

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 3628 OF 2018

K.V. Kurundkar & Anr. ... Petitioners
VS.
State of Maharashtra & Anr. ... Respondents

**WITH
CRIMINAL APPLICATION NO. 6 OF 2019
IN
CRIMINAL WRIT PETITION NO. 3628 OF 2018**

Dileep B. Nivetia ... Applicant
in the matter between
K.V. Kurundkar & Anr. ... Petitioners
VS.
State of Maharashtra & Anr. ... Respondents

**WITH
CRIMINAL WRIT PETITION NO. 3678 OF 2018**

Environment Department & Anr. ... Petitioners
VS.
State of Maharashtra & Anr. ... Respondents

**WITH
CRIMINAL APPLICATION NO. 7 OF 2019
IN
CRIMINAL WRIT PETITION NO. 3678 OF 2018**

Dileep B. Nivetia ... Applicant
in the matter between
Environment Department & Anr. ... Petitioners
VS.
State of Maharashtra & Anr. ... Respondents

**WITH
CRIMINAL WRIT PETITION NO. 3256 OF 2018**

Maharashtra State Road Development

Corporation Ltd. & Anr.	...	Petitioners
VS.		
State of Maharashtra & Anr.	...	Respondents

**WITH
CRIMINAL APPLICATION NO. 8 OF 2019
IN
CRIMINAL WRIT PETITION NO. 3256 OF 2018**

Dileep B. Nivetia	...	Applicant
in the matter between		
Maharashtra State Road Development Corporation Ltd. & Anr.	...	Petitioners
VS.		
State of Maharashtra & Anr.	...	Respondents

**WITH
CRIMINAL WRIT PETITION NO. 3586 OF 2018**

Maharashtra Pollution Control Board & Anr.	...	Petitioners
VS.		
State of Maharashtra & Anr.	...	Respondents

**WITH
CRIMINAL APPLICATION NO. 9 OF 2019
IN
CRIMINAL WRIT PETITION NO. 3586 OF 2018**

Dileep B. Nivetia	...	Applicant
in the matter between		
Maharashtra Pollution Control Board & Anr.	...	Petitioners
VS.		
State of Maharashtra & Anr.	...	Respondents

Mr. Daraius Khambatta, Senior Advocate a/w. Mr. Saket Mone, Mr. Vishesh Kalra, Sonal More, Subit Chakraborti, Neha Joshi i/b. Vidhii Partners, Advocate for the petitioners in WP/3256/2018.
Mr. Saket Mone i/b. Vidhii Partners, Advocate for the petitioners in WP/3628/2018.
Dr. Milind Sathe, Senior Advocate a/w. Sharmila U. Deshmukh i/b. Jaya J. Bagwe, Advocate for the petitioners in WP/3678/2018.
Dr. Milind Sathe, Senior Advocate i/b. Sharmila U. Deshmukh,

Advocate for the petitioner in WP/3586/2018.

Mr. Dileep B. Nivetia, respondent no. 2 in all the Writ Petitions and applicant in all the Applications.

Mr. A.R. Patil, APP for the respondent/State.

CORAM : Mrs.MRIDULA BHATKAR, J.
RESERVED ON : FEBRUARY 13, 2019
PRONOUNCED ON : MAY 2, 2019

JUDGMENT:

1. All these four Petitions are heard together and decided finally at the stage of admission. In all these Petitions, the petitioners, who are original accused nos. 12 to 15 and 19 to 22, are challenging the order dated 8th March, 2018 passed by the learned Metropolitan Magistrate, 62nd Court, Dadar, Mumbai, issuing process under Sections 7, 8, 9, 10, 15, 16 and 17 of the Environment (Protection) Act, 1986 (hereinafter referred to as “the said Act”) read with Rules 3, 3 (3-B), 5 and 14 of the Environment (Protection) Rules, 1986 (hereinafter referred to as “the said Rules”) and Rules 2,3,4,7 and 8 of the Noise Pollution (Regulation & Control) Rules, 2000 (hereinafter referred to as “the Noise Rules”) and, therefore, all these Petitions are disposed of by a common order.

2. It is the case of the complainant i.e., respondent No.2 that

the Government under the supervision of accused No. 12 i.e., Maharashtra State Road Development Corporation Ltd. (hereinafter referred to as “the MSRDC”) took a policy decision to construct Bandra Worli Sea Link Project (hereinafter referred to as “BWSL”). At that time, accused No. 12 i.e., the MSRDC received an Environmental Clearance for construction of BWSL Project. BWSL Project was completed and it was inaugurated on 1st July, 2009, and was made available to public. It is the case of the complainant that thereafter, it was noticed that after inauguration of the BWSL Project, nearly 45,000 additional vehicles ply per day on this road against the earlier vehicle movement of around 3,000 to 5,000 per day and, therefore, there is tremendous increase in vehicular traffic in Worli Sea Face area leading abnormal increase in the levels of air and noise pollution. The level of the air pollution is beyond the National Ambient Air Quality Standards (hereinafter referred to as “NAAQS”) issued by Central Pollution Control Board (hereinafter referred to as “CPCB”). The complainant has relied on the studies conducted by National Environmental Engineering Research Institute (hereinafter referred to as “NEERI”) and the noise monitoring conducted by accused No. 21. The noise pollution has exceeded the levels prescribed

under the Noise Rules. The air and noise pollution is a direct cause of the traffic movement in BSWL. According to the complainant, liberty was granted by this Court in Writ Petition No. 992 of 2010, therefore, the complainant had moved before the National Green Tribunal (hereinafter referred to as "the NGT") by filing an Application No. 35 of 2011. In the said Application, on 28th July, 2016, the NGT had passed the order of amicable settlement. Pursuant to which, certain directions were given, however, till today, there is no change in the noise and air pollution levels. Hence, the complainant, before filing the complaint, gave prerequisite notice of 60 days as contemplated under Section 19(b) of the said Act to all the respondents for violation of the relevant Sections of the said Act so also the said Rules and also for breach of Notification No. MIS/2014/CR 71/ TC1 dated 31st July, 2014 issued by Environment Department, Government of Maharashtra. Thereafter, the complainant lodged a private complaint in which, the learned Magistrate considered the complaint and the documents placed before it and passed the following order on 8th March, 2018 :

