

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Misc. Petition No.56 of 2017

Jai Gopal Soni, S/o Late Shri Basant Kumar Soni, aged about 32 years, R/o Sonarpara, Champa, Tehsil, Thana & Post Champa, District Janjgir-Champa (C.G.)

(Complainant)
---- Petitioner

Versus

1. Shri Shivraj Singh, Chairman, Chhattisgarh State Power Generation Company Ltd., Vidhyut Sewa Bhawan, 2nd Floor, P.O. Sundar Nagar, Dangania, Raipur District Raipur (C.G.)
2. Shri Janardan Kar, Ex Managing Director, CSPGCL, Currently Posted As Director (O&M), Power Mech Projects Limited, Plot No.77, Jubilee Enclave, Opposite Hitex, Madhapur, Hyderabad 500 081 (Telangana)
3. Shri Vijay Singh, Ex Managing Director, CSPGCL, Presently Managing Director, CSPTCL, Vidhyut Sewa Bhawan, P.O. Sundar Nagar, Dangania, Raipur, District Raipur (C.G.)
4. Shri Shashibhushan Agrawal, Managing Director, Chhattisgarh State Power Generation Company Limited, Vidhyut Sewa Bhawan, 3rd Floor, P.O. Sundar Nagar, Dangania, Raipur, District Raipur (C.G.)
5. Shri Aman Kumar Singh, Director, CSPGCL & Secretary, Energy Department, Govt. of Chhattisgarh, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur, Chhattisgarh.
6. Shri Amit Agrawal, Director, CSPGCL & Secretary Finance & Commercial Tax, Govt. of Chhattisgarh, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur (C.G.)
7. Shri P.C. Sharma, Executive Director (PRG-I), Chhattisgarh State Power Generation Company Limited, Vidhyut Sewa Bhawan, 3rd Floor, P.O. Sundar Nagar, Dangania, Raipur, District Raipur (C.G.)
8. Shri M.S. Chouhan, Executive Director (Finance), Chhattisgarh State Power Generation Company Limited, Vidhyut Sewa Bhawan, 3rd Floor, P.O. Sundar Nagar, Dangania, Raipur, District Raipur (C.G.)
9. Shri A.K. Saxena, Executive Director (O&M-Generation), Chhattisgarh State Power Generation Company Limited, Vidhyut Sewa Bhawan, 3rd Floor, P.O. Sundar Nagar, Dangania, Raipur,

District Raipur (C.G.)

10. Shri O.P. Ojha, Executive Director (Civil Projects), Chhattisgarh State Power Generation Company Limited, Vidhyut Sewa Bhawan, 3rd Floor, P.O. Sundar Nagar, Dangania, Raipur, District Raipur (C.G.)
11. Shri M.R. Bagade, Chief Engineer (Civil-Maintenance), Chhattisgarh State Power Generation Company Limited, Vidhyut Sewa Bhawan, 3rd Floor, P.O. Sundar Nagar, Dangania, Raipur, District Raipur (C.G.)
12. Shri A.K. Jain, Additional Chief Engineer (Civil Projects), 2x500 MW Marwa Tendubhata Thermal Power Project, CSPGCL, Post Marwa, Post Sarkhon, District Janjgir-Champa (C.G.)
13. Shri R.P. Nigam, Executive Director (Civil) Circle – I, 2x500 MW Marwa Tendubhata Thermal Power Project, CSPGCL, Post Marwa, Post Sarkhon, District Janjgir-Champa (C.G.)
14. Shri A.K. Singh, Executive Director (Generation), 2x500 MW Marwa Tendubhata Thermal Power Project, CSPGCL, Post Marwa, Post Sarkhon, District Janjgir-Champa (C.G.)
15. Shri S.P. Chelkar, Additional Chief Engineer (Generation), 2x500 MW Marwa Tendubhata Thermal Power Project, CSPGCL, Post Marwa, Post Sarkhon, District Janjgir-Champa (C.G.)
16. Shri B.S. Thakur, Regional Officer, Regional Office, Chhattisgarh Environment Conservation Board, Near Pt. Dindayal Upadhyay Garden, Vyapar Vihar, Bilaspur, District Bilaspur (C.G.)
17. Shri Sanjay Shukla, Member Secretary, State Level Environment Impact Assessment Authority, Paryavas Bhavan, North Block Sector-19, New Raipur, District Raipur (C.G.)
18. Smt. Regina Toppo, Member Secretary, State Level Expert Appraisal Committee, Paryavas Bhavan, North Block Sector-19, New Raipur, District Raipur (C.G.)
19. Shri Devendra Singh, Member Secretary, Chhattisgarh Environment Conservation Board, Paryavas Bhavan, North Block Sector-19, New Raipur, District Raipur (C.G.)
20. Shri Omprakash Choudhary, Ex-Collector, Janjgir-Champa (C.G.), Presently Collector Raipur, District Raipur, Chhattisgarh 492001
21. Shri N. Baijendra Kumar, Principal Secretary, Housing and Environment Department, Govt. of Chhattisgarh, Room No-5/11, Mahanadi Bhawan, Mantralaya, New Raipur, Raipur (C.G.)
22. Shri S.K. Lal, Regional Officer, Western Region, E-5, Kendriya

