C. Saxena to conduct the chemical examination of the samples collected by Shri Rohtaki the learned Chief Judicial Magistrate came to the conclusion that Shri S.C. Saxena received the sample on 24.3.1979 and conducted the chemical examination on 21.4.1979 and that Shri S.C. Saxena was appointed on 26.4.1979 and, therefore, he could not be said to be authorised to conduct the chemical examination. Consequently, the learned Chief Judicial Magistrate came to the conclusion that the non-

petitioners could not be charged under Sections 24, 25 and 26 read with Sections 43 and 44 of the Act of 1974. Consequently, he discharged the non-petitioners of the offences alleged in the complaint, filed by the petitioner.

6. Feeling aggrieved by the aforesaid order by which the accused persons were discharged, this revision petition has been filed by the Rajasthan Board for Prevention and Control of Pollution under Section 397 Cr.P.C.

7. Learned Counsel for the petitioner-complainant has submitted that the findings of the learned Chief Judicial Magistrate are not warranted by law and therefore, liable to be quashed. It is submitted by him that according to the provisions of Section 49 of the Act of 1973 the court will take cognizance on the complaint filed by the Board or by any other person with the previous sanction in writing of the State Board and the question of sanction is irrelevant when the complaint is filed by the Board through its Chief Executive Officer in his official capacity as has been done in this case. In other words the submission of the learned Counsel for the petitioner is that if a complaint is filed by the Board itself through its Member Secretary no separate sanction for prosecution is necessary and in this case the complaint has been filed by the Member Secretary of the Board, therefore, no sanction was necessary. It is further submitted by him that the finding that the Board had not applied its mind before granting sanction for prosecution is also erroneous because the Board in its meeting had clearly considered the question of launching prosecution as is evident by item Nos. 20 and 21 of the minutes of the meeting and, therefore, it cannot be said that the complaint was filed by the Member Secretary without the prior application of mind. It is further submitted by him that the finding of the learned Chief Judicial Magistrate about the authority of Shri A.K. Rohtaki P.W. 1 to take the sample is also erroneous because Shri Rohtaki was duly empowered to take the samples. Regarding the necessity of dividing the samples into 2 parts by Mr. Rohtaki it is submitted by the learned Counsel for the petitioner that in this case no request was made by the non-petitioners to divide the samples into 2 parts. Therefore, no prejudice can be said to have been caused to the non-petitioners and the complaint cannot be thrown away on that ground. Regarding the competence of Shri Saxena to analyse the sample. The learned Counsel for the petitioner has submitted that the notification

dated 26.4.1979 appointing Shri S.C. Saxena as Board Analyst with effect from 26.7.1978 is valid in the eye of law because the appointment of Board Analyst was made on 26.7.1978 and it was the notification which was issued late and in any case the evidence of Shri Saxena is admissible under Section 45 of the Evidence Act on the ground that he is an expert and the provisions relating to appointment of a Board Analyst do not have the effect of debarring the experts other than those appointed by the Board from acting as expert within the meaning of Section 45 of the Evidence Act. On above grounds the learned Counsel for the petitioner has submitted that the order of discharge passed by the learned Chief Judicial Magistrate be set aside and the learned lower court should be directed to proceed with the case in accordance with law.

8. Learned Counsel for the non-petitioners on the other hand supported the order passed by the learned Chief Judicial Magistrate.

9. After hearing the learned Counsel for the parties and going through the order passed by the learned Chief Judicial Magistrate, I have no hesitation in coming to the conclusion that the order of discharge passed by the learned Chief Judicial Magistrate is erroneous. He has come to the conclusion that the sanction for prosecution was given by the Board without application of mind and that a prior sanction for prosecution was necessary. In view of this finding the only order which could have been passed was to drop the proceedings instead of passing an order of discharge because if a court comes to the conclusion that the sanction required for prosecution is not valid or is altogether missing, then such a finding affects the jurisdiction to take cognizance under Section 190 Cr.P.C. on the ground that for want of a valid sanction the cognizance of offence under Section 190 Cr.P.C. could not have been taken. If cognizance of an offence could not be taken under Section 190 Cr.P.C. no further proceedings could be said to be permissible. Hence, the question of discharge does not arise. In a warrant case instituted on a complaint the accused can be discharged under Section 245 Cr.P.C. The stage of passing an order under Section 245 Cr.P.C. can arise only if the prior proceedings which were initiated by taking cognizance under Section 190 Cr.P.C. were legally valid, if those proceedings were invalid for want of sanction, an order of discharge under Section 245 Cr.P.C. could not have been made. Reference in this behalf

