



मध्यप्रदेश प्रदूषण नियंत्रण बोर्ड

पर्यावरण परिसर, ई-५, अरेय कालोनी, भोपाल

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कमांक 187 / लोसूअ/प्रनिबो/2018

भोपाल, दिनांक 1 FEB 2018

प्रति,

क्षेत्रीय अधिकारी,
म0प्र0 प्रदूषण नियंत्रण बोर्ड,
भोपाल/इन्दौर/धार/पीथमपर/उज्जैन/देवास/गुना/ग्वालियर
जबलपुर/सागर/कटनी/सतना/रीवा/शहडोल/सिंगरौली

विषय :- एमसीआरसी कमांक 22283/2016 मेसर्स मोहन कॉलरी यूजी माइन्स
विरुद्ध बोर्ड।

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उपरोक्त विषयान्तर्गत मेसर्स मोहन कॉलरी यूजी माइन्स के विरुद्ध बोर्ड द्वारा दायर प्रकरण के विरुद्ध मान्0 उच्च न्यायालय, जबलपुर में शासकीय सेवक होने के कारण प्रकरण दायर करने की अनुमति लिये जाने संबंधी तथ्यों को उठाते हुये एमसीआरसी कमांक 22283/2016 प्रस्तुत की गई थी। उक्त प्रकरण में मान्0 न्यायालय द्वारा दिनांक 11/10/2017 को निर्णय पारित किया गया है -

"A. Environment Protection and Pollution Control- Water (Prevention and Control of Pollution) Act, 1974- Ss. 49, 47, 44, 25, 26 and 2 (k)- Quashing of complaint proceedings by High Court- Justifiable grounds- Matters to be considered at stage of issuing process- High Court quashing complaint on ground of inadequacy of materials on record though specific and detailed averments regarding commission of offence for violation of Ss. 25 and 26 made in complaint- Pollution Board (through its officers) filing complaint under Section 44 against Respondent 1 and other accused persons- Specific averments of continuous commission of offence, made- Specific role of each accused person in the day-to-day affairs and decision-making process, statedCopies of inspection reports and communications regarding non-compliance with statutory provisions/conditional consent of Pollution Board regarding discharge/treatment of effluent, producedThough Magistrate took cognizance of allegations, High Court quashed the complaint as against Respondent 1 (a Joint Managing Director of the Company) on main ground



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that there was no material on record to show that Respondent 1 was, at the relevant time, in charge of and responsible to the Company for conduct of its business Held, in view of the specific averments in the complaint and Ss. 25, 26, 44 and 47, High Court was not correct in quashing the complaint relating to Respondent 1- Appellant Board was not even required to place all the materials on record at the threshold- At stage of issuing process, Magistrate is only to be prima facie satisfied whether there are sufficient grounds for proceeding against the accused- Therefore, order of High Court quashing complaint set aside- Special Judicial Magistrate (Pollution) directed to proceed with complaint and dispose of the same in accordance with law Criminal Procedure Code, 1973-S. 482." 17. That being so, this petition is, therefore, sans merit and is dismissed. Petitioners may, if deem fit, raise the objections regarding the protection umbrella of Section 197 Cr.P.C before the learned trial Court.

कृपया सूचित हो।

सक्षम प्राधिकारी द्वारा आदेशित

(सुधीर श्रीवास्तव)
विधि अधिकारी

म०प्र० प्रदूषण नियंत्रण बोर्ड, भोपाल

भोपाल, दिनांक 01 FEB 2018

पृ०कमांक 188 /लोसूअ/प्रनिबो/2018

प्रतिलिपि :-

आई०टी० प्रभारी, म०प्र० प्रदूषण नियंत्रण बोर्ड, भोपाल की ओर निर्णय की प्रति सहित सूचनार्थ। कृपया उक्त निर्णय को बोर्ड की वेबसाईट पर महत्वपूर्ण न्यायालयीन निर्णय अन्तर्गत आम सूचना हेतु अपलोड करें।

**THE HIGH COURT OF MADHYA PRADESH
MCRC-22283-2016**

*(M/S. MOHAN COLLIERY UG MINES WESTERN COALFIELDS LTD. Vs MADHYA
PRADESH POLLUTION CONTROL BOARD)*

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Jabalpur, Dated : 11-10-2017

Shri Anoop Nair, learned counsel for the petitioners.
Shri V.S. Shroti, learned senior Advocate with Shri
Sourabh Soni, counsel for the respondent.

Heard.

By filing this petition under Section 482 Cr.P.C, the
petitioners pray to invoke the extraordinary jurisdiction
of this Court and to quash the Criminal Complaint Case
No. 31/2008 pending before J.M.F.C, Junnardeo filed by
the respondent/complainant in the interest of justice.