Paryavaran Bhawan, Arera Colony, Link Road No.3, Ravishankar Nagar, Bhopal (M.P.)

23. Dr. A.B. Akolkar, Member Secretary, Central Pollution Control Board, Parivesh Bhawan, CBD-cum-Office Complex, East Arjun Nagar, Delhi – 110 032.

24. Dr. Sanchita Jindal, Member Secretary, Expert Appraisal Committee, Thermal Power Sector & Director, Ministry of Environment, Forest & Climate Change, Govt. of India, V-303, Indira Paryavaran Bhawan, Jorbagh Road, New Delhi-110003

25. Secretary, Ministry of Environment, Forest and Climate Change, Paryavaran Bhawan, CGO Complex, Lodhi Road, New Delhi-110003

---- Respondents

For Petitioner:	Mr. Harsh Wardhan, Advocate.
For Respondents No.1 to 4 and 6 to 15: -	Mr. Raja Sharma and Mr. Apoorv Kurup, Advocates.
For Respondents No.5, 16 to 19, 21 and 23: -	Mr. V.V.S. Murthy, Senior Advocate with Mr. Shantanu Kumar, Advocate.
For Respondent No.20:	Mr. Shivraj Singh, Advocate.
For Respondents No.22, 24 and 25: -	Mr. N.K. Vyas, Assistant Solicitor General.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

11/05/2017

1. Invoking the jurisdiction of this Court under Section 482 of the CrPC, the petitioner, who was complainant before the trial Court, has filed this petition calling in question legality, validity and propriety of the impugned order dated 5-11-2016 passed by the Chief Judicial Magistrate, Janjgir-Champa, by which his complaint filed under Section 19(b) of the Environment (Protection) Act, 1986; Section 43(1)(b) of the Air (Prevention and Control of Pollution) Act, 1981; and Section 49(1)(b) of the Water (Prevention and Control of Pollution) Act, 1974, has been dismissed by the learned trial Court.

