

In the High Court of Punjab and Haryana at Chandigarh

CRM-M No. 21448 of 2014

Date of decision: 6.4.2015

Bhushan Singh Rana

.....Petitioner

Versus

Punjab Pollution Control Board and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr.Sandeep Khungar, Advocate,
for the petitioner.

Mr.Ashish Verma, Advocate,
for respondent No.1.

Mr.Yogesh Kumar Gupta, AAG, Punjab.

1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

RAJ MOHAN SINGH, J.

This petition has been filed under Section 482 Cr.P.C. seeking quashing of complaint bearing No.42 dated 30.8.2012 / 6.9.2012 (Annexure P-1) and summoning order dated 6.9.2012 (Annexure P-2) and all consequential proceedings arising there from.

Respondent No.1 filed a criminal complaint against petitioner and Gurbinder Singh Bhatti, President Municipal Council, Sirhind by arraying the Municipal Council, Sirhind itself as one of the accused in the complaint for the offences under Sections 43 and 44 read with Section 48 of the Water (Prevention and Control of

Pollution) Act, 1974 (for short 'the Water Act') and for the violations of provisions in terms of Sections 24, 25 and 26 of the Water Act.

Complainant alleged that it is mandatory on the part of the accused-Municipal Council to obtain consent of the complainant-Punjab Pollution Control Board to operate an outlet for discharge of sewage/ sullage of the town. Complainant / respondent No.1 in the complaint has alleged the following allegations in para Nos. 5, 10, 12, 13, 19 and 20:-

"5. That the accused Municipal Council is Government Department as defined under section 48 of the Water (Prevention & Control of Pollution) Act, 1974 and the Municipal Council had not obtained the consent to operate of the complainant board for discharge of sewage / sullage and had also not installed the Sewerage Treatment Plant to treat the sewage / sullage of Sirhind Town. Accused No.2 is the president and accused No.3 is the executive officer of accused no. 1 i.e. Municipal Council, Sirhind. Accused no.2 and 3 are incharge of and responsible for the conduct and day to day business/ functioning of Municipal Council, Sirhind (Accused No.1) and as such are liable to be proceeded against for the offences committed by and on behalf of accused No.1.

10. That the Municipal Council, Sirhind was issued the show cause notice vide letter no. 12120 dated 19.6.2000 (Annexure-P-4) for violation of the provisions of section 25/26 of water Act, 1974 with an opportunity of personal hearing before the Chairman of the Board on 11.07.2000 which was attended by Sh. Ranjit Singh, Executive Officer, Municipal Council, Sirhind

and he submitted that the Municipal Council, Sirhind had not taken any step so far for the treatment of sewage water of the town and its utilization for irrigation. The Municipal Council, Sirhind was directed to take action as under: ,

(i) To stop discharge of sewage water of town into Sirhind Choe by 31.07.2000.

(ii) To submit the scheme for treatment and disposal of sewage water of the town by 31.07.2000.

(iii) To submit the scheme for collection, transportation of disposal of solid waste of the town by 31.07.2000.

(iv) To apply for consent on prescribed perform a to RO by 31.07.2000.

The proceedings of the aforesaid personal hearing was conveyed to the MC vide Board's letter no. 15204 dated 26.07.2000 (Annexure-P-5).

12. That as the Municipal Council, Sirhind failed to ly with the directions given during the personal hearing dated 11.07.2000, the Municipal Council, Sirhind was given another opportunity of personal hearing before the Chairman of the Board on 23.04.2001 which was attended by the Sh.Charanjit Singh, Executive Officer and Sh.Satish Thamman, Asstt. Municipal Engineer, Sirhind. The Executive Officer, Sh. Charanjit Singh submitted that waste water of the town is discharged into Sirhind Choe from where it is used for irrigation by the farmers and no water reaches river Ghaggar. He further submitted that the installation of sewage treatment plant is not possible due to lack of resources. However, if some simple and economically viable treatment technology is

available, then the Me is ready to provide the same. It was decided during the personal hearing that officer of the Board will visit the MC by 30.04.2001 and discuss the issue with regard to simple technology if possible for providing treatment to the waste water and using the same into land for irrigation without disposing it into Sirhind Choe. The proceedings of the personal hearing were forwarded to the Municipal Council, Sirhind vide Board's letter no. 8684 dated 11.05.2001 (Annexure-P-7).

