

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.4388 OF 2015

VISHAL CHANDRAKANT MHATRE)...PETITIONER

V/s.

THE STATE OF MAHARAHSTRA)...RESPONDENT

Mr.Niranjan Mundargi i/b. Mr.Vinayak Patil, Advocate for the
Petitioner.

Mr.A.R.Kapadnis, APP for the Respondent – State.

Mr.R.Y.Kini, Head Constable, 1756, attached to Bhayander Police
Station (Thane Rural), present in court.

CORAM : A. M. BADAR, J.

DATE : 19th DECEMBER 2019

ORAL JUDGMENT :

1 Heard. Rule. Rule returnable forthwith. Heard finally.

2 By this petition, petitioner Vishal Mhatre – original
accused no.2 in Regular Criminal Case No.1074 of 2012 for the

offence punishable under Section 15(1) and 15(2) of the Environment (Protection) Act, 1986, is challenging the judgment and order dated 7th October 2015 passed by the learned Additional Sessions Judge, Thane, in Criminal Revision Application No.166 of 2012 thereby allowing the petition and quashing and setting aside the order of discharge passed below Exhibit 11 on 30th June 2012. The learned trial Magistrate was pleased to discharge the petitioner/accused of offences punishable under Sections 15(1) and 15(2) of the Environment (Protection) Act, 1986, by holding that the complaint filed by the Tahsildar alleging these offences suffers from non-compliance of mandatory provision of Section 19 of the said Act, as notice of not less than 60 days was not given by the complainant, in adherence of provisions of Section 19(b) of that Act.

3 In exercise of revisional jurisdiction, order of discharge passed in favour of the petitioner came to be set aside by the revisional court with a finding that the complaint was not lodged

by an individual person and Section 19(b) of the Environment (Protection) Act, 1986, is not applicable to the case in hand as the complainant is a government servant authorised by the Tahsildar.

4 Heard the learned counsel appearing for the petitioner/original accused no.2. He drew my attention to the charge-sheet filed on 16th September 2009 after investigation of the First Information Report (FIR) lodged by Javed Ali Akbar Shaikh, Circle Officer of the Revenue Department. My attention is further drawn to the supplementary charge-sheet in the said Crime No.II-30 of 2008 filed on 10th June 2010 for the offence punishable under Section 15(1) of the Environment (Protection) Act, whereby, the present petitioner came to be arrayed as an accused along with accused no.1 Rajesh Jiledar Singh. By drawing my attention to provisions of Section 19 of the said Act, it is argued that the learned trial Magistrate cannot take cognizance of the offence punishable under Section 15 of the Environment (Protection) Act on the basis of the charge-sheet filed by the police, after completion of investigation in respect of the FIR. It is

further argued that even the Division Bench of this court while deciding Criminal Appeal Nos.722 of 2012 and 1325 of 2011 has categorically held that the said charge-sheet is non-est. Therefore, it is contended by the learned counsel for the petitioner that by quashing the impugned order, the petitioner needs to be discharged from the offence alleged against him.

5 The learned APP opposed the petition by contending that the complaint was, infact, lodged by Javed Ali Akbar Shaikh, who happens to be the Circle Officer working in the Revenue Department and therefore, technical view in the matter cannot be taken for conferring benefit to the petitioner, who happens to be accused for the offence punishable under the Environment (Protection) Act.

6 I have considered the submissions and also perused the material placed before me including the charge-sheet and supplementary charge-sheet filed pursuant to investigation of the

Crime No.II-30 of 2008 registered at the instance of Javed Ali Akbar Shaikh. It is not in dispute that on 22nd November 2008 Javed Ali Akbar Shaikh visited Police Station Bhayander and lodged report in the capacity of Circle Officer, Bhayander. The said FIR resulted in registration of Crime No.II-30 of 2008. It is averred by First Informant Javed Ali Akbar Shaikh that when he along with his team had been to Survey No.342/1 for removal of encroachment on government land, it was found that some unknown person had indulged in tree felling of mangroves and over 14.60 mts. X 13.70 mts. area permanent stone structure was found to be erected at that place, for being used as jetty. For approaching that permanent structure, road of 23.70 mts. length and 5.70 mts. width was also found to be constructed at the site. First Informant Javed Ali Akbar Shaikh, Circle Officer, reported that during the course of removal of unauthorized construction and encroachment by him as well as his team members, accused no.1 Rajesh Singh came in a motor vehicle along with 4 to 5 persons and started questioning the action by stating that he is having documents to show that he is permitted to effect