"Read the complaint as well as verification statement of complainant. I have gone through the documents

which are filed in support of allegation of the complaint. I have also taken into account documents i.e. copy of order passed in Writ Petition No. 992/2010, the letter of Member Secretary of Maharashtra Pollution Control dtd. 29/ 09/2016, the letter of Member Secretary of Maharashtra Pollution Control dtd. 10/11/2016, the letter of Member Secretary of Maharashtra Pollution Control dtd. 11/11/2016. I have also considered Form IV i.e. copy of notice issued to respondents. I have also carefully read the decision of the Hon'ble National Green Tribunal Western Zone, Bench Pune, passed in Misc. Application of 202/2013 which was filed in between Dilip Nevatia V/s. State of Maha. & Ors. The material produced on record in support of allegation shows that accused nos. 1 to 5, 10 to 15, 19 to 22 has not complied the order of Hon'ble National Green Tribunal Western Zone, Bench Pune. They have also ignored the said order even it was brought to the notice of the above accused person issuing their notice by the complainant before filing the present complaint which are an offence punishable U/s. 7,8,9,10,15, 16 and 17 r/w Rules 3, 3 (3-B), 5 & 14 of the Environment Protection Rules, 1986 Rules 2,3,4,7 & 8 of the Noise Pollution (Regulation & Control) Rules, 2000. There is a sufficient material to proceed with the complaint taking its cognizance against the accused no. 1 to 5, 10 to 15, 19 to 22 for the offence punishable U/s. 7,8,9, 10,15, 16 and 17 r/w. Rules 3, 3 (3-B), 5 & 14 of the

Environment Protection Rules, 1986 Rules 2,3,4,7 & 8 of the Noise Pollution (Regulation & Control) Rules, 2000. Hence process is issued only against accused nos. 1 to 5, 10 to 15, 19 to 22 for the offence punishable U/sec. 7,8,9,10,15, 16 and 17 r/w Rules 3, 3 (3-B), 5 & 14 of the Environment Protection Rules, 1986 Rules 2,3,4,7 & 8 of the Noise Pollution (Regulation & Control) Rules, 2000”.

The said order is challenged in these four Writ Petitions by original accused nos. 12 to 15 and 19 to 22.

3. Mr. Khambata, the learned Senior Counsel for the petitioners/accused No. 12-Maharashtra State Road Development Corporation Ltd. and accused no. 13-R.L. Mopalwar, Vice-Chairman & Managing Director, Maharashtra State Road Development Corporation Ltd. in Writ Petition No. 3256 of 2018, has submitted that the order of issuance of process against the petitioners/accused Nos. 12 and 13 is bad in law as the complaint and the documents relied therein do not disclose any offence committed by the petitioners/accused Nos. 12 and 13. He has relied on the Notification dated 31st July, 2014, which was issued by the Government of Maharashtra through Environment Department. He has argued that the process had been issued only

for want violation of the order dated 11th October, 2013 passed by the learned Members of the NGT in Misc. Application No. 202 of 2013. The petitioners/ accused Nos. 12 and 13 were not parties to the said proceedings and the said order was also not against the petitioners/ accused Nos. 12 and 13 i.e., the MSRDC and its Chairman. He has pointed out that the complainant had not given statutory notice under Section 19 (b) of the said Act to the petitioners/ accused Nos. 12 and 13. He has further pointed out paragraph No.6 of the said Notification wherein it is mentioned that the authorities responsible for implementation of the standards and their use in the State to control air and noise pollution are different authorities, but not the petitioners/accused Nos. 12 and 13. Hence, there is no violation either of the order passed by the NGT or also the directions given in the said Notification and, therefore, the order of issuance of process against the petitioners/ accused Nos. 12 and 13 is to be dropped, quashed and set aside.

4. Mr. Saket Mone, the learned counsel for the petitioners, who are accused Nos. 14 and 15, in Writ Petition No. 3628 of 2016 has submitted that the petitioners/accused Nos. 14 and 15 are the Engineers working in the MSRDC. He has further submitted that

both the petitioners/ accused Nos. 14 and 15 were retired on 31st August, 2018 and 31st January, 2018 respectively. He has further submitted that no notice of 60 days has been given to the petitioners/ accused Nos. 14 and 15 as per Section 30 (1) (b) of the National Green Tribunal Act, 2010. He has further submitted that Rule 34 of the National Green Tribunal Act, 2010 states about the manner of giving notice. He has further submitted that the Act of National Green Tribunal is a substantive legislation and the complete Code and, therefore, Court cannot take cognizance unless the provisions under National Green Tribunal Act are strictly followed.

5. On the point of powers of the High Court under Article 227 and Section 482 of Cr. P.C. of quashing the criminal proceedings, he relied on the judgment of Hon'ble Supreme Court in the case of **Pepsi Foods Ltd. & Anr. vs. Special Judicial Magistrate & Ors., reported in (1998) 5 SCC 749.**

6. He pointed out that process is issued against the accused under sections 7, 8, 9, 10, 15, 16 and 17 read with Rules 3, 3(3-b), 5 and 14 of Environment (Protection) Rules of 1986 and Rules 2,

3, 4, 7 and 8 of Noise Pollution (Regulation & Control) Rules. After going through those sections and rules, the learned senior counsel argued that no offence is made out against the accused nos. 12, 13, 14 and 15. Sections 7, 8, 9, 14, 15 and 17 in fact cannot be attracted. He submitted that the Maharashtra Pollution Control Board has no power to issue any notification and therefore, such order of National Green Tribunal cannot be implemented by Maharashtra Pollution Control Board. On the point of jurisdiction of National Green Tribunal, he relied on the judgment of **Madhya Pradesh Pollution Board vs. Commissioner, Municipal Corporation, Bhopal & Ors.** dated 8th August, 2013

7. He further pointed out notice under section 19B is required for taking cognizance of the offence under the Environment (Protection) Act. The Court shall not have taken cognizance of any offence under the Act except the complaint as per section 19B by any person, who has given notice of not less than 60 days in the manner prescribed the alleged offence and of its intention to make the complaint to the Central Government or the authority. He argued that there is deficiency of not giving the notice. He relied on the observation made in Public Interest Litigation No. 87 of

2006 of Mumbai Environment Action group which was decided on 17th September, 2018.