2. Essential facts shorn of all paraphernalia to judge the correctness of the plea raised at the Bar are as under: -

2.1) The petitioner/complainant filed a criminal complaint under Sections 19(b) of the Act, 1986; Section 43(1)(b) of the Act, 1981; and Section 49(1)(b) of the Act, 1974, before the Chief Judicial Magistrate, Janjgir stating inter alia that the Chhattisgarh State Power Generation Company Limited has established a thermal power plant at Marva, Janjgir of 2 x 500 MW for which environmental clearance has been granted by the Central Government, Ministry of Forest and Environment on 5-2-2008 and that was valid for a period of five years which has expired on 5-2-2013, but thereafter, this validity period has not been extended and no further / fresh environment clearance has been granted and the said power plant is allegedly being run by the said Company without further environment clearance which is punishable under Sections 15, 16 and 17 of the Environment (Protection) Act, 1986. It was further averred that under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981, consent was granted on 5-5-2008 and clause 29 of that consent has not been followed and as per the public hearing, 16 villages have not been rehabilitated, and further, consent to operate under the Water Act and the Air Act has not been obtained which is punishable under the provisions of the Water Act and the Air Act and which are punishable under the aforesaid provisions.

2.2) The petitioner arraigned in his complaint 25 persons as accused persons which include present Chairman of the Chhattisgarh State Power Generation Company Limited, present and former Directors of that Company, Chairman of the Chhattisgarh Pollution Control Board, former and present Directors of that Board, Chief Engineer of the said Power Generation Company, Regional Officer of the Chhattisgarh Environment Conservation Board, Collector, Janjgir-Champa; Principal Secretary (Housing and Environment), Chhattisgarh; Regional Officer of Ministry of Environment; Member Secretary of the Central Pollution Control Board; and Secretary of the Ministry of Environment, Forest and Climate Change.

2.3) The said complaint was filed before the Chief Judicial Magistrate on 17-8-2015 in which he called for the police investigation report and statement of the complainant was recorded on 26-10-2015. On 6-5-2016, learned Magistrate directed that report be called from the Chhattisgarh Environment Conservation Board which was submitted on 7-6-2016. Argument was heard on 20-9-2016 and ultimately, on 5-11-2016, learned Magistrate dismissed the complaint holding that no sufficient ground for issuance of process against the respondents has been made out and further held that on the complaint of the complainant, on the same subject, the National Green Tribunal, Bhopal has taken cognizance.

2.4) Questioning that order, this petition under Section 482 of the

CrPC has been filed by the complainant/petitioner stating inter alia that the learned Magistrate has committed grave illegality in rejecting the complaint taking note of the objection preferred by the accused persons which is wholly unsustainable and bad in law.

3. Mr. Harsh Wardhan, learned counsel appearing for the petitioner/complainant would submit as under: -

1. The learned Chief Judicial Magistrate has permitted the respondents / accused No.16 to 19 to participate in the proceeding even before the issuance of process and has considered reply, documents and objections filed by the accused persons, which is illegal, non est, impermissible and condemnable. Reliance has been placed upon the decisions of the Supreme Court in the matters of Manharibhai Muljibhai Kakadia and another v. Shaileshbhai Mohanbhai Patel and others¹ and Raghu Raj Singh Rousha v. Shivam Sundaram Promoters Private Limited and another² to buttress his submission.

2. The defence of non-impleadment of company is of no help to the respondents. Some of the respondents are officers of the Chhattisgarh State Power Generation Company Limited and therefore relying upon the decision of the Supreme Court in the matters of U.P. Pollution Control Board v. Modi Distillery³, U.P. Pollution Control Board v. Mohan

1 (2012) 10 SCC 517

2 (2009) 2 SCC 363

3 (1987) 3 SCC 684

Meakins Ltd. and others⁴ and **U.P. Pollution Control Board v. Bhupendra Kumar Modi**⁵, such non-arraigning the company as accused is a curable defect.

3. The objections as to the requirement of a valid sanction is also not tenable, as the requirement of sanction is to be examined on case to case basis. The said assessment would necessarily require examination and appreciation of evidence and material which can be undertaken only by the trial Court while examining the complaint on merit. Therefore, the issue of sanction has to be examined deeper by the trial Court after appreciating the evidence on record. Reliance has been placed upon the judgments of the Supreme Court in the matters of **Om Prakash and others v. State of Jharkhand and another**⁶ and **Parkash Singh Badal and another v. State of Punjab and others**⁷.

