

HIGH COURT OF CHHATTISGARH, BILASPURCriminal Misc. Petition No.515 of 2011

1. South Eastern Coal Fields Limited, Gevra Area, Distt. Korba (C.G.)
 2. Chief General Manager, Dipka Expansion Project, South Eastern Coal Fields Limited, Gevra Area, Distt. Korba (C.G.)
- (Applicants)
---- Petitioners

Versus

Chhattisgarh Environment Protection Board, Korba, Through the Regional Officer, Chhattisgarh Environment Protection Board, Regional Office Near Ghantaghar, HIG 21, 22, MP Nagar (Extension), Korba, Distt. Korba (C.G.)

(Non-applicant)
---- Respondent

For Petitioners:	Mr. Shailendra Shukla, Advocate.
For Respondent:	Mr. Animesh Tiwari, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

18/06/2019

1. The Chhattisgarh Environment Conservation Board (for short, 'the Board') through its Regional Officer filed a complaint under Section 200 of the CrPC read with Section 19 of the Environment (Protection) Act, 1986 against petitioner No.1 – South Eastern Coalfields Limited (SECL), a company incorporated under the provisions of the Indian Companies Act, 1956 and its Chief General Manager, Dipka Project – petitioner No.2 herein for commission of the offence punishable under Sections 15 & 17 of the Environment (Protection) Act, 1986 (for short, 'the Act of 1986') stating inter alia that petitioner No.1 SECL was granted consent under the provisions of Sections 25 & 27 of the Water (Prevention and Control

of Pollution) Act, 1974 which was renewed from time to time, but it was not renewed after 30-11-2001 and the SECL is continuing its extraction of coal which is violation of Sections 6 & 7 of the Act of 1986 and punishable under Sections 15 & 17 of the Act of 1986. It was also pleaded that after the said grant, petitioner No.1 SECL has expanded its mining capacity from 10 million tonnes to 15.394 million tonnes from 2001-2002, but no such consent was obtained from the Board which is clear violation of Sections 6 & 7 of the Act of 1986 and petitioner No.1 SECL and petitioner No.2 – its Chief General Manager are responsible for obtaining the said consent and without obtaining consent to protect the environment, they are involved in continuous mining work, therefore, they are liable to be punished and the said act was punishable under Sections 15 & 17 of the Act of 1986. The Chief Judicial Magistrate, Korba, on satisfying himself with the averments of the complaint made and documents annexed thereto, took cognizance of the offence under Sections 15 & 17 of the Act of 1986 against the petitioners herein and issued process thereon.

2. The petitioners herein without entering into appearance before the said Court, after receiving the summons, immediately questioned the order taking cognizance dated 29-8-2005 by way of revision under Section 397 read with Section 399 of the CrPC before the Court of Session. The revisional Court by the impugned order dated 9-6-2011 dismissed the revision finding no merit. Feeling aggrieved and dissatisfied with the order dismissing revision and affirming the order of taking cognizance, this petition under Section 482 of the CrPC has been filed by the SECL questioning those

orders.

3. Mr. Shailendra Shukla, learned counsel appearing for the petitioners, would make two fold contentions: -

1. The complaint under Section 200 of the CrPC read with Section 19 of the Act of 1986 was filed by the Board through its Regional Officer which is violative of Section 19(a) of the Act of 1986, as the Central Government has not authorized the Chhattisgarh Environment Conservation Board to file complaint and since the manner of instituting complaint has already been provided in the Act of 1986, therefore, in absence of valid authorization under Section 19(a) of the Act of 1986 by the Central Government, the complaint case as framed and filed and cognizance taken by the learned Chief Judicial Magistrate deserve to be quashed being non-maintainable.
2. The offences are said to have been committed by petitioner No.1 Company and petitioner No.2 is said to be the Chief General Manager, but there is no averment that petitioner No.2 was the person who, at the time of alleged offence committed, was directly in-charge of and responsible to the company for the conduct of business, as pleading to that effect is absolutely lacking and missing in the complaint, therefore, the complaint filed and cognizance taken are liable to be quashed.