8. Mr. Sathe for accused nos. 19, 20, the Environmental Department and accused no. 21 and 22, Maharashtra Pollution Control Board, argued that cognizance should not have been taken by the learned Magistrate against accused nos. 21 and 22. There is no compliance of Section 19 of Environment (Protection) Act. The sanction to prosecute under section 19B is required. He argued that there are two defects in the notice. The notice is required to be given as per Rule 9 of the Environment (Protection) Rules. Form of Notice should be under Rule 11. It is not given as per Form 11, so it is defective.

9. He also submitted that the notice is given only to three persons, hence the prosecution cannot be filed against other persons. Hence it is not maintainable. It is also not a valid notice, as it is not sent to Environmental Department. He argued that the letter of Ministry of Environment and Forest (MOEF) can be substituted for statutory notice under section 19(b) of the Act. The Division Bench in Mangrove case has stated that consent under

section 19(6) of Environment Protection Act is not so sacrosanct. He relied on the ratio laid down in the case of **Bhajanlal, reported in (1992) 1 SCC 335** (Paragraph 102). He submitted that if there is any other efficacious remedy in the legal statute, then he should not come to High Court by filing this. The complainant should have approached the National Green Tribunal for non-compliance of its order. Hence, the entire complaint is to be dismissed on this ground alone.

10. On referring to the complaint, he submitted that in paragraphs 1 to 23, the complainant has given his historic narration and the averments do not constitute any offence against the respondents or the petitioners. Whatever accusation is made is found only in paragraph 24 of the complaint, which are very vague. These allegations are not sufficient to issue process. No assertion is made that the accused has committed offence due to failure to do certain act. The violation of order of National Green Tribunal cannot be an offence under Environment (Protection) Act. Hence, the reasoning given by the Magistrate is illegal. He referred to Section 25 of the National Green Tribunal, Act of 2010 and pointed out that a procedure is laid down in respect of

execution of award or order. Under section 26, there is a provision of taking steps in the event of non-compliance of the order of National Green Tribunal. He pointed out the Maharashtra Pollution Control Board by its letter dated 29th September, 2016 has informed the Police Commissioner (Transport), Mumbai about the directions under section 31A of Air (Prevention and Control of Pollution) Act. It also communicated the order passed by the National Green Tribunal, Pune in Application No. 35 of 2011 filed by the petitioner and Member Secretary of MPCB has asked the traffic Commissioner to check two ends of Bandra Sea Link with regard to noise level of vehicles and of BS-IV standard, on the basis of PUC certificate issued by the Transport Department, Government of Maharashtra. In the said letter, it was informed to make available a copy of the action taken report along with monitoring data to Transport Department, MPCB and also National Green Tribunal. Hence, it is complied with.

11. Ms. Deshmukh holding for Mr. Sathe, senior counsel for the petitioners, who are accused Nos. 19 to 22, in Writ Petition Nos. 3678 of 2018 and 3586 of 2018 have relied on the guidelines given by the Supreme Court in the case of ***State of Haryana and others***

Versus Bhajanlal and others reported in ***1992 Supp (1) SCC***

335. She has submitted that the petitioners/ accused Nos. 19 to 22 have not committed any offence much less the offence under the provisions of the said Act and the said Rules. In fact, the petitioners/accused Nos. 19 to 22 have issued Notification dated 31st July, 2014, however, they are not the implementing authority. As per the order dated 11th October, 2013 passed by the learned Members of the NGT in Misc. Application No. 202 of 2013, the Environment Department and the Maharashtra Pollution Control Board (hereinafter referred to as “the MPCB”) are not supposed to implement, but by issuing such Notification, they have done their job. The learned counsel read over each Section under which the process had been issued i.e., Sections 7,8,9,10,15, 16 and 17 of the said Act read with Rules 3, 3 (3-B), 5 & 14 of the said Rules and also Rules 2,3,4,7 & 8 of the Noise Rules. She has further submitted that these provisions are under Chapter III of the said Act, however, they are not applicable to the petitioners/ accused Nos. 19 to 22 as they speak about the offence committed by the Industry and the manufacturing process. She has further submitted that notice of 60 days under Section 19 (b) is prescribed in the form IV of the said Act, however, no notice has been given to the

petitioners/ accused Nos. 19 to 22 i.e., the Environment Department and the MPCB. Section 17 of the said Act states about the offence committed by the Government Department. However, the present petitioners/ accused Nos. 19 to 22 are not the Government Departments, but they are the regulatory authorities. She has also relied on the judgment of the Supreme Court in the case of **Harshendra Kumar D. Versus Rebatilata Koley and others** reported in **(2011) 3 SCC 351** and also the judgment of the **Division Bench of this Court dated 18th October, 2011 in Criminal Writ Petition No. 833 of 2011** in the case of **The State of Maharashtra Vs. Navlakh Umbre Paryavaran Parisar Vikas Sangh and Ors.**

12. Per contra, Mr. Nivetia, complainant had referred the order dated 11th December, 2012 passed by the National Green Tribunal in Application No. 35 of 2011 wherein directions were given to the accused persons to ensure that the Noise Pollution and Air Pollution do not exceed the permissible limits. He also relied on the order dated 28th July, 2016 where National Green Tribunal has opined that it is desirable that separate bodies to discuss the issues with the applicant by way of amicable settlement.