4. On the basis of above-stated submission, he would finally submit that the impugned order be set-aside and criminal complaint be registered to the file of the Chief Judicial Magistrate, Janjgir-Champa for hearing and disposal in accordance with law.

4. Mr. V.V.S. Murthy, learned Senior Advocate appearing for Chhattisgarh Environment Conservation Board and Central Pollution Control Board, would submit that they have only

4 (2000) 3 SCC 745

5 (2009) 2 SCC 147

6 (2012) 12 SCC 72

7 2007 AIR SCW 1415

submitted the report as called by the trial Court and have not participated in the trial. Since report was called by the trial Magistrate, the Boards were duty bound to submit report and they have not participated in the trial. Therefore, the argument raised on behalf of the petitioner that the respondents/accused persons have participated in the trial is not correct and is contrary to record. He would further submit that senior officers of Chhattisgarh Environment Conservation Board as well as the Member Secretary of the Central Pollution Control Board have unnecessarily, against the requirement of law, been arraigned as party respondents only just to harass them and this petition under Section 482 of the CrPC is nothing but a sheer abuse of the process of the Court which deserves to be dismissed with heavy cost.

5. Mr. N.K. Vyas, learned Assistant Solicitor General for respondents No.22, 24 and 25, would submit that the offence is alleged to have been committed by the Company i.e. the Chhattisgarh State Power Generation Company Limited, but the said Company has not been arrayed as an accused therefore vicarious liability of their officers shall not come into play. Even otherwise, the senior officers of the Central Government are no way connected with the running of the Chhattisgarh State Power Generation Company Limited and they have been dragged for nothing. To buttress his submission in this point, he relied upon a decision of the Supreme Court in the matter of **Nalin Thakor and others v. State of Gujarat and others**⁸. He would further submit that respondents No.22 and 24 are senior

8 (2003) 12 SCC 461

officers of the Central Government being Regional Officer, Western Region and Member Secretary, Ministry of Environment, Forest and Climate Change, respectively, and respondent No.5 is Secretary of Ministry of Environment, Forest and Climate Change, and without there being an averment as to their liability for such an act of a Company who even have not been arraigned as party, they have been impleaded, therefore it is a case where for no rhyme or reason they have been impleaded. It is not a bona fide petition and it deserves to be dismissed with heavy costs.

6. Mr. Raja Sharma and Mr. Apoorv Kurup, learned counsel appearing for respondents No.1 to 4 and 6 to 15, would submit that the petitioner did not arraign M/s. Chhattisgarh State Power Generation Company Limited as party in his complaint filed before the Chief Judicial Magistrate, though the petitioner has sought to fasten vicarious / constructive liability upon the respondents for commission of offence under Sections 39, 40 and 41 of the Air Act; Sections 44, 47 and 48 of the Water Act; and Sections 15, 16 and 17 of the Environment Act. They would also submit that the complaint alleging vicarious liability of respondents No.1 to 4 and 6 to 15 is not at all maintainable without arraigning the Company itself as a party and without demonstrating their role and incriminating material against them. They would place strong reliance upon a three-Judge Bench decision of the Supreme Court in the matter of **Aneeta Hada v. Godfather Travels and Tours Private Limited**⁹ and would also submit that **Aneeta Hada's**

9 (2012) 5 SCC 661

decision (supra) has been further followed in the matter of **Standard Chartered Bank v. State of Maharashtra and others**¹⁰.

They would contend that the petitioner failed to make any specific averment with respect to the present respondents indicating their role in the running of the said Company and in view of the provisions contained in Section 16 of the Environment (Protection) Act, Section 40 of the Air Act and 47 of the Water Act. Therefore, the complaint is neither maintainable in law nor maintainable in fact and as such, the petition deserves to be dismissed.

