

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

CRM-M-3673-2015
Date of decision:06.8.2015

Smt. Vinod Gupta

...Petitioner

Versus

Haryana State Pollution Control Board through its Regional Officer,
Faridabad Region, Faridabad Region, Panchkula

...Respondent

CRM-M-5691-2015

Shri Yogesh Kumar Gupta and others

...Petitioners

Versus

Haryana State Pollution Control Board through its Regional Officer,
Faridabad Region, Faridabad Region, Panchkula

...Respondent

CRM-M-5692-2015

Mrs.Sangeeta Gupta and others

...Petitioners

Versus

Haryana State Pollution Control Board through its Regional Officer,
Faridabad Region, Panchkula

...Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

1. To be referred to the Reporters or not ?
2. Whether the judgment should be reported in the Digest ?

Present: Mr.R.S.Cheema, Sr. Advocate with
Mr.Gur Mohan Singh, Advocate for the petitioners.

Mr.Deepak Balyan, Advocate for the respondent.

RAMESHWAR SINGH MALIK, J. (Oral)

These three identical petitions, filed under Section 482 of the Code of Criminal Procedure ('Cr.P.C.' for short), whereby different accused are seeking quashing of same complaint bearing No. 158 of 2014 dated 3.9.2014 (Annexure P-1), are being decided by this common order, as all the three petitions are based on same set of facts. However, for the facility of reference, the facts are being culled out from CRM-M-3673-2015.

Shorn of detailed factual background of the matter, it would suffice to note only the basic facts, which are necessary for disposal of these petitions. Complaint No. 10 of 2013 dated 23.4.2013 (Annexure P-5) was filed by the respondent-Board/complainant under Section 15 read with Section 19 of the Environment Protection Act, 1986 ('the Act' for short) against M/s QRG Central Hospital & Research Centre, a company incorporated under the Companies Act as accused No.1, Qimat Rai Gupta, Anil Gupta, Ameet Kumar Gupta, Rajesh Kumar Gupta, Sanjev Gupta and Vibha Gupta, as accused Nos. 2 to 7, respectively, being Directors of accused No.1, besides Shalini Gupta and Sangeeta Gupta as Principal/Responsible officers of M/s QRG Central Hospital & Research Centre, as accused Nos. 8 and 9. The learned court of competent jurisdiction issued the summoning order dated 25.4.2014 vide Annexure P-7, however, only against accused Nos. 1 to 7.

During the pendency of the above-said complaint (Annexure P-5), impugned complaint bearing No.158 of 2014 dated 3.9.2014 (Annexure P-1) came to be filed by the respondent-Board/complainant as an additional complaint. The learned court took cognizance of this additional complaint and issued the impugned summoning order dated 20.11.2014

(Annexure P-3). In the additional complaint, the respondent-complainant/Board sought to make the petitioners as accused persons, not in the capacity as Directors or Principal/responsible officers of M/s QRG Central Hospital & Research Centre but as Directors or authorised representatives of M/s QRG Medicare Limited, a different company incorporated under the Companies Act. Petitioners in CRM-M-5691-2015 were made accused in the additional complaint (Annexure P-1) as representatives of M/s The Vivekananda Ashram, Faridabad. All the three petitions are challenging only the additional complaint (Annexure P-1) and subsequent proceedings arising therefrom including the impugned summoning order (Annexure P-3).

Notice of motion was issued and pursuant thereto, reply on behalf of the respondent-Board was filed.

Learned senior counsel for the petitioners, in all the three petitions, submits that once the original complaint No.10 of 2013 (Annexure P-5) was already pending trial, the impugned additional complaint bearing No. 158 of 2014 dated 3.9.2014 (Annexure P-1) was not maintainable. He further submits that even if the complainant-Board was of the view that some additional accused, including the petitioners were also involved in the commission of offence, the complainant-Board ought to have waited up to that stage of the trial, when the Board could have moved an appropriate application under Section 319 Cr.P.C., for summoning the accused in the impugned complaint (Annexure P-1), as additional accused to face the criminal trial. On the same analogy, learned senior counsel for the petitioners submits that once the impugned additional complaint (Annexure P-1) was not maintainable, the learned trial Judge exceeded his jurisdiction,

while passing the impugned summoning order dated 20.11.2014 (Annexure P-3). In support of his contentions, learned senior counsel for the petitioners places reliance on the following judgments:-

(i)Crl. Revision Petition No. 321 of 2004 (S.Nagrajan v. State), decided by Delhi High Court on 15.3.2012;

(ii)Hemant P.Vissanji and others v. Mulshankar Shivram Rawal and another, 1991 (3) BCR 83 (Bombay High Court);

(iii)Ajit Narain Haskar and others v. Assistant Commissioner of Central Excise (Legal), ILR 2002 KAR 2175;

(iv)Assandas and another v. Nathirmal and another, 1954 CriLJ 1234;

(v)Jamuna Singh and others v. Bhadai Shah, 1964 AIR (SC) 1541;

(vi)Meka Karthik and others v. State of Andhra Pradesh, 2014 (5) RCR (Crl.) 848; and

(vii)Dharam Pal and others v. State of Haryana and another, (2014) 3 SCC 306

He prays for quashing the impugned additional complaint (Annexure P-1) and the consequential proceedings arising therefrom including the summoning order dated 20.11.2014 (Annexure P-3), by allowing all these three present petitions.