13. The complainant also has relied on the directions given by accused no. 21-Maharashtra Pollution Control Board (MPCB) dated 29th September, 2016 through accused no. 22 to accused no. 1 under section 31A of Air (Prevention & Control of Pollution) Act, 1981. MPCB has directed that the Traffic Commissioner shall check the pollution level of the vehicles in the two ends of Bandra Worli Sea Link for compliance of BS-IV standard, on the basis of PUC certificate issued by the Transport Department, Government of Maharashtra. The complainant has stated that the Traffic Department is supposed to suggest the suitable measures to control the pollution after calling the data of Noise Pollution. Accused no. 8, i.e., Commissioner of Police was asked to submit the Action taken Report. However, accused no. 8 is dropped. The complainant issued reminder dated 10th November, 2016 to accused no. 21 Maharashtra Pollution Control Board for the implementation of its own directions and monitoring. So also the reminder copy was sent to accused no. 3- R.L. Mapalwar, Vice-Chairman and Managing Director, Maharashtra State Road Development Corporation. Thereafter, he sent the letter dated 28th November, 2016 to accused no. 3-P.D. Wikan, Deputy Transport

Commissioner, Government of Maharashtra to direct accused no. 4-S.S. Pedemkar, R.T.O. Mumbai Central and accused no. 5-D.G. Balerao, R.T.O., Mumbai West to check the vehicles for Air Pollution and blowing sirens and submit their report to office of accused no. 1. The complainant also relied on the letter dated 6th December, 2016 sent to accused no. 4..

14. By communication between accused nos. 3 and 4 that from 1st December, 2016 to 6th December, 2016, out of 1459 vehicles, 91 vehicles were found to be in violation of Air Pollution. However, no vehicles were found to be in violation of sirens. According to the complainant, during that period 2,10,000/- vehicles have used BWSL and hence the data was collected very arbitrarily, so he wrote the letters of protest to accused nos. 4 and 5, as everyday 35000 to 45000 vehicles used BWSL. The complainant has argued that the Government authorities and officers/accused working therein in those Departments had no inclination to take remedial measures in order to prevent Environment Pollution caused by BWSL in Worli Sea face area and so he gave legal notice under section 19(1) of the Act. He also relied on the order dated 20th January, 2017 passed by the National Green Tribunal in

Application no. 35 of 2011 wherein the directions were given to accused no. 21 MPCB to submit the action taken report. He also relied on the letter dated 27th February, 2017 of accused no. 22 to accused no. 1 to comply with the order dated 20th January, 2017 of National Green Tribunal and also the directions issued by accused no. 21-MPCB and to submit the Action Taken Report. He also relied on the roznama of the proceedings which took place on 1st March, 2017 in the Complaint No. 35 of 2011 before the National Green Tribunal where the learned counsel of MSRDC informed that data is collected and wants time of two months to file report suggesting remedial measures. National Green Tribunal issued notice to some police personnel as to why the coercive action, as contemplated under Order 21 Rule 32 of CPC should not be resorted to procure compliance of the directions in respect of order dated 20th January, 2017.

15. Therefore, the complainant in paragraph 24 of the complaint has stated that the accused have failed to comply with and have acted in contravention of the relevant provisions of Environment Protection Rules and Noise Pollution (Regulation & Control) Rules read with Notification no. MIS/2014/CR/71/PCI of Environment

Department, Government of Maharashtra and also the provisions of Air (Prevention and Control of Pollution) Act of 1981 and Environment (Protection) Act, 1986. Pursuant to this complaint, the learned Magistrate has issued process.

16. Mr. Nivetia relied on the ratio laid down in various cases of the Supreme Court on the point of powers of the High Court under section 482 of Cr. P.C. and under Article 227 of the Constitution and the scope of the High Court to interfere with the order of issuance of process under section 204 of Cr. P.C:

- (i) Smt. Nagawwa vs. Veeranna Shivalingappa Konjalgi and Ors.¹
- (ii) U.P. Pollution Control Board vs. M/s. Mohan Meakin Ltd. & Ors.²
- (iii) Fiona Shrikhande vs. State of Maharashtra & Anr.³
- (iv) Bhushan Kumar & Anr. vs. State (NCT of Delhi) & Anr.⁴
- (v) Nupur Talwar vs. Central Bureau of Investigation & Anr.⁵
- (vi) Vijayander Kumar & Ors. vs. State of Rajasthan & Anr.⁶

1 AIR 1976 SC 1947

2 AIR 2000 SC 1456

3 AIR 2014 SC 957

4 AIR 2012 SC 1747

5 AIR 2012 SC 1921

6 AIR 2014 SC (Supp) 1319

17. The complainant also relied on the orders of the Supreme Court and this Court. He relied on the order dated 26th November, 2018 of Hon'ble Supreme Court in Writ Petition (Civil) No. 13029 of 1985 in **M.C. Mehta vs. Union of India & Ors.**

18. He also relied on the Division Bench judgment of Bombay High Court dated in Bombay Environmental Action Group vs. State of Maharashtra & Ors.⁷ He relied on the Full Bench judgment dated 8th August, 2013 of National Green Tribunal in the case of **Madhya Pradesh Pollution Control Board Paryavaran Parisar vs. Commissioner, Municipal Corporation, Bhopal & Ors.**

19. Considered the submissions, perused the complaint and the documents. Section 19 of the Act states about taking cognizance of the offence. It opens with non-obstante clause that No Court shall take cognizance of any offence except on a complaint made by the Central Government or any authority in this behalf by that Government or if an individual wants to file the complaint under the Act, then he should give notice of not less than sixty days of the

⁷ Public Interest Litigation No. 87 of 2006 dated 17.09.2018

alleged offence and of his intention to make a complaint to the Central Government or authority or officer authorized. It is also mentioned in Section 19(b) that the said notice is to be given in the manner prescribed. For that purpose, one has to look up Rule 11 of the Environment (Protection) Rules, 1986. Rule 11 states the manner of giving notice by the person who intends to lodge complaint under clause (b) of Section 19. The notice which shall be sent in writing in Form IV and it is to be sent by RPAD by keeping minimum margin of 60 days. If the offence has taken place in a State, then the notice is to be given to the State Board, the Government of State (represented by the Secretary to the State Government incharge of environment); and the Ministry of Environment and Forests (represented by the Secretary to the Government of India.).