7. Mr. Shivraj Singh, learned counsel appearing for respondent No.20, would argue in line with the submissions raised by counsel for the other respondents.
8. I have heard learned counsel for the parties and considered their rival submissions and also gone through the record with utmost circumspection.
9. Upon hearing counsel for the parties and after perusal of the record, following questions would emerge for consideration: -
 1. Whether the complaint as framed and filed without arraigning the Company namely Chhattisgarh State Power Generation Company Limited, was maintainable for prosecution of the present respondents?
 2. Whether the impugned order is liable to be rejected on the ground that the trial Magistrate has permitted the accused persons No.16 to 19 to participate in the proceedings before

¹⁰ (2016) 6 SCC 62

issuing process / passing the impugned order?

10. Before proceeding further, it would be appropriate to notice that as alleged by the complainant in the complaint filed before the Magistrate, the offence is said to have been committed by the Chhattisgarh State Power Generation Company Limited stating inter alia that environment clearance was granted by the Ministry of Environment, Forest and Climate Change in favour of the said Company on 5-2-2008 for a period of five years, but it was not extended further and it was being run without there being any extension of environment clearance illegally which is punishable under Sections 15, 16 and 17 of the Environment Act and similarly, the condition incorporated in the consent dated 5-5-2008 by the Chhattisgarh Environment Conservation Board, particularly clause 29 promising rehabilitation of 16 villages, has not been followed by the Chhattisgarh State Power Generation Company Limited. The power plant was being operated by the said Company without there being any consent to operate under the Air Act and the Water Act which is punishable under the aforesaid provisions as incorporated in the earlier paragraph. Therefore, the principal allegation has been made against the Company and the offence is said to have been committed by the said Company under the provisions of the Environment (Protection) Act, the Water Act and the Air Act, and thereafter, the Directors and other officers of the Company have been arraigned making them as accused in the complaint vicariously liable for the offence committed by the Company.

11. Now, the question is whether arraigning of the Company in the complaint as an accused was imperative in view of the provisions contained in Section 16 of the Environment (Protection) Act, 1986; Section 40 of the Air Act, 1981; and Section 47 of the Water Act, 1974, respectively.

12. Section 16 of the Environment Act, 1986 provides for offences by companies which states as under: -

“16. Offences by companies.—(1) Where any offence under this Act has been committed by a company, every person who, at the time the offence was committed, was directly in charge of, 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 and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, 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.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) “company” means any body corporate, and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.”

13. Similarly, Section 40 of the Air Act, 1981 provides responsibility of

offence committed by companies which states as under: -

“40. Offences by companies.—(1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was directly in charge of, 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 and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, 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.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) “company” means any body corporate, and includes a firm or other association of individuals; and

(b) “director” in relation to a firm, means a partner in the firm.”

14. Section 47 of the Water Act, 1974 also provides responsibility of

offence committed by companies which states as under: -

“47. Offences by companies.—(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, 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 and punished accordingly:

Provided that nothing contained in this subsection shall render any such person liable to any punishment provided in this Act 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.

(2) Notwithstanding anything contained in subsection (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) “company” means any body corporate, and includes a firm or other association of individuals; and

(b) “director” in relation to a firm means a partner in the firm.”

15. The aforesaid provisions of the three Acts namely the Environment Act, the Air Act and the Water Act, are *pari materia* provisions and they provide for responsibility of an offence which is committed by companies.

16. A focused glance of the aforesaid provisions would show that for the offence committed by the company, the officers of the company who were directly in-charge of and responsible to the company for the conduct of the business of the company are vicariously liable and on conviction, the company will be guilty of the offence and those officers will also be guilty of the offence. In other words, when the company is prosecuted for an offence; then only the officers directly in-charge and responsible to the company shall be

held vicariously liable and as such, unless the company is held guilty for the commission of offence, the officers of the company cannot be held guilty independently. Thus, the officers of the company are vicariously liable for the offence committed by the company. Therefore, in order to prosecute the persons who were directly in-charge and responsible to the company for the conduct of the business of the company and in order to maintain valid complaint against the company who has allegedly committed an offence under the Environment (Protection) Act, the Water Act and the Air Act, arraigning of that company as an accused in the complaint is absolutely necessary.