Per contra, learned counsel for the respondent-Board submits

that all these three petitions are misconceived and liable to be dismissed,

because the same are based only on technicalities. He further submits that there was sufficient material available, on the basis of which additional complainant (Annexure P-1) was filed. He would next contend that once the learned senior counsel for the petitioners has fairly conceded about the right of the complainant, for summoning the present petitioners as additional accused, by moving an appropriate application under Section 319 Cr.P.C., the additional complaint (Annexure P-1) was very much maintainable. He also defends the impugned summoning order, contending that the learned trial Judge did not exceed his jurisdiction, while passing the impugned summoning order. He submits that the petitioners were found involved in serious violations of the relevant provisions of the Act. He would contend that since the petitioners are offenders under the Act, which is a very serious and sensitive issue, they are not entitled for invoking the inherent jurisdiction of this Court under Section 482 Cr.P.C.

On the maintainability of the impugned additional complaint (Annexure P-1), he places reliance on a judgment of Bombay High Court in **S.G.Rajadhyakshya v. Razak Cassim Narkar and others, 1984 CriLJ 1454**. He also refers to the orders passed by a Division Bench of this Court in CWP No.27853 of 2013 {Krishan Lal Gera v. State of Haryana and others} dismissed on 18.12.2013 and CWP No.15584 of 2013 {Dr.Ambedkar Samaj Sudhar Committee (Regd.) and others v. State of Haryana and others} disposed on 23.7.2013. Learned counsel for the Board submits that against the order dated 18.12.2013 passed by a Division Bench of this Court, in the above said writ petition bearing CWP No.27853 of 2013, petitioner therein namely Krishan Lal Gera has approached the Hon'ble Supreme Court by way of SLP (C) No.2856 of 2014, wherein

notice has been issued by the Hon'ble Supreme Court and matter is still pending consideration. He prays for dismissal of these petitions.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that in the given fact situation of the cases in hand, all the three petitions have been found to be fit cases, warranting interference, at the hands of this Court, while exercising its inherent jurisdiction under Section 482 Cr.P.C. All these three petitions deserve to be allowed, for the following more than one reasons.

The facts of the case are hardly in dispute. Original Complaint No.10 of 2013 (Annexure P-5) was already pending. In the said original complaint, even the summoning order dated 25.4.2014 (Annexure P-7) has been issued by the learned court of competent jurisdiction. During the pendency of the above-said original complaint (Annexure P-5), complainant-respondent/Board filed the impugned additional complaint No. 158 of 2014 dated 3.9.2014 (Annexure P-1), which was not maintainable in the present form and at this stage of the trial of original complaint. Learned senior counsel for the petitioners has rightly contended and was fully justified to say so that once the learned court has taken the cognizance of the original complaint, the complainant-Board ought to have waited till the appropriate stage and the present petitioners along with other accused persons, if any, could have been summoned to face the criminal trial as additional accused, by moving an appropriate application under Section 319 Cr.P.C.

It is so said because the Code of Criminal Procedure no where

provides filing of additional complaint, during the pendency of the trial of original complaint, on the same set of allegations, as has been done by the respondent-Board in the present case. Having said that, this Court feels no hesitation to conclude that the impugned additional complaint (Annexure P-1) was not maintainable at the hands of the respondent-Board, in the present from and at this stage of the trial of original complaint (Annexure P-5).

In case, after re-examination of the matter, the respondent-Board was of the view that some additional accused were also involved in the commission of offence in question, it should have waited and taken recourse to the well known procedure of law provided under Section 319 Cr.P.C., by invoking the said provisions at the appropriate stage. Such peculiar fact situation, as obtaining in the present case, has been taken care of by the legislature by providing Section 319 Cr.P.C on the statute book. However, since the complainant-Board proceeded in haste without waiting for the appropriate stage of the criminal trial of its original complaint (Annexure P-5), additional complaint (Annexure P-1) was not maintainable and the same cannot be sustained, for this reason also.

