

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M No.44653 of 2016 (O&M)

Date of decision: 25.10.2018

Satish Kumar Sood

....Petitioner

Versus

Haryana State Pollution Control Board

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Aashish Chopra, Advocate
with Mr. Karan Gulati, Advocate
for the petitioner.

Mr. Deepak Balyan, Advocate
for the respondent.

ARVIND SINGH SANGWAN J. (Oral)

Prayer in this petition is for setting-aside the order dated 29.07.2009 passed by the Special Environment Court, Faridabad in complaint No.49 of 2009 vide which the petitioner has been summoned to face trial and the order dated 24.10.2016 vide which the revision filed by the petitioner was dismissed by the Revisional Court.

Counsel for the petitioner has submitted that the complaint (Annexure P5) was filed by the respondent – Haryana State Pollution Control Board (hereinafter to be referred to as 'the Board') on the premise that the Company i.e. M/s. Ajay Enterprises Private Limited i.e. accused No.1 and accused No.2 – Rattan Chand Sood, being its Director had set up M/s. Wembley Estate (Rosewood City), Near Ghasaula & Badshahpur Village, Sector 49-50, Gurgaon, for promoting and marketing the construction. It is stated in the complaint that

accused Nos.2 to 5 are the responsible persons for the day-to-day business dealings of accused No.1 – Company.

The Ministry of Environment and Forest (in short 'MOEF'), Government of India had issued a notification dated 27.01.1994 that any existing industry or project listed in Schedule-I of Ministry of Environment and Forest, New Delhi, will obtain a no objection/clearance certificate as per the provisions of the notification. It is further stated in the complaint that accused No.1 – company was required to obtain environment clearance from MOEF as the process of new construction is given in Serial No.31 of Schedule-I of the 1994 Notification (as amended in the year 2004), however, the clearance certificate was not obtained. It is also stated in the complaint that vide letter dated 05.12.2008 (Annexure C2 attached with the complaint) a notice was given to the accused for violation of the directions given under Section 5(VII) of the Environment Protection Rules read with Section 19 of the Environmental Protection Act, 1986 and the company has submitted a reply (Annexure C3) showing the status of the company.

Counsel for the petitioner has further submitted that the complaint, which was instituted on 08.01.2009, though, with the reply filed by the company dated 26.12.2008 along with copy of the Environment Clearance Certificate was attached as Annexure C3, however, the said certificate was never placed before the trial Court, though, it was part and parcel of the document (Annexure C3 attached with the complaint).

Counsel for the petitioner has relied upon the clearance

certificate (Annexure P4) dated 27.08.2007 to show that the Ministry of Environment and Forest has issued a clearance certificate in favour of the company and the same was brought to the notice of the respondent – Board, while filing reply (Annexure C3 attached with the complaint) and therefore, neither the official of the Board has taken notice of the same nor the same was placed before the trial Court as part of Annexure C3 and, therefore, there was no occasion for the trial Court to look into the same and come to the conclusion that the petitioner has prima facie committed the offence as the complaint has been filed by withholding the aforesaid document from the notice of the trial Court.

Counsel for the petitioner has also submitted that even the complaint (Annexure P5) is silent about the date when the accused – company has started the constructions at the spot and, therefore, the allegations regarding violation of Section 19 of the Act, on the face of it are not proved and the provisions of Sections 15 and 19 of the Act are not violated by the company.

Counsel for the petitioner has further relied upon the judgment of this Court dated 23.08.2011 passed in CRM-M No.26803 of 2010 wherein the while dealing with a similar case where, the construction company had already obtained a clearance certificate from the Ministry of Environment and Forest (MOEF) and there was vague allegations in the complaint about the date of starting the construction, the complaint and subsequent proceedings were quashed. The operative part of the said judgment reads as under:-

“Learned senior counsel for the petitioner has submitted that the company had applied for Environment

Clearance Certificate from the appropriate authority. The Ministry of Environment and Forests vide letter dated 4.10.2007 (Annexure P-7) conveyed the grant of environmental clearance for the project in question. Thereafter, the company applied for 'No Objection Certificate' in respect of construction of the proposed project and submitted application along with a copy of Environment Clearance Certificate and a draft of `35,000/- dated 28.7.2008. However, the complaint in question had been filed on 6.11.2008 under Section 15 of the Act.

