

Court No. - 12

Case :- APPLICATION U/S 482 No. - 10788 of 2023

Applicant :- M/S Sahibabad Printers Thru Its Partner Jai Sahni
And 3 Others

Opposite Party :- State Of U.P. Thru. Prin. Secy (Home) Lko
And 2 Others

Counsel for Applicant :- Sheeran Mohiuddin Alavi, Harsh
Vardhan Kediya

Counsel for Opposite Party :- G.A., Ashok Kumar Verma

Hon'ble Rajeev Singh, J.

1. Heard learned counsel for the applicants, Shri Ashok Kumar Verma, Special Counsel for U.P. Pollution Control Board and perused the record.
2. Present application has been moved by the applicants for quashing the order dated 06.04.2022 as well as entire proceedings of Complaint Case No.877/2020 (U.P. Pollution Control Board Vs. M/s Sahibabad Printers & Ors.) pending before Special Judicial Magistrate, Pollution/C.B.I., Lucknow.
3. Learned counsel for the applicants submitted the applicants were having valid consent dated 05.02.2019 for running the unit in question but in the most mechanical manner, complaint in question was filed with the allegation that during the course of inspection dated 26.12.2019, it was found that without obtaining prior consent from the complainant, applicants were installing an additional thermo pack which is an air polluting source in the industry in question. He further submitted that at the time of filing the complaint, the consent order dated 05.02.2019 was not considered.
4. Learned counsel for the applicants submitted that at the time of passing the summoning order, no any inquiry was conducted, as the order was passed in the most mechanical manner without asking for inspection report. He further submitted that applicants were having valid consent and only they were replacing the thermo pack which was installed in the unit due to some flaw, therefore, it cannot be said that they were installing an additional thermo pack.
5. Learned counsel for the applicants relied on the decision of Hon'ble Apex Court in the Case of *Nabajyoti Baruah & Anr. Vs. Odijerang & Ors.* in *SLP (Crl) No.2135 of 2022* and submitted that as the applicants are residing outside the district,

therefore the inquiry in accordance with the provision of Section 202 Cr.P.C. was mandatory. He further submitted that the applicant no.2 and 4 are suffering from chronic ailment and requested for kind indulgence of this Court.

6. Shri Ashok Kumar Verma, Special Counsel for U.P. Pollution Control Board opposed the prayer of applicants and submitted that at the time of inspection, it was found that an additional thermo pack was being installed, and thereafter, separate notice was issued for payment of the compensation for the Environmental loss and the compensation was paid by the applicants amounting Rs.2,81,250/- (it is not disputed by learned counsel for the applicants). He further submitted that no information was given about the replacement as this is a new case developed at this stage that they were replacing the thermo pack. He further submitted that the complaint in question is filed under the provisions of Section 37 of Air Prevention and Control of Pollution Act, 1981 and this is a special act, in which, Special Judicial Magistrate Water Pollution Control, Lucknow is having jurisdiction and no such requirement of inquiry in accordance with the provisions of Section 202 is required. He further submitted that all these defence of applicants can be raised before the trial court, therefore, application is liable to be dismissed.

7. Considering the submissions of learned counsel for the parties, going through the contents of application, as well as other relevant documents, as the complaint in question is filed under Section 37 of the Act, 1981 which is a special act, therefore, the provisions of inquiry under Section 202 Cr.P.C. will not apply in the present case, as it is well settled that the evidence placed before the Court below at the time of summoning order cannot be adjudicated by this Court by way of mini trial and this is already settled in the case of ***C.B.I Vs. Aryan Singh*** reported in ***2023 SCC OnLine SC 379***, therefore, I am of the view that the application is misconceived and liable to be dismissed.

8. Accordingly, the application is hereby **dismissed**.

9. However, it is open to the applicants to appear before the trial court and apprise all these facts and also raise all the grievances including the chronic ailment of the applicants. In case, any grievance is raised, trial court is directed to consider the same and give relaxation in accordance with law.

Order Date :- 3.11.2023

V. Sinha