4. Mr. Animesh Tiwari, learned counsel appearing for the respondent, while replying the contentions made on behalf of the petitioners, would submit as under: -

1. By notification dated 16th April, 1987, the Central Government has authorized the Regional Officers of the State Board for institution of complaint under Section 19(a) of the Act of 1986 and therefore this objection that the complaint is filed by an unauthorised person, has no legs to stand.
2. Though the pleading as mandated in Section 16(1) of the Act of 1986 that petitioner No.2 was the person who at the time the alleged offence was committed was directly in-charge of and responsible to the company, has not been pleaded, but substantially the requirements of Section 16(1) have already been pleaded in the complaint in paragraphs 9, 10 & 11, therefore, substantial compliance of the proviso to Section 16(1) has been made. As such, technical objection should not prevail over the overwhelming public health and the matter requiring protection of environment has to be construed strictly and the petition being devoid of merit deserves to be dismissed.
5. I have heard learned counsel for the parties, considered the rival submissions and also went through the record with utmost circumspection.
6. On consideration of the submissions of learned counsel for the parties, following two questions arise for consideration: -
 1. Whether, the complaint as framed and filed is bad for non-compliance of Section 19(a) of the Act of 1986?
 2. Whether, the complaint is liable to be rejected for non-compliance of Section 16(1) of the Act of 1986?

Re Question No.1: -

7. Section 19(a) of the Act of 1986 provides as under: -

“19. Cognizance of offences.—No court shall take cognizance of any offence under this Act except on a complaint made by—

(a) the Central Government or any authority or officer authorised in this behalf by that Government; or

(b) xxx xxx xxx”

8. A careful analysis of the language of Section 19(a) of the Act of 1986 clearly shows that it prohibits institution of prosecution for an offence under the Act except on fulfillment of one or two conditions, either the prosecution must be instituted by the Central Government or the State Government or a person authorised in that behalf by the Central Government or by any authority or officer authorised in this behalf by the Central Government.

9. The Supreme Court in the matter of **A.K. Roy and another v. State of Punjab and others**¹ while dealing with the provisions contained in Section 20(1) of the Prevention of Food Adulteration Act, 1954 has clearly held that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other modes of performance are necessarily forbidden. It was further held that the intention of the legislature in enacting Section 20(1) was to confer a power on the authorities specified therein which power had to be exercised in the manner provided and not otherwise.

10. Now, the question is whether in the instant case, the provisions contained in Section 19(a) of the Act of 1986 have been complied

¹ (1986) 4 SCC 326

with while filing the complaint?

11. The notification issued by the Central Government on 16th of April, 1987, has been brought to the notice of this Court during the course of hearing, which has been issued by the Central Government under S.O. 394(E) in exercise of the powers conferred under Section 19(a) of the Act of 1986 which authorises the Regional Officers of the State Board for the prevention and control of water pollution who have been delegated powers under Sections 20, 21 & 23 of the Water (Prevention and Control of Pollution) Act, 1974.

The said notification dated 16th April, 1987 states as under: -

“S.O. 394(E).—In exercise of the powers conferred under clause (a) of section 19 of the Environment (Protection) Act, 1986 (29 of 1986), the Central Government hereby authorises the officers and authorities listed in column (2) of the Table hereto for the purposes of the said section with the jurisdiction mentioned against each of them in column (3) of that Table:

TABLE

Serial No.	Officer	Jurisdiction
(1)	(2)	(3)
1.	xxx xxx xxx	xxx xxx xxx
2.	xxx xxx xxx	xxx xxx xxx
3.	xxx xxx xxx	xxx xxx xxx
4.	xxx xxx xxx	xxx xxx xxx
5.	xxx xxx xxx	xxx xxx xxx
6.	xxx xxx xxx	xxx xxx xxx
7.	Regional Officers of the State Board for the prevention and control of water pollution who have been delegated powers under section 20, 21 and 23 of the Water (Prevention and Control of Pollution) Act, 1974.	Area as laid down by the State Board
8.	Regional Officers of the State Board for the prevention and Control of Air Pollution who have been delegated powers	Area as laid down by the State Board

	under section 24 of the air (Prevention and Control of Pollution) Act, 1981.	
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12. As such, the Regional Officer of the State Board exercising power under the respective provisions of the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 has been authorised by the Central Government to exercise the power and to file complaint under Section 19 of the Act of 1986 and the complaint filed by the Regional Officer of the State Board would be valid institution of complaint as officer authorised by the Central Government.