may be made to a ruling of the Supreme Court in Mohammed Safi v. The State of West Bengal : 1966 CriLJ75 . In that case, an order of acquittal was passed by Shri N.C. Ganguly, Judge, Special Court, because Shri Ganguly came to the conclusion that he could not take cognizance of the offence under Section 190 Cr.P.C. The view that he could not take cognizance of the offence was ultimately found to be erroneous. In a subsequent trial the appellant was convicted under Section 409 IPC and before the Supreme Court it was urged by the appellant that the order of acquittal passed by Shri Ganguly in the earlier proceeding attracted the provisions of Section 403(1) of the Criminal Procedure Code, 1898 and, therefore, the appellant could not be convicted of the offence punishable under Section 409 IPC. The Supreme Court held that the order passed by Shri Ganguly could not operate as an order of acquittal and it was enough to look upon it merely as an order putting a stop to the proceedings. Therefore, once the learned Chief Judicial Magistrate came to the conclusion that the sanction for prosecution was not in accordance with law, the proceedings pending, before him had to be dropped in place of passing an order of discharge under Section 245(1) Cr.P.C. Since the learned Chief Judicial Magistrate has held that there was no valid sanction for prosecution the order passed by him amounts to an order of dropping the proceedings on the ground that he could not legally take cognizance of the offence under Section 190 Cr.P.C. for want of legal sanction.

10. In view of the above reasons, the solitary question that arises for decision is whether the finding of the learned Chief Judicial Magistrate that a sanction for prosecution was necessary and that there was no legal sanction for prosecution is justified.

11. Learned Counsel for the petitioner has submitted that since the complaint was filed by the Board through its Member Secretary, no sanction for prosecution was necessary. Section 49 of the Act of 1974 reads as under:

49. Cognizance of offences.-(1) No court shall take cognizance of any offence under this Act except on a complaint made by:

(a) A Board or any officer authorised in this behalf by it; or

(b) any person who has given notice of not less than sixty days in the manner prescribed, of the alleged offence and of his intention to make a complaint, to the Board or officer authorised as aforesaid.

and no 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) Where a complaint has been made under Clause (b) of Sub-section (1), the Board shall, on demand by such person make available the relevant reports in its possession to that person;

Provided that the Board may refuse to make any such report available to such person if the same is, in its opinion, against the public interest.

(3) 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.

12. A bare reading of Section 49 shows that Section 49 requires the court to take cognizance on a complaint made by (a) Board or any officer authorised in this behalf by it or (b) any person who has given notice of not less than sixty days in the manner prescribed, of the alleged offence and of his intention to make a complaint to the Board or officer authorised as aforesaid. There is no provision for giving any sanction for prosecution. What Section 49 of the Act of 1974 requires is that the cognizance of an offence should be taken by the Metropolitan Magistrate or a Judicial Magistrate of first class on a complaint and such complaint must be filed by the authorities or persons mentioned in Clauses (a) and (b) of Sub-section (1) of Section 49 of the Act of 1974. Under Clause (a) the Board or any officer authorised by the Board is competent to file a complaint and under Clause (b). any person who has given notice of not less than sixty days in the manner prescribed of the alleged offence and of his intention to make a complaint to the Board or officer is authorised to make a complaint. Sanction by the Board for prosecution is not required by Section 49 of the Act of 1974. The learned Chief Judicial

Magistrate has misdirected himself by assuming that a sanction for prosecution was necessary. Since no sanction for prosecution was necessary under Section 49 of the Act of 1974, the powers of the learned Chief Judicial Magistrate to take cognizance under Section 190 Cr.P.C. were not fattered for want of sanction. All that was necessary for him for the purpose of taking cognizance was a complaint submitted by the authorities or persons mentioned in Clauses (a) and (b) of Sub-section (1) of Section 49 of the Act of 1974, subject, of course, to the requirements of Section 190(1)(a) Cr.P.C, 1973. In the instant case it is evidence from the record that there was a complaint before the learned Chief Judicial Magistrate made on behalf of the Board, it was signed by the Member Secretary and it was actually presented before the Court by Shri Nawal Kishore Vyas counsel for the complainant-petitioner.