Learned counsel for respondent No.1 as well as learned State counsel, on the other hand, have submitted that the clearance certificate had been obtained by the petitioner later on and hence, the criminal proceedings against the petitioner were liable to proceed.

After hearing learned counsel for the parties, I am of the opinion that the present petition deserves to be allowed.

*In the case of **State of Haryana vs. Bhajan Lal**, 1992 Supp(1) Supreme Court Cases 335, the Apex Court has held as under:-*

“The following categories of cases can be stated by way of illustration wherein the extraordinary power under Article 226 or the inherent powers under Section 482, Cr.P.C. Can be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently chennelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:-

(1) Where the allegations made in the first information report or the complainant/respondent

No.2, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a Police Officer without an order of Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of aggrieved

party.

(7). Where a criminal proceeding is manifestly attended with mala fide and/or where the proceedings is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.”

The point in controversy in the present case is only to the effect that whether the petitioner got the Environment Clearance Certificate before starting the work or thereafter.

In the present case, notification was issued by the Ministry of Environment and Forests dated 14.9.2006, whereby the company was required to get the prior Environment Clearance Certificate before starting its business. Admittedly, the petitioner was granted the clearance certificate by the Government of India, Ministry of Environment and Forests vide letter dated 4.10.2007 (Annexure P-7).

A perusal of the complaint (Annexure P-1) reveals that the complaint was filed against the petitioner and others on the allegation that the petitioner had started new construction project without obtaining any prior

Environment Clearance Certificate from the Ministry of Environment and Forests. The complaint has been filed in November, 2008, whereas, the clearance certificate has been issued to the petitioner on 4.10.2007. In the complaint it has not been mentioned that as to when the construction project was started by the company. A perusal of the complaint also reveals that the allegations levelled therein are vague as it has not been stated therein as to how the offence under Section 15 of the Act had been committed by the petitioner-company. The petitioner has applied for 'No Objection Certificate' after the receipt of clearance certificate along with the requisite fee of ` 35,000/- on 30.7.2008 (Annexure P8). In these circumstances, it cannot be said that the company had started its work before the issuance of the Environment Clearance Certificate. On the day the complaint was filed, the petitioner-company was already having the Environment Clearance Certificate. In these circumstances, the continuation of the criminal proceedings against the petitioner would be nothing but an abuse of process of law.

Accordingly, the present petition is allowed. Complaint No.57 dated 6.11.2008 (Annexure P-1) under Section 15 of the Act, as well as summoning order dated 21.11.2008 (Annexure P-5), and all the subsequent proceedings arising therefrom, are quashed.”

In reply, counsel for the respondent – Board has not disputed that the petitioner – company had obtained the clearance certificate on 27.08.2007 and it is also not disputed that in the complaint filed by the Board, no date of starting the construction by the company is mentioned.

After hearing the counsel for the parties, I find merit in the

present petition for the following reasons:-

1. A perusal of the complaint (Annexure P5) show that the same was filed with the averments that prior to filing of the same, a notice was issued (Annexure C2) under Section 5(VII) of the Environment Protection Rules and Section 19 of the Environment Protection Act, 1986, proposing to file a complaint under Section 15 read with Section 19 of the Environment Protection Act against accused No.1 and its Directors for violation of the E.I.A. Notification dated 14.09.2006. In this notice dated 05.12.2008, it is stated that the accused/directors have started the construction without obtaining the environment clearance certificate under the 2006 Notification.

Vide Annexure C3 (attached with the complaint), the accused persons have informed the Board on 26.12.2008 that the environment clearance certificate is submitted for the notice of the Board. While filing the complaint, both these documents are attached as Annexures C2 and C3, which means that the complainant prior to filing of the complaint had the knowledge that the accused had already obtained the requisite environment clearance certificate. A perusal of the certificate (Annexure P4) issued by the Government of India, Ministry of Environment and Forest, New Delhi clearly show that the same was issued in favour of M/s. Ajay Enterprises Private Limited, the accused No.1, who is setting up the project by the name M/s. Wembley Estate (Rosewood City), Near Ghasaula & Badshahpur Village, Sector 49-50, Gurgaon. Clause (II) of this certificate show that

the same relates to the aforesaid M/s. Wembley Estate and therefore, prior to filing of the complaint, the complainant – Board had every knowledge that the accused were granted the requisite certificate.