13. Reverting to the facts of the present case, in this case, complaint has been filed by the Chhattisgarh Environment Conservation Board through its Regional Officer who is the authorised person within the meaning of Section 19(a) of the Act of 1986, as duly authorised by the Central Government by notification dated 16th April, 1987. As such, there is sufficient compliance of the provision contained in Section 19(a) of the Act of 1986 and therefore the submission raised in this behalf on the part of the petitioners is hereby repelled, as the complaint instituted by the Regional Officer of the respondent Board is strictly in accordance with law.

Re Question No.2: -

14. In order to answer question No.2, it would be expedient to notice Section 16 of the Act of 1986 which provides 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.”

15. A careful perusal of Section 16(1) of the Act of 1986 would show that it creates a deeming legal fiction whereby every person, who is in charge of and/or responsible to the company for the conduct of its business becomes automatically guilty of the offence committed by such a company and is liable to be proceeded against and punished accordingly. No other overt act and or direct commission of the offence by such a person is necessary barring the factum of being in charge of the company or responsible thereto for the conduct of the business of the company.

16. In the matter of **S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla and another**², with reference to Section 141 of the Negotiable Instruments Act, 1881, which also deals with offences by

² (2005) 8 SCC 89

companies, Their Lordships of the Supreme Court have clearly held that it is necessary to specifically aver in a complaint under Section 141 that at the time the offence was committed, the person accused was in charge of and responsible for the conduct of business of the company. Their Lordships further held that this averment is an essential requirement of Section 141 and that has to be made in the complaint. The proposition of law so laid was followed in the matters of K.K. Ahuja v. V.K. Vora and another³, National Small Industries Corporation Limited v. Harmeet Singh Paintal and another⁴, A.K. Singhania v. Gujarat State Fertilizer Company Limited and another⁵ and Gunmala Sales Private Limited v. Anu Mehta and others⁶.

17. But, the question is whether the words “was directly in charge of, and was responsible to, the company for the conduct of the business of the company” are necessarily to be incorporated in the complaint in order to make the complaint maintainable?
18. The aforesaid question was considered by a Full Bench of the Patna High Court in the matter of Mahmud Ali v. State of Bihar and another⁷ relating to Section 47(1) of the Water (Prevention and Control of Pollution) Act, 1974 which is *pari materia* to Section 16 of the Act of 1986 and the Full Bench held that Section 47(1) of the Water (Prevention and Control of Pollution) Act, 1974 does not necessarily mandate the incorporation of the words “was in charge of and was responsible to the company for the conduct of the

3 (2009) 10 SCC 48

4 (2010) 3 SCC 330

5 (2013) 16 SCC 630

6 (2015) 1 SCC 103

7 AIR 1986 Patna 133

business of the company” being rules of evidence and deeming fictions. It was held in paragraphs 8 and 9 of the report, relying upon its earlier decision in the matter of Ram Kripal Prasad v. State of Bihar⁸, as under: -

“8. Analysed as above, Section 47(1) spells out a deeming fiction of vicarious liability and a rule of evidence laying the burden of proof on persons in charge of and responsible to the company for the conduct of its business.