17. "Alter ego" is a principle that one who defends another against attack stands in the position of that other person and can use only the amount of force that the other person could use under the circumstances. (See Black's Law Dictionary – Eighth Edition.) The concept of alter ego is used primarily to hold the controlling parties of a corporation personally liable instead of limiting liability to the corporate entity.

18. The Supreme Court in the matter of **Sunil Bharti Mittal v. Central Bureau of Investigation**¹¹ while considering the corporate criminal liability held the principle that criminal intent of person(s) controlling company can be imputed to company based on principle of "alter-ego" and further held that when company is the accused, its Directors can be roped in only if there is sufficient incriminating evidence against them coupled with criminal intent or the statutory

11 (2015) 4 SCC 609

regime attracts the doctrine of vicarious liability. Paragraph 44 of the report states as under: -

“44. When the company is the offender, vicarious liability of the Directors cannot be imputed automatically, in the absence of any statutory provision to this effect. One such example is Section 141 of the Negotiable Instruments Act, 1881. In Aneeta Hada (supra), the Court noted that if a group of persons that guide the business of the company have the criminal intent, that would be imputed to the body corporate and it is in this backdrop, Section 141 of the Negotiable Instruments Act has to be understood. Such a position is, therefore, because of statutory intendment making it a deeming fiction. Here also, the principle of “alter ego”, was applied only in one direction, namely, where a group of persons that guide the business had criminal intent, that is to be imputed to the body corporate and not the vice versa. Otherwise, there has to be a specific act attributed to the Director or any other person allegedly in control and management of the company, to the effect that such a person was responsible for the acts committed by or on behalf of the company.”

19. The law with regard to arraigning the Company as an accused in case of commission of offence by Company is well settled and stands conclusively and authoritatively decided by the Supreme Court in Aneeta Hada (supra) in which Their Lordships of the Supreme Court were pleased to frame a question in paragraph 3 of its judgment, “whether the Company could have been made liable for prosecution without being impleaded as an accused and whether the Directors could have been prosecuted for offences punishable under the aforesaid provisions without the Company being arrayed as an accused”. Their Lordships considered various authorities on the point and finally, in clear and unmistakable terms held in paragraph 59 that under Section 141 of the Negotiable Instruments Act, 1881, arraigning of a company as an accused for

maintaining the prosecution, is imperative. Their Lordships further held that the other categories of offenders can only be brought in the drag-net on the touchstone of vicarious liability as the same has been stipulated in the provision itself. Paragraphs 58 and 59 of the report state as under: -

“58. Applying the doctrine of strict construction, we are of the considered opinion that commission of offence by the company is an express condition precedent to attract the vicarious liability of others. Thus, the words “as well as the company” appearing in the section make it absolutely unmistakably clear that when the company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof. One cannot be oblivious of the fact that the company is a juristic person and it has its own respectability. If a finding is recorded against it, it would create a concavity in its reputation. There can be situations when the corporate reputation is affected when a Director is indicted.

59. In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under [Section 141](#) of the Act, arraiging of a company as an accused is imperative. The other categories of offenders can only be brought in the drag-net on the touchstone of vicarious liability as the same has been stipulated in the provision itself. We say so on the basis of the ratio laid down in C.V. Parekh¹² which is a three-Judge Bench decision. Thus, the view expressed in Sheoratan Agarwal¹³ does not correctly lay down the law and, accordingly, is hereby overruled. The decision in Anil Hada¹⁴ is overruled with the qualifier as stated in para 51. The decision in Modi Distillery (supra) has to be treated to be restricted to its own facts as has been explained by us hereinabove.”