20. My attention is drawn to the notice dated 26th December, 2016 under section 19(b) of the Environment (Protection) Act, 1986 given by the complainant but it is only addressed to the Principal Secretary, Environment Department and the Member Secretary, Maharashtra Pollution Control Board. In the notice, he has given three points - (i) Pollution on Worli Sea Face Road and

there is no compliance of BS-IV standards and no compliance of checking of PUC certificates; (ii) The vehicles that have met the noise standards are only to be allowed to use BWSL and Worli Sea Face Road; (iii) The authority failed to control indiscriminate use of sirens having impermissible levels of sound and failing to ensure that they are used in accordance with law in silent and residential area of Worli Sea Face. Thus, the grievance made in respect of air pollution and noise pollution due to honking and using vehicles without PUC (Pollution under control Certificate). Along with this notice, the complainant has referred to the direction under section 31A of Air (Prevention and Control of Pollution) Act, 1981 dated 29th September, 2016 issued by the Maharashtra Pollution Control Board/accused no. 21 to Transport Commissioner and the Police Commissioner (Transport). Thus, it shows that accused no. 21 has issued directions regarding controlling of air and noise pollution. I have considered the objections raised by the petitioners and I am of the view that there is overall compliance of issuing the notice under Form IV Rule 11 of the Environment Protection Rules and therefore there is no default of sending the notice under section 19(b) of Environment (Protection) Act.

Let me analyse first the sections under which the learned Magistrate has issued process.

21. Sections 7,8,9,10, 15,16, and 17 of the said Act are to be read with the relevant Rules 3, 3 (3-B), 5 and 14 of the said Rules.

22. Chapter III of the said Act pertains to prevention, control and abatement of environmental pollution

23. Section 7 of the said Act reads thus :

“7. Persons carrying on industry, operation, etc, not to allow emission or discharge of environmental pollutants in excess of the standards – No person carrying on any industry, operation or process shall discharge or emit or permit to be discharged or emitted any environmental pollutant in excess of such standards as may be prescribed”.

24. Section 8 of the said Act reads thus :

“8. Persons handling hazardous substances to comply with procedural safeguards. - No person shall handle or cause to be handled any hazardous substance except in accordance with

such procedure and after complying with such safeguards as may be prescribed”.

25. On plain reading of sections 7 and 8 of the said Act and considering the role played by the accused, who are the officers and not involved in any kind of manufacturing, industry and operation, are not responsible for any emission of environmental pollution and at the outset, these sections cannot be attracted.

26. Section 9 of the said Act reads thus :

“9.Furnishing of information to authorities and agencies in certain cases

(1) Where the discharge of any environmental pollutant in excess of the prescribed standards occurs or is apprehended to occur due to any accident or other unforeseen act or event, the person responsible for such discharge and the person in charge of the place at which such discharge occurs or is apprehended to occur shall be bound to prevent or mitigate the environmental pollution caused as a result of such discharge and shall also forthwith--

(a) intimate the fact of such occurrence or apprehension of such occurrence; and

(b) be bound, if called upon, to render all assistance,

to such authorities or agencies as may be prescribed.

(2) On receipt of information with respect to the fact or apprehension on any occurrence of the nature referred to in sub-section (1), whether through intimation under that sub-section or otherwise, the authorities or agencies referred to in sub-section (1) shall, as early as practicable, cause such remedial measures to be taken as necessary to prevent or mitigate the environmental pollution.

(3) The expenses, if any, incurred by any authority or agency with respect to the remedial measures referred to in sub-section (2), together with interest (at such reasonable rate as the Government may, by order, fix) from the date when a demand for the expenses is made until it is paid, may be recovered by such authority or agency from the person concerned as arrears of land revenue or of public demand”.

27. Undoubtedly, as per section 9 (1) of the said Act, a person in charge shall intimate the fact of pollution and is bound to render all assistance to such authorities and agencies.

28. As per section 9 (2) of the said Act, if such information of

pollution is received, then the authorities and agencies shall as early as practicable cause such remedial measures to be taken as are necessary to prevent or mitigate the environmental pollution.

29. Section 10 of the said Act gives power of entry and inspection to person in authority in order to collect the data of pollution and to prevent pollution.

30. Section 15 of the said Act reads thus :

“15. Penalty for contravention of the provisions of the act and the rules, orders and directions

(1) Whoever fails to comply with or contravenes any of the provisions of this Act, or the rules made or orders or directions issued thereunder, shall, in respect of each such failure or contravention, be punishable with imprisonment for a term which may extend to five years with fine which may extend to one lakh rupees, or with both, and in case the failure or contravention continues, with additional fine which may extend to five thousand rupees for every day during which such failure or contravention continues after the conviction for the first such failure or contravention.

(2) If the failure or contravention referred to in sub-

section (1) continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which may extend to seven years”.

Thus, it shows legislative intent to make a serious efforts to protect the environmental pollutants.

31. Section 16 of the said Act states about the offences by companies. The accused persons neither are the companies nor they are the directors or office bearers of any company. Hence, *ex facie* section 10 is not applicable.

32. Section 17 of the said Act states about the offences by government department and lays down a deeming provision to fix guilt to the head of the department, who is responsible for the offence committed under the said Act. The proviso of the said section states that if such head of the department proves that the offence was committed without his knowledge and he exercised all due diligence to prevent commission of such offence, then he is out of clutches of section 17.

33. Section 17 (2) of the said Act states that any officer in the

department can be held responsible under this section if it is found that the offence under the said Act is committed on account of negligence or connivance of any officer.

34. In the case of ***Navlakh Umbre Paryavaran Parisar Vikas Sangh and Ors.***(*supra*), the Division Bench of this Court has considered the provisions under Sections 16 and 17 of the said Act and held as under : .

“17.....we find that Section 17 would apply in case where department of the Government is running any industry or setting up project in respect of which the provisions of the Environment (Protection) Act, 1986 and Rules thereunder are violated. Section 17 would not apply to the Chairman and Members of the Appraisal Committee and the Assessment Authority which committee and authority are appointed in exercise of the powers under the Act by the Notification of 2006”.

