

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.47034 of 2013

Arising Out of PS.Case No. -4 Year- 2013 Thana -PATNA COMPLAINT CASE District- PATNA

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Rajeev Kumar son of Shri Sachidanand Yadav, resident of Flat No. 202 Sumit Chandra Griham Apartment, Ramnagri Road, P.S.- Rajeev Nagar, District-Patna, Executive Engineer (Mechanical) NH Mechanical Division, Muzaffarpur

.... Petitioner/s

Versus

1. The State of Bihar
2. Bihar State Pollution Control Board, through its Chairman Beltron Bhawan, Shastri Nagar Patna-800023

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Yogesh Chandra Verma, Sr. Advocate
: Mr. Raj Kishor Prasad, Advocate
For the Opposite Party No.2 : Mr. Shivendra Kishore, Sr. Advocate
: Mrs. Prinita Singh, Advocate
For the State : Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date: 31-10-2017

This application under Section 482 of the Code of Criminal Procedure (for short 'the CrPC') has been filed for quashing the order dated 16.05.2013 passed by the learned Sub Divisional Judicial Magistrate, Patna in Complaint Case No.04(M) of 2013 by which the petitioner, an Executive Engineer has been summoned to face trial for the offence punishable under Section 37 of the Air (Prevention and Control of Pollution) Act, 1981 (For short 'the Act').

2. The allegation in the complaint petition filed by the Bihar



State Pollution Control Board (for short 'the Board') is that on 04.05.2013 a Member of the Board inspected the Hot Mix Plant located at Bariarpur at Motihari, East Champaran under National Highway (Mechanical Division), Road Construction Department, Muzaffarpur. During inspection, it revealed that the aforesaid Road Construction Department had established a Hot Mix Plant having the capacity to produce 30 to 35 tons of bitumen and stone chips mixture per hour. Though, at the time of inspection, the plant was found closed, the same was operational from before. The plant was devoid of any chimney or proper pollution control equipments. Further, the location of Hot Mix Plant did not conform to the minimum distance of 200 meter from habitation and railway line. It has further been alleged in the complaint that the unit was established without prior consent of the Board as required under Section 21 of the Act. The complainant alleged that the petitioner was directly incharge and responsible for the affairs of the Hot Mix Plant in question.

3. On the basis of the aforesaid complaint, the learned Sub Divisional Judicial Magistrate, Patna, vide order dated 16.05.2013, took cognizance of the offence under Section 37 of the Act and summoned the petitioner in exercise of powers conferred under Section 204 of the CrPC.

4. The case of the petitioner is that being an Assistant



Engineer, he was promoted to the post of Executive Engineer (Mechanical), vide notification of Road Construction Department, dated 25.02.2013. Subsequently, vide notification dated 17.04.2013, he was posted as an Executive Engineer (Mechanical), National Highway, Mechanical Division at Muzaffarpur. He submitted his joining at Muzaffarpur only after the aforesaid notification dated 17.04.2013 was issued. The Hot Mix Plant at Motihari came within his jurisdiction only after he took charge on 18.04.2013 pursuant to the aforesaid notification dated 17.04.2013. As he came to know that no objection certificate from Board has not been obtained, he immediately purchased two forms through money receipt nos. 20672 and 20673 for applying and for obtaining no objection certificate from the Board. Since the Hot Mix Plant was in the premises of Road Construction Sub Division Office, Motihari, the petitioner was in the process of obtaining details from Road Construction Department, which was required to be filled up in the No Objection Form. He inspected the Hot Mix Plant on 30.04.2013 and immediately thereafter, vide letter dated 02.05.2013, he directed the Junior Engineer (Mechanical)- cum-Incharge Hot Mix Plant site, Motihari to suspend the work till the establishment of Secondary Pollution Control Unit. Thereafter, in view of the positive order passed by the petitioner on 05.05.2013, when the Hot Mix Plant was inspected by



the officials of the Board, it was also found to be totally closed. However, on 09.05.2013, the instant case was filed against him.

5. Mr. Y. C. Verma, learned senior counsel for the petitioner submitted that the petitioner had no role at all in establishment of Hot Mix Plant at Motihari, which was done in the year 2011 itself. The memo of payment was entered in the measurement book on 28.03.2011, whereas the petitioner joined the post on 18.04.2013. Within 10 days of his joining, he obtained form for getting No Objection Certificate from Board and within 15 days of his joining he directed for closing the plant. He submitted that on the basis of the observations made by this Court in a writ proceeding a departmental proceeding was also initiated against the petitioner on the self same charges as levelled in the present complaint case. In the said departmental proceeding the enquiry officer submitted his report holding the petitioner to be not guilty of the charges. After going through the enquiry report, the disciplinary authority exonerated the petitioner from the charges levelled against him, vide order dated 07.08.2015, as contained in Annexure-9 to the present application.

6. Mr. Shivendra Kishore, learned Senior Advocate appearing for the Board submitted that exoneration of the petitioner in the departmental proceeding would be of no consequence so far as the present complaint is concerned. He submitted that as far as the



complaint is concerned, there is specific allegation against the petitioner that on 05.05.2013 when the inspection was made by the officials of the Board, the petitioner was incharge of the affairs of the National Highway (Mechanical Division), Road Construction Department, Muzaffarpur and according to the allegation made in the complaint though Hot Mix Plant was closed at the time of inspection, it was operational from before and had the capacity to produce 30 to 35 tons bitumen and stone chips mixture per hour. He submitted that the said plant was devoid of any chimney or proper pollution control equipments and location of the plant did not conform to the minimum distance from habitation. He submitted that the plant was established without prior permission of the Board.

7. I have heard learned Senior Advocates appearing on behalf of the parties and perused the record.

8. As far as installation of the plant is concerned, the petitioner cannot be held responsible for the same. From the submissions made on behalf of the parties, as also from the record, it would transpire that establishment of Hot Mix Plant was made at Motihari in the year, 2011 itself whereas the petitioner joined to the post upon transfer at Motihari on 18.04.2013. It would also be evident from the complaint that on the date of inspection the plant was found non-operational. As the petitioner himself was transferred and posted



at that place on 17.04.2013 and he submitted his joining on 18.04.2013 he cannot be held responsible for installation of the plant without obtaining prior permission of the Board which was made in the year, 2011 or for the plant being operational prior to 18.04.2013 when he submitted his joining in the Division. It is true that exoneration in a departmental proceeding in itself may not be sufficient to hold a person innocent in a criminal case, but if the charges are same and the enquiry officer and the disciplinary authority have found the petitioner to be innocent in the matter even on the basis of preponderance of probability, the same may be taken into consideration as one of the factors for appreciating as to whether the prosecution of the petitioner in the complaint case would be proper or not.

9. Having regard to the facts and circumstances of the case noted above, I am of the opinion that no mens rea can be attributed against the petitioner for committing an offence punishable under Section 37 of the Act. In that view of the matter, the prosecution of the petitioner in the complaint case would amount to an abuse of process of the court.

10. Accordingly, the application is allowed.

11. The impugned order dated 16.05.2013 passed by the learned Sub Divisional Judicial Magistrate, Patna in Complaint Case



No.04(M) of 2013 is hereby set aside.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	N/A
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Transmission Date	08.11.2017