20. The principle and proposition of law laid down in **Aneeta Hada**

(supra) has further been reaffirmed and reiterated in a very recent

decision pronounced in **Standard Chartered Bank** (supra) in

12 State of Madras v. C.V. Parekh, (1970) 3 SCC 491 : 1971 SCC (Cri) 97

13 Sheoratan Agarwal v. State of M.P., (1984) 4 SCC 352 : 1984 SCC (Cri) 620

14 Anil Hada v. Indian Acrylic Ltd., (2000) 1 SCC 1 : 2001 SCC (Cri) 174

which Their Lordships holding that a complaint is not maintainable without making the company a party observed as under in paragraph 12: -

“12. At one point of time, as issue had arisen before this Court, whether a complaint could be held to be maintainable without making the company a party. The said controversy has been put to rest by a three-Judge Bench decision in *Aneeta Hada v. Godfather Travels and Tours (P) Ltd.* (supra) wherein it has been held that: (SCC p. 688, para 58)

“58. ... when the company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof.”

It has been further held therein that there cannot be any vicarious liability unless there is a prosecution against the company. In the case at hand, the Company has been arrayed as Accused 1 along with the Chairman and other Directors.”

21. In **Aneeta Hada** (supra) and **Standard Chartered Bank** (supra),

Their Lordships were dealing with the provisions of Section 141 of the Negotiable Instruments Act, 1881. A careful comparison of Section 141 of the Negotiable Instruments Act, 1881; Section 16 of the Environment Act, 1986; Section 40 of the Air Act, 1981; and Section 47 of the Water Act, 1974, would show that Section 141 of the Negotiable Instruments Act, 1881 is a para materia provision to Section 16 of the Environment Act, 1986; Section 40 of the Air Act, 1981; and Section 47 of the Water Act, 1974, as such, the proposition laid down in **Aneeta Hada** (supra) reiterated in **Standard Chartered Bank** (supra), squarely applies to the facts of the present case, as in the instant case offence is alleged to have been committed by the Chhattisgarh State Power Generation

Company Limited under the provisions of the Environment (Protection) Act, 1986; the Air Act, 1981; and the Water Act, 1974, respectively. It is, therefore, held that arraigning the company as an accused, since the offence is said to have been committed by the Company i.e. the Chhattisgarh State Power Generation Company Limited, in the complaint was the first and foremost requirement which has not been done and the said Company has not been arraigned as accused in the said complaint filed before the jurisdictional criminal court, only other persons who are either related with the Company currently or previously and officers of the Central Government and the State Government have been arrayed as party accused without assigning their specific role in running of the said company. The complaint as framed and filed only against the officers of the company without arraigning the Chhattisgarh State Power Generation Company Limited, who is alleged to have committed the offence, is held to be not maintainable in law.

22. At this stage, to be fair with Mr. Harsh Wardhan, learned counsel for the petitioner/complainant, the judgment cited by him in **Modi Distillery's** case (supra) to buttress his submission that non-arraigning the company is a curable defect and it can be cured if the order is set aside and the matter is remanded to the trial Magistrate, deserves to be noticed. The aforesaid decision was a two-Judge Bench decision which was considered by Their Lordships of the Supreme Court in **Aneeta Hada** (supra) in paragraph 52 of its judgment and Their Lordships held that the decision in **Modi Distillery's** case (supra) has to be treated to be

restricted to its own fact and it has further been observed by Their Lordships in paragraph 52 that “M/s. Modi Distilleries was arrayed as a party instead of M/s. Modi Industries Ltd.. Thus, it was a defective complaint which was curable but, a pregnant one, the law laid down as regards the primary liability of the company without which no vicarious liability can be imposed has been appositely stated”. In view of the above, this decision cited by Mr. Harsh Wardhan is of no help to the petitioner.