35. In ***U.P. Pollution Control Board*** (*supra*), the accused company was alleged to be discharging toxic effluents in river and the issue was about quashing of proceedings against the directors where the company is *prima facie* held responsible. In the said case, the Supreme Court held that any Director, manager or other

officer of the company, who has consented to or connived in the commission of the said offence, is made liable for the punishment of the offence.

36. Rule 3 of the said Rules sets up the standards for emissions or discharge of environmental pollutants from the industries, operations or processes as per Schedule I to IV.

37. Rule 3 (3-B) of the said Rules states about the combined effect of emission or discharge of environmental pollutants in an area, from industries, operations, process, automobiles and domestic sources, shall not be permitted to exceed the relevant concentration in ambient air as specified against each pollutant as per schedule VII.

38. Rule 5 of the said Rules states about the prohibitions and restrictions on the location of industries and the carrying on processes and operations in different areas.

39. As per Rule 14 of the said Rules, every person carrying on an industry, operation or process is required to obtain consent

under Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 and under the Hazardous Wastes (Management and Handling) Rules, 1989, they are required to submit their environmental statement for the financial year to the Board.

40. Rule 2 of the Noise Pollution Rules states about the definitions.

41. Rule 3 of the Noise Pollution Rules states about ambient air quality standards in respect of noise for different areas/ zones and it should be maintained as per schedule.

42. Rule 4 of the Noise Pollution Rules states about the responsibility of the Pollution Control Board and Committees. They are required to collect compile and publish technical and statistical data relating to noise pollution and measures devised for its effective prevention, control and abatement.

43. Rule 7 of the Noise Pollution Rules states that if at all the noise pollution level exceeds the standards by 10dB (A), can make a complaint to the authority, and the authority shall act on

the complaint and shall take action.

44. Rule 8 of the Noise Pollution Rules empowers the authority to report to the officer in charge of a police station or may issue written order or directions which he thinks necessary to any person for preventing, controlling and regulating-

“(a) the incidence or continuance in or upon any premises of -

(i) any vocal or instrumental music,

(ii) sounds caused by playing, beating, clashing, blowing or use in any manner whatsoever of any instrument including loudspeakers, [public address systems, horn, construction equipment, appliance or apparatus] or contrivance which is capable of producing or re-producing sound, or

[(iii) sound causes by bursting of sound emitting fire crackers, or]”.

45. The Noise Pollution (Regulation and Control) Rules, 2000 are framed in exercise of the powers conferred by clause II of sub section 2 of section 3, sub section 1 and clause (b) of sub section 2 of section 6 and section 25 of the said Act read with Rule 5 of the

said Rules and, therefore, in the event of breach of these Rules, section 15 of the said Act imposing penalty for prevention of the provisions of the Act and the Rules can be imposed.

46. In view of scheme of the Rules and Act, the prayer made by the original complainant in respect of issuance of the process is to be considered.

47. The original complainant has made allegations in general against the authorities. This is obviously not for commission of any act but for omission to discharge their statutory function. The officers, who are responsible for good governance, are required to perform number of duties diligently and failure to do so thus amount to commission of the offence.

48. Undoubtedly, it is duty of the government or their officers to maintain ecological balance and ensure pollution free city for the citizens.

49. In the present case, the issue raised in respect of heavy vehicular traffic at BWSL. Initially, the vehicular traffic about 4000 to 5000 vehicles per day were estimated is completely falsified be-

cause within a short period, 35000 to 40000 vehicles per day were running on the said road. The authority cannot say no to any vehicle, who is ready to pay necessary charges. The entry can be refused to those vehicles who do not have pollution under control (PUC) certificate to prevent air pollution, so also the vehicle whose driver goes on honking by exceeding the limit of 10dB(A) can be stopped or fined, thereby committing breach of Rule 3 of the Noise Pollution Rules. However, it is necessary for the complainant to show specific incidents of such air or noise pollution. For example, he is required to give incidents of 3 or 4 days where the air quality or noise pollution was more than specified standards.

50. The words used in this section are industries, processes and operations. The vehicular traffic is not an industry. It also cannot fall within the meaning of process or operation. The meaning of process and operation is necessarily to be read in context with industry. If any product being manufactured may not fall in industry and it may be an operation or process, then that is covered under section 7 of the said Act. Therefore, the vehicular traffic itself can-

not be included either in industry or operation or process as contemplated under section 7 of the Act.

Hence, in view of discussion on section 7, Rules 3, 3-B), 5 and 14 are not applicable.

51. Before dealing with the order of issuance of process passed by the learned Magistrate and the order of the learned Sessions Judge quashing the said order of process, the averments made in the complaint and the relevant prayer is to be understood properly. The complaint initially was filed against 22 persons. Out of them, accused nos. 6,7, 8, 9, i.e., top police personnel were dropped. Subsequently, accused nos. 16, 17, and 18, i.e., Chief Secretaries of State of Maharashtra were also dropped. Accused no. 12 is Maharashtra State Road Development Corporation (MSRDC), accused no. 19 is Environment Department and accused no. 21 is Maharashtra Pollution Control Board. Apart from these three legal entities, other accused are prosecuted in their personal capacity that they failed to discharge their legal obligations and did not comply with the provisions of Environment Protection Act & Rules and Noise Pollution Regulation Control Rules.

52. The complainant on the point of competency of the Court of Magistrate and disability of the National Green Tribunal to impose penal action, relied on the judgment of **Madhya Pradesh Pollution Control Board** (*supra*). In the said case, complaints were instituted in Chief Judicial Magistrate Court at Bhopal under sections 15 and 16 of Environment Protection Act and also under sections 44, 47 and 88 of the Water (Prevention and Control of Pollution) Act, 1974. The Magistrate issued summons under the relevant sections of the Environment Protection Act to the accused. Subsequently, the case was transferred to the National Green Tribunal. The National Green Tribunal held that as per the jurisdiction of the National Green Tribunal Act it is limited by the words "all civil cases". However, it is mentioned that Section 15 of National Green Tribunal Act gives wide jurisdiction of the Tribunal to pass an order, give relief and compensation to the victim of pollution so also other environmental damages. However, the Tribunal has no jurisdiction to deal with the criminal cases. It has no jurisdiction to try, adjudicate and punish the accused person even though they are found guilty under sections 15 and 16 of the Environmental Act in view of section 14 of National Green Tribunal Act. In the said case, the National Green Tribunal was dealing

with the penal provisions of the Environmental Protection Act and Water (Prevention and Control Pollution) Act of which the Magistrate has already taken cognizance. The view taken by the National Green Tribunal has correctly held that only the Court can take cognizance and punish. However, the Tribunal, in the said case, had not considered Section 26 of the National Green Tribunal Act, 2010.