13. That the Municipal Council, Sirhind was visited by the Officers of the Board on 01.06.2001 (Annexure-P-8) and the Executive Officer Sh. Charanjit Singh was advised to visit the power colony of Ropar Thermal Power Plant to see the oxidation ponds provided for treatment of waste water and too adopt the same system in Sirhind. He was also advised to utilize whole of treated effluent onto land for plantation as per Karnal Technology or on onto land for irrigation as adequate land of the farmer is available near the disposal point. He was further advised to get prepared the estimate of cost too be incurred on the treatment and disposal of domestic effluent and submit the action plan to implement the same. But Executive Officer, Municipal Council, Sirhind did not send any report regarding the compliance to the aforesaid advises and had failed to stop discharging domestic effluent into Sirhind Chao.

19. That the Municipal Council, Sirhind was issued show cause notice vide letter no. 3136 dated 27.5.2012 (Annexure-P-14) for violation of the provisions of Water Act, 1974 with the

opportunity of personal hearing before the Member Secretary of the Board on 08.06.2011 which was attended by Sh. S.K. Gulati, Executive Officer, Municipal Council, Sirhind. It was decided during hearing that:

(i) The MC shall submit a time bound action plan along with PERT chart regarding the installation of sewage treatment plant (STP) and details regarding proper disposal of the treated wastewater on to land for irrigation / plantation clearly indicating the dates by which the aforesaid activities would be completed.

(ii) In case, the Municipal Council fails to install the STP and make adequate and appropriate arrangement for disposal for its treated wastewater onto land for irrigation/plantation within the stipulated period, the Board shall be constrained to initiate legal proceedings against it under the provisions of the Water Act, 1974.

The proceedings of the personal hearing held on 08.06.2011 were conveyed to the MC vide Board's letter no. 3452 dated 14.06.2011 (Annexure-P-15).

20. That the disposal site of Municipal Council, Sirhind was again visited by the officer of the Board on 16.11.2011 and matter regarding installation of sewage treatment plant was discussed with the concerned officials, but in vain. The MC was not serious towards the pollution control measures. Therefore a show cause notice for violation of the provisions of Water (prevention & Control of Pollution) Act, 1974 was issued to Municipal Council, Sirhind vide letter No. 4714 dated 9.12.2011 (Annexure-P-16) along with an opportunity of

personal hearing before Member Secretary of Bhushan Singh Rana, Executive Officer, Municipal Council, Sirhind. The Executive Officer submitted that:

"The scheme has been provided in about 36x area in the Municipal Council the drainage of which is being made through disposal in the Sirhind Choe. The Water Supply and Sewerage Board has prepared 100x sewerage scheme for ₹.30.83 Crore and a detailed project report has been sent to the Government for approval. Under this scheme there is a proposal to set up one STP in Zone No. 14 M.L.D and one STP in Zone No.25 M.L.D Capacity. This scheme has not yet been approved by the Government. Due to weak financial position of the Municipal Council, it is unable to incur expenditure on the setting up of STP. After the approval of the Scheme by the Government and receipt of funds, your instructions shall be complied with strictly."

In pursuance to the aforesaid complaint, CJM Fatehgarh Sahib passed an order dated 6.9.2012, summoning the petitioner and others for offence under Sections 43 and 44 read with Section 48 of the Water Act on the ground that the complaint has been filed by public servant in discharge of its official duty, therefore recording of preliminary evidence was dispensed with.

Before embarking upon merits of this case, it would be necessary to have a glance of Sections 48 and 49 of the Water Act:-

"48. OFFENCES BY GOVERNMENT DEPARTMENTS.

Where an offence under this Act has been committed by any Department of Government, the Head of the

Department 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 section shall render such Head of the Department liable to any punishment 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.

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.”

Since Section 197 Cr.P.C. would also be having bearing on the merits of this case, the provision is being reproduced here as under:-

“197. Prosecution of Judges and public servants.

(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction-

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government: Provided that where

the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression " State Government" occurring therein, the expression " Central Government" were substituted.

(2) *No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.*

(3) *The State Government may, by notification, direct that the provisions of sub- section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub- section will apply as if for the expression " Central Government" occurring therein, the expression " State Government" were substituted.*

(3A) *Notwithstanding anything contained in sub- section (3), no court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in*

force therein, except with the previous sanction of the Central Government.

(3B) Notwithstanding anything to the contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a court upon such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991 , receives the assent of the President, with respect to an offence alleged to have been committed during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in the State, shall be invalid and it shall be competent for the Central Government in such matter to accord sanction and for the court to take cognizance thereon.

(4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held.”

Learned counsel for the petitioner vehemently argued that the petitioner is a public servant and the alleged offence having been committed in discharge of public duty, attracts mandatory requirement in terms of Section 197 Cr.P.C. Learned counsel relied

upon **Rakesh Kumar Mishra vs. State of Bihar and others 2006**

(1) RCR (Crl.) 456 and the decision dated 16.5.2012 rendered by this Court in bunch of matters i.e. lead case bearing **CRM-M No. 13202 of 2010** titled **N.S.Brar, PCS, Ex.Administrator, Municipal Council, Abohar vs. Punjab Pollution Control Board, Nabha Road, Patiala.**

Learned counsel for the petitioner also referred to Section 48 of the Water Act to contend that the petitioner being Executive Officer, Municipal Council, Sirhind does not fall within the definition of 'Head of Department', who shall be deemed to be guilty of the offence in question.