9. Once it is held as above, the argument of the learned counsel for the petitioner falls in its place and stands conclusively repelled. It is settled beyond cavil that rules of evidence and deeming fictions are not to be expressly spelt out and pleaded. They are matters which are for consideration and application in the course of the trial. To require that the complaint itself must plead a rule of evidence or, in terms, spell out a deeming fiction provided by the statute therein is an argument bordering on hypertechnicality. One must always keep in mind the broader perspective that the administration of criminal law is more a matter of substance than of form and should not be allowed to be obscured by pettifogging technicality. This aspect seems to be well covered if not wholly concluded by the recent Full Bench judgment of this Court in Ram Kripal Prasad v. State of Bihar, 1985 Pat LJR 271 : (1985 Cri LJ 1048). Therein also in the context of Section 14 of the Employees' Provident Funds Scheme, 1952 it was argued that the petition of complaint must, in term, plead each and every relevant fact including the precise number of employees in the establishment. Repelling such a contention on principle and precedent, it was concluded by the Full Bench in the terms following : —

"To sum up on this aspect, the answer to question No. (iii) formulated at the outset has to be rendered in the negative and it is held that a petition of complaint for offences under Section 14 of the Act need not in terms plead each and every minuscule relevant fact nor the precise number of employees of the prosecuted establishment. In any event, the failure to do so does not vitiate the proceedings on such technical ground alone." "

19. In the matter of U.P. Pollution Control Board v. Modi Distillery⁹,

Their Lordships of the Supreme Court taking note of the provisions

⁸ 1985 Pat LJR 271 : 1985 Cri LJ 1048

⁹ (1987) 3 SCC 684

contained in Sections 25(1), (2) and 26 as well as Sections 44 and 47 and the averments in the complaint after finding that prima facie materials are available and all the issues to be dealt with by the Judicial Magistrate at the time of trial, set aside the order of the High Court interfering with the order of the CJM directing issue of process to the respondents and directed the learned Magistrate to proceed with the trial in accordance with law. It was held by Their Lordships in **Modi Distillery's** case (supra) that strict approach adopted over the offenders causing air, water and other pollutions should be made. Those who discharge noxious polluting effluents into streams, rivers or any other water bodies which inflicts on the public health at large should be, should be dealt with strictly de hors the technical objections.

20. The proposition of law laid down in **Modi Distillery's** case (supra) was followed with approval by the Supreme Court in the matter of **U.P. Pollution Control Board v. Dr. Bhupendra Kumar Modi and another**¹⁰ and it was held as under: -

“38. In the case on hand which is also similar to *Mohan Meakins Ltd.*¹¹ had commenced its journey in the year 1985, nonetheless lapse of such a long period cannot be a reason to absolve the respondents from the trial. In a matter of this nature, particularly, when it affects public health if it is ultimately proved, courts cannot afford to deal lightly with cases involving pollution of air and water. The message must go to all persons concerned whether small or big that the courts will share the parliamentary concern and legislative intent of the Act to check the escalating pollution level and restore the balance of our environment. Those who discharge noxious polluting effluents into streams, rivers or any other water bodies which inflicts (*sic* harm) on the public health at large, should be dealt with strictly de hors the technical objections. Since escalating pollution level of our environment affects the life and health of human beings

10 (2009) 2 SCC 147

11 U.P. Pollution Control Board v. Mohan Meakins Ltd., (2000) 3 SCC 745

as well as animals, the courts should not deal with the prosecution for offences under the pollution and environmental Acts in a causal or routine manner.”

21. At this place, it would be most appropriate to notice the observation by His Lordship S.P. Bharucha, J. speaking for the Supreme Court in the matter of **Narmada Bachao Andolan v. Union of India**¹² which reads as follows: -

“An adverse impact on the environment can have disastrous consequences for this generation and generations to come.”

22. Similarly, H.L. Gokhale, J. speaking for the Supreme Court in the matter of **Municipal Corpn. of Greater Mumbai v. Kohinoor CTNL Infrastructure Co. (P) Ltd.**¹³ observed as under: -

“The right to a clean and healthy environment is within the ambit of Article 21. Furthermore, the right to a clean and pollution free environment, is also a right under our common law jurisprudence.”