53. The senior counsel Mr. Khambata, Mr. Sathe, counsel Ms. Sharmila Deshmukh and Mr. Sanket Mone all have specifically highlighted the powers of National Green Tribunal under section 26 of the National Green Tribunal Act. It was rightly pointed out that National Green Tribunal Act of 2010 is itself a complete code and Chapter III states about jurisdiction, powers and proceedings of the Tribunal. Section 14 makes it clear that the Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment is involved. Section 15 states that the Tribunal is empowered to pass the orders of relief and compensation. Chapter IV of the said Act is about the penalty for failure to comply with orders of Tribunal. Thus, the legislature while giving powers of remedial compensation to the Tribunal has

not left the Tribunal toothless but the Tribunal is armed with penal powers for non-compliance or disobedience of its orders and punish a defaulter to the extent of 3 years or with fine which may extend to Rs. 10 crores or both and in case the contravention continues, with additional fine which may extend to twenty-five thousand rupees for everyday can be imposed.

54. Thus, in view of Section 26 of National Green Tribunal Act and considering the entire scheme of National Green Tribunal Act for the contravention of the orders passed under National Green Tribunal, the efficacious and proper remedy available to the complainant is under section 26 of the Act. The Magistrate has issued process under section 15 of Environmental Protection Act and other sections. Section 15 of the Environmental Protection Act states as follows:

“15. Penalty for contravention of the provisions of the Act and the rules, orders and directions.

(1) Whoever fails to comply with or contravenes any of the provisions of this Act, or the rules made or orders or directions issued thereunder, shall, in respect of each such failure or contravention, be punishable with imprisonment for a term which may extend to five years or with fine which may extend to one lakh rupees, or with both, and in case the failure or contravention continues, with additional

fine which may extend to five thousand rupees for every day during which such failure or contravention continues after the conviction for the first such failure or contravention.

(2) If the failure or contravention referred to in sub-section (1) continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which may extend to seven years.”

55. Under section 26, the Tribunal enjoys penal powers which are also available under section 15 to Judicial Magistrate First Class under the Environment Protection Act. A question raised before the Court is whether the order passed by National Green Tribunal can be subject matter of Section 15 of Environment Protection Act. A breach of the orders passed under the act by any authority or non-compliance of the provisions of the Act by the petitioner/accused can be the subject matter under section 15. Similarly, the orders or directions issued under the Environment (Protection) Act if not obeyed or implemented also comes under the clutches of Section 15 of the Act. It can be in view of the terms used in Section 15 of the Environment (Protection) Act, however, undoubtedly, the efficacious remedy available to the complainant is under section 26 of the National Green Tribunal Act.

56. Let me advert to the order of National Green Tribunal (Western Zone) Bench, Pune in Miscellaneous Application No. 202 of 2013 dated 11th October, 2013 which was relied by the learned Magistrate while issuing process. In the said order, the Tribunal has directed the Maharashtra Pollution Control Board (MPCB) , i.e., present accused no. 21 to prescribe noise standards for use of sirens and multi-toned horns in consultation with Central Pollution Control Board (CPCB) as required under section 17(g) of Air (Prevention & Control of Pollution) Act, 1981 to avoid nuisance cause to the residence on the side of Worli sealink. The said exercise should have been completed within four months and such standards are to be fixed by MOEF. It also directed that the prescribed standards so fixed by MPCB in consultation with CPCB shall be communicated to the Transport Commissioner, State of Maharashtra and fixed standards are to be communicated to the Sirens and Multi-toned Horns Manufacturing Authorities and the Registering Authority in the State of Maharashtra and to all the concerned Authorities who are required to implement the Law, i.e., police and it is to be communicated within four months. It directed that RTO, i.e., accused nos. 4 and 5 shall ensure due compliance

of the use of sirens and multi-tone horns and such horns are to be removed from the concerned vehicle. The Government vehicles are also prohibited from installing such multi-toned horns. The honking is prohibited between 10.00 p.m. to 6.00 a.m. in any locality. The Police Commissioner was directed to promulgate the sound standards. The use of horns by the ambulance is also to be monitored. The Tribunal referred to earlier directions dated 9th January, 2013 and said that the responsibility is fixed on MPCB or CPCB for compliance within a period of four months and same shall be immediately communicated to the Transport Commissioner and the Director General of Police without any delay and the latter Authorities shall comply with the directions. In paragraph 8 of the said order, the Tribunal has made it clear that in case of non-compliance of the directions, the Tribunal may hold the Authority in contempt and prosecute them.

57. Thus, in fact the Tribunal itself has taken care of the execution of its own orders which ought not to have been ignored by the learned Magistrate while issuing process for non-compliance of the order of National Green Tribunal.

58. Moreover, in the course of argument it was submitted that the noise mapping was prepared by the authorities in the year 2017. Thus, it shows the implementation of the orders of various authorities by accused nos. 19, 20, 21 and 22. I fail to understand how MSRDC is responsible for breach of the orders passed under the Act. There is no other order than the order of National Green Tribunal. Hence, the allegations made in the complaint are vague and it cannot be said that any specific offence is constituted against the petitioners.

59 On the point of powers of the Court under section 482 of Cr. P.C. and Article 227 of the Constitution, both the parties have relied on number of judgments. It is useful to refer to the law laid down by the Supreme Court and High Courts in various judgments:

60. In **Smt. Nagawwa** (*supra*), it is held that -

“Magistrate has been given an undoubted discretion in the matter and the discretion has to be judicially exercised by him. Once the Magistrate has exercised his discretion, it is not for the High Court, or even the Supreme Court, to substitute its own discretion for that

of the Magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in conviction of the accused.

