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HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No. 591 of 2016****Order Reserved on 30.08.2017****Order Delivered on 18.09.2017**

Umesh Chaudhary S/o Late S.N Chaudhary Aged About 56 Years
 Chief General Manager, Lakshman Open Cast Coal Mines, S.E.C.L.
 Kusmunda Area, P.S. Kusmunda, District Korba, Chhattisgarh.
 Presently Posted As General Manager, S E C L Raigarh Area, Chhote
 Atar Muda, Behind Collectorate Office S E C L Raigarh, Chhattisgarh.

---- Petitioner**Versus**

Chhattisgarh Environmental Conservation Board Korba, Through
 Regional Officer, C.G. Environment Conservation Board, Near Tehsil
 Office, Korba, Chhattisgarh.

---- Respondent**Cr.M.P. No. 630 of 2016**

B.K. Mishra S/o Shri C.K. Mishra Aged About 57 Years Chief General
 Manager, Lakshman Open Cast Coal Mines, S.E.C.L. Kusmunda
 Area, P.S. Kusmunda, District Korba Chhattisgarh. Presently Shri B.K.
 Misra Mukhya Prabandhak Laxman Open Cast - Coal Mine S.E.C.L.
 Kusmunda Area Kusmunda, District Korba Chhattisgarh.

---- Petitioner**Versus**

Chhattisgarh Environmental Conservation Board Through Regional
 Officer, C.G. Environment Conservation Board, Near Tehsil Office,
 Korba C.G.

---- Respondent

For the Petitioners	: Dr. N.K. Shukla, Senior Advocate with Shri Vivek Chopda, Advocate.
For the Respondent	: Shri Animesh Tiwari, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**CAV ORDER**

1. Heard.
2. These petitions have been brought under Section 482 of the Code of Criminal Procedure with a prayer to quash the Complaint Case No. 32 of

2010 pending against the petitioners in both the cases before the Court of Judicial Magistrate First Class, Katghora.

3. A complaint has been filed by the respondent against the petitioners in both the cases for prosecution of the offence under Sections 44 and 47 of the Water (Prevention and Control of Pollution) Act, 1974, Sections 22, 39 and 40 of the Air (Prevention and Control of Pollution) Act, 1981 and Sections 15, 16 and 19 of the Environment Protection Act, 1986, alleging in it that the petitioners in both the cases were in-charge of mining activities of the coal mines exploited by South Eastern Coalfields Limited (SECL) for the year 2007-2008 and contrary to the permission granted for limit of excavation of coal, they have excavated the coal from the mines in excess continuing from 2008 to 2010 and it has adverse effect on air and water in the environment concerned, which is getting polluted.

4. Learned counsel for the petitioner submits that in Cr.M.P. No. 591 of 2016, the petitioner came into the charge of Chief General Manager of SECL, Kusmunda on 2.8.2010 and worked in that post till 21.4.2015 (Annexure – P/4). Hence, the allegation made in the complaint with regard to exploitation of coal from the mines, against the petitioner – Umesh Chaudhary, is baseless and the period of alleged excessive exploitation of coal from the mines is from 2007 to 2010. The complaint by respondent No.2 does not make any specific allegation that the petitioner was directly responsible for the excessive mining.

5. Learned counsel for the petitioner in Cr.M.P. No. 630 of 2016 submits that petitioner – B.K. Mishra was not posted in any capacity when the

alleged excessive exploitation/ exigency of the coal from mines started in the year 2007-2008 vide Annexure – P/4. As per Annexure-P/4, the information given to the respondent, it is clear that petitioner – B.K. Mishra was posted in Kusmunda, Korba as Chief General Manager on 2.6.2009 and worked till 2.4.2010. Hence, it is prayed that the criminal proceedings against the petitioner be quashed.

6. Learned counsel for the respondent submits that there is a clear report of excessive exploitation of coal from the mines concerned and that the petitioners in both the cases are directly responsible for excessive mining which was resulted in the pollution of air and water and their act is punishable under the provisions of the concerned acts.

7. Perused the record.

8. On the complaint made by the respondent, the trial Court, by order dated 7.1.2012 has taken cognizance and issued summons for appearance of the petitioner/ accused in that case. This order was challenged before the Court of the Additional Sessions Judge, Khatghora in Revision Petition No. 30 of 2012 which has been decided by order dated 12.5.2016 and the revision petition was dismissed.

9. Section 16 of the Environment (Protection) Act provides for the offence by companies, according to which, every person who, at the time the offence was committed, was directly in-charge of, was responsible 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 prosecuted against and

punished accordingly.

10. Section 47 of the Water (Prevention and Control of Pollution) Act, 1974 is 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 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.

11. Section 40 of the Air (Prevention and Control of Pollution) Act, 1981 is 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.

It cannot be ascertained that the time limit as mentioned in the complaint, whether 2007-2008 to 2009-2010 is meant for financial year that ends in the March of every year or whether it is meant to include the whole year stating from January to December. The petitioner in Cr.M.P. No. 591 of 2016 was posted in the concerned colliery in 2010, whereas the petitioner in Cr.M.P.

No. 630 of 2016 got posted in the month of June, 2009 which shows their postings during years of excessive exploitation alleged in the complaint. If the year concerned is to be referred as a whole year, this allegation made by the respondent/ complainant needs a clarification and such clarification can be obtained only in the proceeding before the trial Court. No assumption can be made at this stage for the purpose of exercise of jurisdiction under Section 482 of the Code of Criminal Procedure. Hence, in view of the legal position regarding the persons responsible for the offence by companies for the acts as above mentioned, the petitioners in both the cases cannot get any benefit at this stage. In the result, it is found that the petitions are devoid of merit. Consequently, both the petitions are dismissed.

Sd/-

(Rajendra Chandra Singh Samant)
Judge