Coming to the impugned summoning order (Annexure P-3), it has been found that the learned Magistrate failed to appreciate the above-said material aspect of the matter, about the non-maintainability of the additional complaint (Annexure P-1). The learned Magistrate fell in serious error of law, while exceeding his jurisdiction taking cognizance of the same offence for the second time, which was not permissible in law, because the cognizance of any offence can be taken only once, in terms of Section 190 Cr.P.C. Once the filing of additional complaint itself was not permissible, the impugned summoning order was an order without

jurisdiction and the same cannot be sustained.

However, as fairly conceded by the learned senior counsel for the petitioners, the complainant-Board will be at liberty to move an appropriate application under Section 319 Cr.P.C., at the appropriate stage of criminal trial of the original complaint (Annexure P-5), for the purpose of summoning of other accused persons, including the petitioners, to face criminal trial as additional accused. In fact, it goes without saying that the prosecuting agency or the complainant in a complaint case, as in the instant matter, would always be at liberty to move the application under Section 319 Cr.P.C., however, at an appropriate stage of the criminal trial.

In the present case, the complainant-Board, instead of waiting for the appropriate stage of the criminal trial of its original complaint (Annexure P-5) and moving an application under Section 319 Cr.P.C., filed the impugned additional complaint (Annexure P-1), for which the complainant-Board was not entitled in law, such an additional complaint being not maintainable.

The above-said view taken by this Court also finds support from the above-said judgments relied upon by the learned senior counsel for the petitioners. The relevant observations made in para 14 of its judgment by Delhi High Court in **S.Nagrajan's** case (supra), which can be gainfully followed in the present case, read as under:-

“I find myself in agreement with the contentions raised by the learned counsel for the petitioner. The cognizance of an offence can be taken only in terms of Section 190 of Cr.P.C. One of the modes for taking cognizance is on the basis of a complaint. It may be also pertinent here to mention that a cognizance of an offence can be taken only once, therefore,

once the complainant is filed under the Act, in the instant case, being the first complaint against the three accused, namely Madan Lal f M/s Popular Store, vender-cum-proprietor or M/s P.K.Agency Supplier and National Diary Development Board, manufacturer, the second complaint was totally barred and accordingly the cognizance of the second complaint or the second offence in the second complaint against the new accused persons could not have been taken. The cognizance of the offence against the new accused persons in such an eventuality could be taken only during the course of trial in pursuance to Section 319 Cr.P.C. in case the evidence would have come up against them.

Although no direct judgment of the Hon'ble Supreme Court has been brought to the notice of this Court by the learned senior counsel for the petitioners, yet in para 39 of its judgment in **Dharampal's** case (supra), the Hon'ble Supreme Court held that cognizance of an offence can be taken only once.

Coming to the judgments relied upon by the learned counsel for the complainant-Board, there is no dispute about the law laid down therein. However, on close perusal of the cited judgments, the same have been found of no help to the complainant-Board, being distinguishable on facts. It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundra Rao and another Vs. State of Tamil Nadu and others**, 2002 (3) SCC 533.

Reverting back to the facts of the cases in hand and respectfully following the law laid down by Hon'ble Apex Court and different High

Courts, in the cases referred to hereinabove, it is unhesitatingly held that cognizance of the offence having already been taken by the learned Magistrate, while issuing summoning order (Annexure P-7) in the original complaint (Annexure P-5), neither the additional impugned complaint (Annexure P-1) was maintainable nor the impugned summoning order (Annexure P-3) could have been issued, thus, the impugned additional complaint (Annexure P-1) as well as the impugned summoning order (Annexure P-3) cannot be sustained, for this reason as well.

No other argument was raised.

Considering the peculiar facts and circumstances of the cases noticed hereinabove, coupled with the reasons aforementioned, this Court is of the considered view that all these three petitions deserve to be allowed.

Consequently, the impugned complaint No. 158 of 2014 dated 3.9.2014 (Annexure P-1) in every petition, as well as the impugned summoning order dated 20.11.2014 (Annexure P-3) in every petition, are ordered to be quashed, so as to prevent any further abuse of process of law and also to secure the ends of justice.

However, it is specifically made clear that the complainant-respondent/Board shall be at liberty to move an appropriate application under Section 319 Cr.P.C., at the appropriate stage of criminal trial of its original complaint (Annexure P-5), for the purpose of summoning other accused persons, including the petitioners in all these three petitions, to face the criminal trial as additional accused. It is further clarified that the learned trial Magistrate will be well within his jurisdiction while summoning the other accused persons, including the petitioners under Section 319 Cr.P.C. in all these three petitions, to face trial as additional

accused on its own and also without moving an application by the prosecution-complainant.

Resultantly, with the above-said observations made and directions issued, all these three petitions stand allowed, however, with no order as to costs.

6.8.2015
mks

(RAMESHWAR SINGH MALIK)
JUDGE