13. The only question that can arise in connection with this complaint is whether Shri Nawal Kishore Vyas Advocate was competent to present it before the court and whether the Member Secretary who signed the complaint on behalf of the Board was authorised by the Board to sign it on behalf of the Board.

14. Learned Counsel for the petitioner has submitted that the petitioner in its 20th meeting authorised the Member Secretary to file a complaint. In para No. 14 of the complaint it is stated that in its 20th meeting held on 18.4.1979 the Board authorised the Member Secretary under Sub-section 2(2) of Section 12 of the Act of 1974 to file the complaint and perform other functions on behalf of the Board. The petitioner got exhibited 8 documents in the lower court which are marked as Ex.P. 1 to Ex.P.8. Ex.P.6 is the copy of the minutes of the 21st meeting held on 26.5.1979. In this meeting vide para No. 21.1 the decisions taken in the 20th meeting were confirmed and vide para No. 21.5 Shri Nawal Kishore Vyas, Advocate was appointed as counsel for the Board. The copy of the minutes of the 20th meeting has neither, been exhibited in the lower court nor any copy thereof appears to have been filed in the lower court. However, the learned Chief Judicial Magistrate has in para No. 4 of his order referred to Ex.P.6 and Ex.P.7 and also referred to para 20-6 of the minutes of the 20th meeting. Learned Counsel for the petitioner has filed an uncertified copy of the minutes of the 20th meeting alongwith an affidavit of an Assistant Engineer with the revision petition. No

permission has been sought by the petitioner for taking the copy of the minutes of 20th meeting on record.

15. In view of para No. 14 of the complaint in which it was stated that the Board in its 20th meeting had authorised the Member Secretary to file the complaint, it was necessary for the learned Chief Judicial Magistrate to have enquiry whether there was any such resolution of the Board as may be said to authorise the Member Secretary to file the complaint under Section 49(1)(a) of the Act No. 6 of 1974. The learned Chief Judicial Magistrate does not appear to have taken any pains to make any enquiry in this behalf. In these circumstances, I am afraid the order passed by the learned Chief Judicial Magistrate cannot be upheld because once the cognizance has been taken on the basis of a complaint under Section 190 Cr.P.C., it was necessary for the learned Chief Judicial Magistrate to have conducted proper enquiry as to authority of the Member Secretary to file a complaint, when it was urged before him that the proceedings should be dropped for want of proper complaint. I, therefore, deem it proper to set aside the order dated 29.6.1989 passed by the learned Chief Judicial Magistrate, Pali and hereby remand the case back to him with the direction that he will give an opportunity to the complainant to produce such evidence as the complainant may like to produce in support of the contents of para No. 14 of the complaint and after giving the aforesaid opportunity the learned Chief Judicial Magistrate shall hear both the parties and decide the question whether the proceedings instituted on the complaint deserve to be dropped on the ground that it has not been instituted in accordance with Clause (a) of Sub-section (1) of Section 49 of the Act of 1974. If the learned Chief Judicial Magistrate comes to the conclusion that the complaint on which the cognizance was taken by him is a complaint within the meaning of Section 49(1)(a) of the Act of 1974, he shall proceed to take further steps in accordance with law viz. give an opportunity to the complainant to produce its evidence under Section 244 Cr.P.C. and thereafter proceed in accordance with law. If the complainant fails to establish that the Member Secretary authorised by the Board to file the complaint and if the learned Chief Judicial Magistrate comes to the conclusion after conducting inquiry as directed above that the complaint on record is not a complaint under Section 49(1)(a) of the Act of 1974, he shall drop the proceedings in place of discharging the accused.

16. A copy of this order alongwith the record of the lower court be sent to the learned Chief Judicial Magistrate, Pali within 15 days.

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