2. It is not disputed that petitioner No. 2- S.S. Prasad was
posted as General Manager, W.C.L, Kanhan Area from
25.04.2007 to 30.04.2009 and petitioner No. 3- S.C.
Gupta was posted as Sub Area Manager in Mohan
Colliery of Kanhan Area of W.C.L from 03.09.2007 to
13.01.2011.

3. A complaint case under Sections 21, 37, 39, 40 of Air
(Prevention and Control of Pollution) Act, 1981, (in short
"Air Act, 1981") and under Sections 25, 44, 45- A and 47
of Water (Prevention and Control of Pollution) Act, 1974,
(in short "Water Act, 1974") has been filed against the
petitioner No. 1- M/s. Mohan Colliery Underground

Mines, petitioner Nos. 2 and 3. The M.P. Pollution Control Board was established under the "Water Act, 1974" and has been authorized to act under the "Air Act, 1981" and "Water Act, 1974." The Regional Officer of Jabalpur authorized Shri D.V.S. Jatav, Scientist to file the complaint on behalf of the M.P. Pollution Board. The petitioner No. 1 is the Colliery and petitioner No. 2, the General Manager and petitioner No. 3 is the Sub-Area Manager of the Colliery. The petitioners Nos. 2 and 3 were in control of the Colliery. They were under obligation to observe the "Air Act, 1981" and "Water Act, 1974." The petitioners are authorized to extract coal under the Colliery since 1975. According to Section 21 of the "Air Act, 1981" and Section 25 of the "Water Act, 1974, the accused persons were required to renew their permission of running the mine. The Colliery was given permission to extract coal to the extent of 2,07,309 metric tonnes per year. The accused persons extracted coal more than the quantity permitted. The management of the Colliery also did not seek any permission from the Board as required under the E.I. Notification of the Government of India, Department of Pollution and Forest Ministry. As per the letter No. 2858 of the Board dated 24.12.2005 the Colliery has been extracting coal violating the provisions of "Air Act, 1981" and the "Water Act, 1974." Therefore, the same is punishable under Section 21 of the "Air Act, 1981" and Section 25 of the

"Water Act, 1974."

4. On filing this complaint, learned J.M.F.C has registered the same and framed charge against the petitioners. The petitioners have assailed the order impugned on the ground that the period of alleged violation is shown to be 2001 to 2005. At that point of time the petitioners were not the persons responsible for managing the mine. The Pollution Board/respondent/complainant has not mentioned in the complaint as to what excess mining has been done in the Colliery. The Pollution Board has not shown any document that Mohan Colliery extracted mineral beyond the permissible limit from 2001 to 2005. Permission was granted by the respondent/Board for the period of 2006 to 2012. The petitioner Nos. 2, 3 discharged their duties as officers of the Mohan Colliery were public servants and no sanction has been granted.

5. The petitioners further pray that no sanction has been obtained for prosecuting them as required under the law, hence, the complaint case is liable to be dismissed.

6. On behalf of the respondents, the contentions have been vehemently opposed and it is claimed that the petitioner/company extracted more than the prescribed limit of coal. The company engaged in extracting excess of the quantity permitted despite show cause notice. When the inspection was conducted by the Board, different defaults were found as mentioned at para 3 of

the complaint. According to Section 57 of the "Water Act, 1974," where an offence under the Act has been committed by a company, whoever, persons who at the time of offence was committed was in-charge 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.

7. The provision of Section 197 Cr.P.C is not applicable in the present case. As the petitioner Nos. 2, 3 are appointed by the company and not by the State Government, therefore, they are not entitled to the benefit of Section 197 Cr.P.C.

8. It is also contended that the notification of Ministry of Environment and Forest was not followed by the company and in violation of the same, every person in-charge of the company are responsible for the conduct of the business of the company. Therefore, the inherent power of the Court should not be exercised to stifle a legitimate prosecution. The issues involved whether factual or legal are of great magnitude and cannot be seen in their true perspective without sufficient material.

9. Learned counsel for the petitioners placed reliance on **N.K. Ganguly Vs. Central Bureau of Investigation, New Delhi, (2016) 2 SCC 143, Amal Kumar Jha Vs. State of Chhattisgarh and Another, (2016) 6 SCC 734, Devinder Singh And Others Vs. State of Punjab**

Through **CBI, (2016) 12 SCC 87** and submitted that alleged act was done has a reasonable nexus with official duty, therefore, sanction under Section 197 Cr.P.C can be invoked.