23. The other two decisions which Mr. Harsh Wardhan has cited are **Mohan Meakins Ltd.'s** case (supra) and **Bhupendra Kumar Modi's** case (supra) to highlight the fact that environmental offences are of a serious nature, because they concern and effect large section of the society and are not liable to be considered lightly by the courts, and on such technical pleas, the accused persons cannot be allowed to escape the clutches of law. These two cases are clearly distinguishable on facts, as it has been held relying upon the larger bench decision of **Aneeta Hada** (supra) that arraigning of company is an imperative requirement for maintaining a maintainable complaint to prosecute the Company and its responsible officers. Therefore, these judgments are also not helpful to the petitioner.

24. In view of the aforesaid, it is held that in view of the provisions contained in Section 16 of the Environment Act, 1986; Section 40 of the Air Act, 1981; and Section 47 of the Water Act, 1974, where the offence is said to have been committed by the company,

arraigning of the company as a party in the complaint is a condition precedent in order to make a valid and maintainable complaint to prosecute the company and its responsible officers and in absence of company being arraigning as accused in a complaint, the said complaint is held to be not maintainable in law.

25. The first question is answered accordingly.

Answer to question No.2: -

26. Having answered question No.1 and having regard to the conclusion reached herein-above that the complaint as framed and filed is not maintainable in law, question No.2 is not required to be decided, yet with all fairness to counsel for the petitioner, the issue is taken-up for consideration.

27. The scheme of Chapter XVI of the CrPC shows that an accused person does not come into the picture at all till process is issued. This does not mean that he is precluded from being present when an enquiry is held by a Magistrate. He may remain present either in person or through a counsel or agent with a view to be informed of what is going on. But since the very question for consideration being whether he should be called upon to face an accusation, he has no right to take part in the proceedings nor has the Magistrate any jurisdiction to permit him to do so. (See **Chandra Deo Singh v. Prakash Chandra Bose alias Chabi Bose and another**¹⁵, **Balraj Khanna and others v. Moti Ram**¹⁶, **Manharibhai Muljibhai Kakadia** (supra) and **Raghu Raj Singh Rousha** (supra).)

28. According to respondents No.16 to 19, they have not participated in

15 AIR 1963 SC 1430

16 1971 (3) SCC 399

the trial and they have already submitted a report in which they have also submitted report that similar plea is pending before the National Green Tribunal and taking note of that plea, it appears that the learned Magistrate has rejected the complaint. Entire order sheets of trial have been placed before this Court. A careful perusal of the order sheets would show that on each date of hearing, the complainant has appeared through his counsel and presence of any officer or any Advocate on behalf of the respondents has not been recorded except on 14-10-2016. It has been recorded in the order sheet dated 14-10-2016 that “अनावेदक द्वारा एक नोटिस की प्रती प्रस्तुत किया गया” and in the impugned order only it has been recorded that on behalf of the respondents one document has been produced, that has been taken note of. Therefore, it is not established that accused persons No.16 to 19 have participated in the proceeding.

29. Mr. N.K. Vyas, learned Assistant Solicitor General, has also raised a plea that their officers are the officers of the Central Government and without prior sanction under Section 197 of the CrPC, the complaint was not maintainable. In view of the finding arrived herein-above, I deem it inappropriate to deal with the aforesaid submission, as the complaint is held to be not maintainable. It is left open to be considered and decided in appropriate case.
30. As a fallout and consequence of aforesaid discussion, this petition under Section 482 of the CrPC deserves to be and is accordingly dismissed.

31. So far as the question of cost is concerned, this Court is inclined to impose heavy cost upon the petitioner taking into account the manner in which he roped in the senior officers of the said Company, Chairman of the said Company, senior officers of the Chhattisgarh Environment Conservation Board, Central Pollution Control Board and senior officers of the State Government and the Central Government without assigning their specific role and without placing adequate incriminating material against them, but considering the fact that the complaint was dismissed without issuing notice to them and learned counsel for the petitioner has submitted that the petitioner would be careful in future and would not indulge in such a practice, this Court decided not to impose cost upon the petitioner except warning the petitioner to be careful in future and not to repeat this practice.

Sd/-
(Sanjay K. Agrawal)
Judge