23. Reverting to the facts of the present case in light of the principles of law laid down in the aforesaid judgments, it would be appropriate to first notice the averments made in the complaint as to the responsibility of petitioner No.2 for day to day affairs / conduct of the business of the company in light of Section 16 of the Act of 1986. Paragraphs 9, 10 and 11 of the complaint read as follows: -

“9. यह कि, अभियुक्त क्रमांक-1 कोयला उत्खनन करने वाली परियोजना (संस्थान) है तथा अभियुक्त क्रमांक-2 इस परियोजना के प्रमुख महाप्रबंधक है अभियुक्त गण के विरुद्ध परिवाद पत्र प्रस्तुत करने हेतु परिवादी संस्था को भारत शासन पर्यावरण एवं वन मंत्रालय द्वारा अनुमति प्रदान की गई है जिसका पत्र क्रमांक जे. 11015/87/2003-आई. ए.-II (एम.) 7 जुलाई 2005 तथा पत्र क्रमांक जे. 15012/29/2002 आइ.ए.-II (एम.) दिनांक 8 जुलाई 2005 है जो प्रकरण के साथ संलग्न है।

12 (2000) 10 SCC 664, para 274

13 (2014) 4 SCC 538, para 30

10. यह कि, अभियुक्त गण को परिवादी संस्था द्वारा समय-समय पर इस सन्दर्भ में लिखित सूचना पत्र द्वारा भेजा गया था जिसका पत्र क्रमांक 2908/ बी-176/ मु.अ./छ.प.सं.म./2002 रायपुर दिनांक 27.08.2002 है। उसके पश्चात भी अभियुक्त गण के द्वारा उत्खनन कार्य हेतु विधिवत सम्मति प्राप्त नहीं की है तथा बिना वैधानिक सम्मति के तथा पर्यावरण को सुरक्षित रखने हेतु सक्षम प्रदूषक नियंत्रण व्यवस्था किए बिना ही उत्खनन कार्य निरंतर जारी है।

11. यह कि, अभियुक्त गण के द्वारा पर्यावरण संरक्षण अधिनियम 1986 की धारा 6 एवं 7 का स्पष्ट रूप से उल्लंघन किया जा रहा है जो कि इसी अधिनियम की धारा 15 एवं 17 तथा सहपठित संशोधित धारा 3, उपधारा 1,2 के खंड 5-1997 के अंतर्गत दंडनीय अपराध है। अभियुक्त गण को दंड दिलाए जाने हेतु परिवादी को यह परिवाद प्रस्तुत करने की आवश्यकता हुई।”

24. A careful perusal of the aforesaid averments would reveal that the respondent Board has clearly averred that petitioner No.1 is a company who is responsible for obtaining necessary clearance from the Board which it has not taken and petitioner No.2 being the Chief General Manager of the petitioner No.1 Company is also responsible and they are violating the provisions contained in Sections 6 and 7 of the Act of 1986. It was also averred that despite notice dated 27-8-2002, the petitioners have not obtained necessary consent and therefore they are liable to be punished and proceeded for violation of Sections 15 and 17 of the Act of 1986.

25. In my considered opinion, such an averment made in the complaint is substantial compliance of Section 16 of the Act of 1986, at present, which is subject to evidence by the parties during the course of trial and which is pending consideration and it cannot be held at this stage, that there is no compliance of Section 16 of the Act of 1986. This plea is left and kept open to be considered by the

learned trial Magistrate during trial. It is made clear that this Court has not expressed any opinion on the plea based on Section 16 of the Act of 1986. It will be considered and decided by the trial Magistrate.

26. I do not see any illegality or infirmity in the order taking cognizance by the learned Magistrate for commission of the aforesaid offence. Thus, the order taking cognizance as well as the order of the revisional Court rejecting the revision are hereby affirmed though for different reasons assigned herein-above. Concludingly, I do not find any merit in this petition under Section 482 of the CrPC, it deserves to be and is accordingly dismissed subject to the above-stated observation leaving the parties to bear their own cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

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