10. It is also claimed that under Section 482 Cr.P.C, the petitioners are entitled for exoneration in the proceedings. In this regard reliance has been placed of **Videocon Industries Limited and Another Vs. State of Maharashtra And Others, (2016) 12 SCC 315.**

11. Per contra, learned counsel for the respondent placed reliance on **Mohd. Hadi Raja Vs. State of Bihar and Another, AIR 1998 SC 1945** wherein the Apex Court has held that:-

·Criminal P.C. (2 of 1974), S. 197-
Sanction to prosecute- Protection by
way of sanction not available to-
Officers of Govt. Companies or Public
Undertakings- Even when such public
undertakings are 'State' within
meaning of Art. 12 of Constitution on
account of deep pervasive control of
the government."

12. So far as the sanction of the prosecution is concerned, the record does not show that the petitioners have ever raised this issue before the learned trial Court. It seems that the petitioner has for the first time raised this issue at this stage.

13. The contention of the petitioners that the production quantity has not been mentioned in the complaint how much mining coal has been extracted, it would be appropriate to mention here that in the reply of the respondent, the details of inspection dated 09.06.2005 indicates the year wise extraction/production for the years 1995 to 96, 1996 to 97, 1997 to 98, 2000 to 01, 2001 to 2002, 2002 to 2003 are 1,73, 406 MTp.a, 1,83, 800 MTp.a, 2, 43, 800 MTp.a, 2,52,000 MTp.a, 2, 77, 900 MTp.a, 3,44,400 MTp.a respectively. For the years 2000-01, 2001-02 and 2002-03, the extracted coal is 2,52,000 MT., 2,77,900 M.T, 3,44,400 MT respectively. Report dated 09.06.2005 is part of the complaint.

14. As regarding the period of the offence is concerned, the period mentioned in the report is part of the complaint indicates that period of violation of the provisions of "Water Act, 1974" and "Air Act, 1981 is shown."

15. It would be appropriate to mention here that the inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest

Court of the State should normally refrains from giving a prima facie decision in a case when the entire facts are incomplete and hazy. More so when the evidence has not been collected and produced before the Court and the issues involved whether the factual or legal are of magnitude and cannot be seen in their true perspective without sufficient material. It would be appropriate to mention that in the case of **R.Kalyani Vs. Janak C. Mehta And Others, (2009) 1 SCC 516**, Hon'ble the Apex Court has held that "the respondents 1 and 2 were sought to be proceeded against on the premise that they are vicariously liable for the affairs of the company. The Hon'ble Apex Court further held that vicarious liability can be fastened only by reason of a provision of statute and not otherwise and for the said purpose a legal fiction has to be created. The respondents 1 and 2 were sought to be proceeded against on the premises that they were vicariously liable for the affairs of the company. For that the company must be made an accused persons. Legal fiction arises both against the company as well as the person responsible for the acts of the company.

16. In a similarly situated case of **U.P. Pollution Control Board Vs. Dr. Bhupendra Kumar Modi And Another, (2009) 2 SCC 147**, the Full Bench of the Hon'ble Apex Court has held that those who discharge noxious polluting effluents into streams, rivers or any other water bodies which detrimentally affects public health at large, should be dealt with strictly de hors technical objections. In the words of the Apex Court:-

"A. Environment Protection and Pollution Control- Water (Prevention and Control of Pollution) Act, 1974- Ss. 49, 47, 44, 25, 26 and 2 (k)- Quashing of complaint proceedings by High Court- Justifiable grounds- Matters to be considered at stage of issuing process- High Court quashing complaint on ground of inadequacy of materials on record though specific and detailed averments regarding commission of offence for violation of Ss. 25 and 26 made in complaint- Pollution Board (through its officers) filing complaint under Section 44 against Respondent 1 and other accused persons- Specific averments of continuous commission of offence, made- Specific role of each accused person in the day-to-day affairs and decision-making process, stated- Copies of inspection reports and communications regarding non-compliance with statutory provisions/conditional consent of Pollution Board regarding discharge/treatment of effluent, produced- Though Magistrate took cognizance of allegations, High Court quashed the

complaint as against Respondent 1 (a Joint Managing Director of the Company) on main ground that there was no material on record to show that Respondent 1 was, at the relevant time, in charge of and responsible to the Company for conduct of its business- Held, in view of the specific averments in the complaint and Ss. 25, 26, 44 and 47, High Court was not correct in quashing the complaint relating to Respondent 1- Appellant Board was not even required to place all the materials on record at the threshold- At stage of issuing process, Magistrate is only to be prima facie satisfied whether there are sufficient grounds for proceeding against the accused- Therefore, order of High Court quashing complaint set aside- Special Judicial Magistrate (Pollution) directed to proceed with complaint and dispose of the same in accordance with law- Criminal Procedure Code, 1973-S. 482."

17. That being so, this petition is, therefore, sans merit and is dismissed. Petitioners may, if deem fit, raise the objections regarding the protection umbrella of Section 197 Cr.P.C before the learned trial Court.

(SUSHIL KUMAR PALO)
JUDGE

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