On the other hand, learned counsel for the respondents submitted that Section 48 of the Water Act being a provision of special statute, therefore Section 197 Cr.P.C. is not attracted. Under Section 48 of the Water Act, Municipal Councilor can only take two defences i.e. the offence was committed without his knowledge and he had taken due diligence to prevent commission of the offence. Learned counsel for the respondents relied upon **V.C. Chinnappa Goudar vs. Karnataka State Pollution Control Board and another 2009 (3) Karnataka LJ 86.** Learned counsel in view of Sections 60 and 49 of the Water Act argued that in general law, burden is on the prosecution to prove that the accused had the mens rea to commit the offence, whereas, in terms of Section 48 of the Water Act, the onus is otherwise. In view of Section 60 of the Water Act, the provision of the Act have overriding effect over the Code of Criminal Procedure and therefore, sanction in terms of Section 197 Cr.P.C. is

not attracted.

First of all, I would like to deal with the averments made in the complaint itself so as to visualize whether the petitioner can be made vicariously liable for the omission on the part of the Municipal Council ? In para 5 of the complaint, complainant has alleged that accused No.2 and 3 i.e. Gurbinder Singh Bhatti, President, Municipal Council, Sirhind and the petitioner are the incharge of and responsible for the conduct and day to day business of the Municipal Council, Sirhind. The inaction on the part of the Municipal Council was pleaded after 30.3.1990 when consent to operate sewage system for discharging waste water expired.

In para 10 of the complaint, complainant alleged that opportunity of personal hearing before Chairman of the Board was granted to the Municipal Council, which was attended by one Ranjit Singh, Executive Officer, Municipal Council, Sirhind in pursuance to show cause notice dated 19.6.2000. Similarly another opportunity of personal hearing granted by the complainant was attended by one Charanjit Singh, Executive Officer and Satish Thamman, Assistant Municipal Engineer, Sirhind on 11.7.2000. Aforesaid Charanjit Singh, Executive Officer was advised to visit the power colony of Ropar Thermal Power Plant to see the oxidation ponds provided for treatment of waste water and adopt the same system in Sirhind.

In para No.15 of the complaint, the complainant further alleged that the President and Executive Officer of Municipal Council, Sirhind were given opportunities of personal hearing by the Chairman of the Board on 16.9.1997. None attended the date of

hearing. The complainant again issued show cause notice on 27.5.2012 and this time the date of hearing was attended by one Sh. S.K.Gulati, Executive Officer, Municipal Council, Sirhind.

In para No.20 of the complaint, the meeting of personal hearing before the Member Secretary on 20.12.2012 is shown to have been attended by the petitioner.

In the light of aforesaid facts as pleaded in the complaint, question arises as to whether petitioner can be made vicariously liable for the inaction on the part of the Municipal Council, who was being represented by different persons in the rank of Executive Officer in the past and whether petitioner can be termed as responsible person for managing the affairs of Municipal Council on day to day basis ?

A perusal of Section 48 of the Water Act requires that where the offence is committed by the department of the Government, then the Head of Department shall be deemed to be guilty. There are two exceptions to the aforesaid if Head of Department pleads that the offence was committed without his knowledge or that he exercised due diligence to prevent commission of such offence.

Firstly, the petitioner does not fall under the definition of 'Head of Department' nor the complainant has averred in the complaint specifically that petitioner is the Head of Department and is responsible for day to day management of the Municipal Council.

In order to fasten vicarious liability, complainant has to aver specifically that the petitioner at the time when offence was

committed was responsible for the conduct and day to day business of the Municipal Council. Narration of facts in different paragraphs given in the complaint gives names of different Executive Officers at different times.

Only general averment has been made in para No.5 of the complaint that accused No.2 and 3 are responsible for the conduct of business of the Municipal Council on day to day basis. The averment, even if made in the complaint in the aforesaid manner, can be negated if some unimpeachable and acceptable circumstance comes which may lead to the conclusion that the petitioner could never be incharge of and responsible for the conduct of business of the company at the relevant time and therefore, making the petitioner as an accused to stand trial would be an abuse of process of law.