A perusal of the impugned order passed by the trial Court further show that there is a reference to Annexure C3 only to the extent that the status of the accused persons and incorporation of accused No.1 – company, is apparent from this document whereas, the trial Court has completely ignored that vide this document, the accused persons have brought to the notice of the Board that the Ministry of Environment and Forest had already issued a clearance certificate. Thus, the trial Court has passed the impugned order dated 29.07.2009 without looking into the contents of Annexure C3, which itself is a part of the complaint and, therefore, the impugned summoning order has been passed without application of judicial mind.

2. Even otherwise, the findings recorded by the Revisional Court while dismissing the revision petition, is not only against the record but also erroneous. The operative part of the findings, reads as under:-

“6. After hearing both the sides and going through the records, this Court finds no merit in the submissions of Ld. counsel for the revisionist. The main contentions of the revisionist are that neither there is any necessity of clearance certificate nor the revisionist can be said to be not possessed with any clearance certificate as subsequently clearance certificate has been issued in favour of the revisionist. However, it is not disputed that at

the time of passing of the impugned order, these documents were not available before the Ld. trial Court at the time of passing of the impugned order and the impugned order cannot be said to be suffering from any irregularity or illegality at that stage. However, the revisionist has an opportunity to argue the same before the Ld. trial Court at the stage of framing of charge and in case there is any merit in the contentions of the revisionist, the same will be taken into consideration by the Ld. trial Court at the time of passing the order on charge.

7. In view of the above facts and circumstances, the revision petition being devoid of merits is hereby dismissed. Lower Court record alongwith a copy of the order be sent back. File be consigned to records after due compliance.

*Announced in open Court.
24.10.2016*

*Dr. Pankaj,
Additional Sessions Judge,
Faridabad.”*

It is not the case of the petitioner that there was no necessity of obtaining a clearance certificate rather the certificate was duly produced before the Board prior to filing of the complaint. The finding of the Revisional Court that the certificate was not put up before the trial Court at the time of passing of the summoning order is otherwise against the record as at that stage, the accused were not represented and the complainant – Board had withheld the certificate (Annexure P4) dated 27.08.2008 from the notice of the trial Court, as it was an integral part of the document Ex.C3 submitted by the accused persons and only the forwarding letter was attached with the

complaint and the certificate was never brought to the notice of the trial Court and, therefore, the order dated 24.10.2016, passed by the Revisional Court is legally and factually incorrect.

3. *A perusal of the complaint also show that that vague allegations are levelled against the petitioner. In para 7, it is stated that without obtaining the environment clearance certificate from the Ministry of Environment and Forest, the accused have started new construction of M/s. Wembley Estate (Rosewood City), Near Ghasaula & Badshahpur Village, Sector 49-50, Gurgaon. No date has been given in the complaint as to when the construction had started and, therefore, the complaint is totally vague and at this stage, no improvement can be made in the complaint even if the petitioner is directed to face the trial and, therefore, in the absence of any specific allegations, the prosecution of the petitioner is nothing but abuse and misuse of process of law.*

4. *In reply filed by the Board, the factum of obtaining the clearance certificate dated 27.08.2008, is neither disputed nor denied. Even the receiving of letter (Ex.C3, which is attached with the complaint) vide which the certificate was submitted before the Board is not denied. In a specific averment made by the petitioner in para 7 of the petition that no date has been given regarding the commencement of construction is also not denied in the corresponding para of the written statement filed in this Court.*

5. *A perusal of the complaint also show that no specific*

allegations are levelled against the petitioner, who is one of the director of the company that he was vicariously liable for the commission of offence as it is not stated that at the relevant time, he was the incharge of the company and also responsible for conduct of its business and the only allegation is that the petitioner is the director of the company and, therefore, he is responsible for day-to-day affairs of the company. This fact is also not disputed by the Board in its reply.

6. *In view of the judgment of the Hon'ble Supreme Court in **Bhajan Lal's case (supra)** and from the bare perusal of the complaint and the environment clearance certificate (Annexure P4), which is not disputed or denied by the Board, it is found that the allegations levelled against the petitioner are vague and nothing has been mentioned as to how the offence under Section 15 of the Act is committed by the petitioner.*

Accordingly, the present petition is allowed, the summoning order dated 29.07.2009 and the order dated 24.10.2016 are set-aside and the complaint No.49 of 2009 dated 08.01.2009 (Annexure P5) and all other subsequent proceedings arising therefrom are ordered to be quashed, *qua* the petitioner.

(ARVIND SINGH SANGWAN)
JUDGE

25.10.2018
yakub

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No