In the said case, four circumstances are laid down whether the order of issuance of process can be quashed and set aside.

61. In **Fiona Shrikhande** (*supra*), it was held that on reading of the complaint, *prima facie* has been made out or not to issue process by the Magistrate is to be taken into account and the Magistrate is not expected to embark upon a detailed discussion of the merits or demerits of the case.

62. In **Bhushan Kumar** (*supra*), it is held that “the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and he is only to be *prima facie* satisfied whether there are sufficient grounds for proceeding against the accused”.

63. In **Nupur Talwar** (*supra*), it is held that the Magistrate is not required to explicitly state the reasons for issuance of summons

under section 204 of Cr. P.C. In the said case, the Supreme Court while relying on the case of Chandra Deo vs. Prokash Chandra Bose⁸ produced the principles laid down in the said case wherein it was held that what the Magistrate has to be satisfied is whether there is “sufficient ground for proceeding” and not whether there is sufficient ground for conviction. The adequacy of the evidence for conviction can be determined only at the trial and not at the stage of enquiry.

64. In **Vijayander Kumar** (*supra*), it is held that the availability of both civil as well as criminal remedy is not a valid ground to quash the criminal proceedings.

65. In **M.C. Mehta** (*supra*), the Supreme Court has observed that the nodal agencies are not taking the issue of Air Pollution seriously and therefore, gave directions to Central Pollution Control Board and State Pollution Control Board and Authorities under the Graded Action Plan to take immediate action for prosecution.

8 AIR 1963 SC 1430

65. In **Bombay Environmental Action Group** (*supra*), the Division Bench of this Court has directed the registration of offence by the police officer under sub-section (1) of Section 15 of the Environment Protection Act, 1986. This Public Interest Litigation was in respect of saving mangroves, as they are essential part of the environment. In the said PIL, the Division Bench has ordered total freeze of destruction and cutting of mangroves in entire Maharashtra and directed the preservation of mangroves in various ways.

66. However, in the case of **State of Haryana vs. Bhajan Lal & Ors.**⁹ Elaborately the cases in 7 categories are classified for the purpose of quashing and it is held that those categories not fully exhaustive but there may be other legal circumstances where the Court can use its inherent powers to stop abuse of power and to do the justice.

67. In the landmark judgment of **Pepsi Foods Ltd.** it is held that the power of superintendence of High Court under Article 227 is not only of administrative nature but also is of judicial nature. The powers under Article 226 and 227 of the Constitution and also

⁹ 1992 Supp 1 SCC 335.

under section 482 of Cr. P.C. are very wide, however, they are to be exercised with due care and caution. In respect of issuance of process, the Supreme Court has observed that :

“28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witness to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

68. Thus, it is a settled law that the High Court should sparingly use its inherent powers in the matter of quashing and setting aside the process and the learned Magistrate while issuing process

should consider the complaint and other documents relied by the complainant and should not think of the success of the case. However, the powers of the High Court under section 482 of Cr. P.C. and Article 227 of the Constitution of India are not completely restricted. The High Court not only has supervisory powers to stop the abuse of powers but is required to use its powers to do the justice and stop unnecessary criminal litigations when no specific offence is made out.

69. From the impugned order dated 11th October, 2013 which is referred to the contents in this complaint, it appears that the directions given by National Green Tribunal were followed by Maharashtra Pollution Control Board. The directions issued by Maharashtra Pollution Control Board to Maharashtra State Road Development Corporation Ltd, i.e., accused nos. 12 to 15. The copy of the reminder dated 10th November, 2016 and 11th November, 2016 by Maharashtra Pollution Control Board/accused no. 21 was sent to the Transport Commissioner, Maharashtra State Road Development Corporation Ltd. and Joint Commissioner of Police(Traffic) i.e., accused nos. 11 to 15 and also accused nos. 1 to 3 and deleted accused nos. 6 to 9. There is also a letter dated

12th January, 2016 given by the Scientist-II, (Environment Dept.), Government of Maharashtra to the Commissioner of Police and Transport Commissioner, Maharashtra and Member Secretary, MPCB in respect of taking action pursuant to notice under section 19(b) of Environment (Protection) Act is also written. Another letter of Member Secretary dated 28th February, 2017 was written by MPCB/accused no. 21 to the complainant in response to the notice and it is mentioned that the National Green Tribunal in its order dated 20th January, 2017 passed in Application No. 35 of 2011 filed by the complainant had directed the Regulatory Authorities to comply with the directions issued by the Maharashtra Pollution Control Board vide letter dated 29th September, 2016 and accordingly all the authorities are communicated the order dated 20th January, 2017. All these documents and communication is a part of the complaint. It shows that MPCB/accused no. 21 and Environment Department/accused no. 19 have taken steps pursuant to the order of National Green Tribunal. However, as pointed out by the complainant, if at all there is air pollution or noise pollution, then it is to be controlled, as suggested by him, strictly compulsory that PUC and honking is required to be monitored.

70. In criminal law, it is necessary for the complainant to make out a specific case against each accused. The general allegations are not sufficient to issue process against any person. In the present matter, the petitioners/MSRDC, i.e., nos. 12 to 15, were not parties in Miscellaneous Application No. 202 of 2013 before the National Green Tribunal. It is also not clear what directions were given to these petitioners and by whom. Thus, considering the present set of facts, as per the directions given by the National Green Tribunal, action was taken by accused nos. 19 to 22, i.e., Environment Department and Maharashtra Pollution Control Board, hence there is no material to issue process against these petitioners under the Environment Protection Act or Air and Noise (Regulation and Control) Rules. Thus, the order of issuance of process is set aside and quashed qua the petitioners only.

71. I appreciate the efforts taken by the respondent/ original complainant for maintaining the ecological balance of this fully crowded city. Though the process is quashed and set aside, the mission taken by the complainant to fight against air and noise pollution cannot be underestimated.

72. Thus, Writ Petitions are allowed. Rule made absolute as above.

73. Criminal Applications are also accordingly disposed of.

(MRIDULA BHATKAR, J.)