Simply by being an Executive Officer of the Municipal Council, requirement of Sections 48 and 49 of the Water Act is not attracted. Section 48 of the Water Act only make head of the department as deemed guilty. There is no concept of responsible person like the petitioner who can be incharge and responsible for day to day functioning of the Committee (though facts are denied altogether). Therefore, strict liability qua the petitioner cannot be construed. It is not sufficient to make bald cursory statement in the complaint that the petitioner is incharge of and is responsible for the conduct of business of the Municipal Council without specifying anything more as to whether his role is that of head of Department or not. This is in consonance with strict interpretation of penal

statute, especially where such statute creates vicarious liability. In view of averments made in the complaint itself, petitioner cannot be held to be the Head of Department nor his capacity as Executive Officer would make him vicarious liable for any offence.

Secondly, the plea of the petitioner being public servant and therefore, protected in terms of Section 197 Cr.P.C. remains a debatable issue in the present context particularly when the Water Act is a special statute in which cognizance of the offence is to be taken under Section 49 of the Water Act only on the complaint made by the Board or by its authorized officer or by any other person as defined there under. The onus in terms of Section 48 of the Water Act is on the accused as the Head of Department shall be deemed to be guilty of offence by way of legal fiction. There are two safeguards to the effect that the offence was committed without the knowledge of the Head of Department or that he exercised due care and diligence to prevent commission of such offence.. The conflict between Sections 4 and 5 of the Cr.P.C. and that of Sections 48 and 49 of the Water Act was deliberated in **V.C.Chinnapa Goudar's case (supra)** and the Court held that the provisions of Water Act have the overriding effect over the provisions of Criminal Procedure Code and therefore, Section 197 Cr.P.C. is not attracted in the present context.

I have considered the aforesaid submissions of both sides and found that the complaint in question lacks material averments in order to attract vicarious liability on the part of the petitioner.

Petitioner has not been pleaded to be the Head of Department as required under Section 48 of the Water Act. The different paragraphs involves different Executive Officers, who attended the hearing in pursuance to show cause notices. In the absence of strict averment in the context of 'Head of Department', no vicarious liability can be fastened upon the petitioner.

Even for the sake of vicarious liability of the petitioner in the context of his being incharge and responsible person for day to day conduct of business of Municipal Council, specific averments are required to be made in the complaint that in what manner the petitioner is responsible for a particular affair of the Municipal Council. Specific averments are required to be made with specific details of business and sharing of responsibility by the petitioner. Bald statement in para No.5 of the complaint does not espouse the cause of the complainant in any manner. In view of aforesaid, inherent lacuna in the complaint that goes to the very roots of the case, making the origin to be baseless and thereafter maxim "*sublato fundamento cadit opus*" applies, making entire subsequent proceedings to fall through being a nullity.

The second controversy vis-à-vis the applicability of Section 197 Cr.P.C. is an issue which has to be appreciated in the light of special statute i.e. Sections 48 and 49 of the Water Act. Head of the department shall be deemed to be guilty of offence under Section 48 of the Water Act by way of legal fiction and it is only on two counts, he can be protected if he proves that the offence was committed without his knowledge or that he exercised due care and

diligence to prevent the commission of such offence. A bare reading of Section 48 of the Water Act fastens onus upon the accused to prove his innocence. In general law, burden is always on the prosecution to prove that the accused had mens rea to commit the offence. There appears to be a direct conflict between Sections 4 and 5 of the Cr.P.C. and that of Sections 48 and 49 of the Water Act. Since provisions of the Water Act have the overriding effect in terms of Section 60 of the Water Act, whereas, the provisions of Sections 4 and 5 of the Cr.P.C. shall not affect any special or local law in the absence of any specific provision to the contrary. The judgment relied upon by learned counsel for the petitioner in **CRM No. 13202 of 2010** does not talk about anything in the aforesaid context. The said decision does not cover the aforesaid controversy.

In view of apparent conflict between Sections 4 and 5 of the Cr.P.C. and Sections 48 and 49 of the Water Act, the Water Act being a special statute has the overriding effect over the Code of Criminal Procedure in view of Section 60 of the Water Act. Therefore, in view of onus being on the accused, Section 197 Cr.P.C. has no place to be fit in the scheme of things. Resultantly, it is held that in the case in hand, the applicability of Section 197 Cr.P.C. requiring previous sanction of Government before prosecuting a public servant in terms of Section 48 of the Water Act is not attracted.

Therefore, on first principle i.e. the petitioner being not the Head of Department, no strict liability in terms of Section 48 of the Water Act can be applied. This petition stands allowed. Complaint bearing No.42 dated 30.8.2012/6.9.2012 (Annexure P-1); summoning

order dated 6.9.2012 (Annexure P-2) and all the subsequent proceedings arising therefrom are quashed.

(RAJ MOHAN SINGH)
JUDGE

April 6, 2015
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