construction. This report, as was, disclosing commission of cognizance offence, in the opinion of the Investigating Officer, the same was treated as FIR under Section 154 of the Cr.P.C. and that is how Crime No.II-30 of 2008 came to be registered for offences punishable under Sections 15(1) and 15(2) of the Environment (Protection) Act, 1986, against Rajesh Singh. Ultimately, charge-sheet came to be filed on 16th September 2009.

7 Subsequently, on conducting further investigation, supplementary charge-sheet came to be filed on 10th June 2010 and that is how petitioner/accused no.2 Vishal Chandrakant Mhatre came to be arraigned as an accused, by alleging the offence punishable under Section 15(1) of the Environment (Protection) Act, against him in the said crime.

8 It is, thus, clear that the prosecution has alleged the offence punishable under Section 15 of the Environment (Protection) Act, 1986, against accused persons including the petitioner. For better understanding of the matter, it is necessary to quote provisions of Section 15 as well as Section 19 of the

Environment (Protection) Act. Those read 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 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 subsection (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.”

“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) any person who has given notice of not less than sixty days, in the manner prescribed, of the alleged offence and of his intention to make a complaint, to the Central Government or the authority or officer authorised as aforesaid.”

9 Bare perusal of provisions of Section 19 of the Environment (Protection) Act, makes it clear that cognizance of offences punishable under the Environment (Protection) Act, 1986 can be taken by the Competent Court only on the basis of complaint made by either Central Government or by authority or officer authorized by it. Any private person can also lodge complaint alleging the offence punishable under the Environment (Protection) Act, provided such person gives notice of not less than sixty days in prescribed manner, reflecting his intention to make a complaint. Such notice is required to be given to the Central Government or to the authority or officer authorized by it. Section 2(d) of the Cr.P.C. defines the term complaint which is

found to be used in Section 19 of the Environment (Protection) Act, 1986. It reads thus :

“2(d) " complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report. Explanation.- A report made by a police officer in a case which discloses, after investigation, the commission of a non- cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant;”

Definition of the term “complaint” as such, makes it clear that police report cannot be construed as a complaint as defined by Section 2(d) of the Cr.P.C. However, report of commission of non-cognizable offence submitted after investigation by police to the Magistrate can be considered as a “complaint” within the meaning of the term defined under Section 2(d) of the Cr.P.C. Section 2(r) of the Cr.P.C. defines “police report” as the report forwarded by the Police Officer to the Magistrate under sub-section (2) of Section

173 of the Cr.P.C. Chapter XII of the Cr.P.C. deals with information to the police and their powers to investigate. Section 154 of the Cr.P.C. deals with recording of information in cognizable cases. Section 156 of the Cr.P.C. deals with powers of Police Officer to investigate cognizable cases. Procedure for investigation is also prescribed under this chapter and Section 173 of the Cr.P.C. deals with filing of the report by Police Officer on completion of investigation of cognizable offence. This report in common parlance is known as the charge-sheet. Thus, filing of report by police after investigation of averments made in the FIR on conclusion of investigation is considered as filing of the charge-sheet by police. As against this, on filing of the complaint, the Magistrate has to deal with it under Chapter XV of the Cr.P.C. Under Section 200 of the Cr.P.C., the Magistrate taking cognizance of the offence on complaint is required to examine the complainant on oath apart from witnesses present, if any. If a public servant acts or purports to act in discharge of his official duties, and makes a complaint in writing, the Magistrate is not required to examine such complainant and the witness. He can

deal with such complaint straightaway by following subsequent provisions of Chapter XV of the Cr.P.C.

10 In the case in hand, offences alleged against the petitioner are only under the Environment (Protection) Act, 1986, and cognizance of such offences can be taken by the court only on the basis of complaint made to it either by the Central Government or any other authority or officer authorized in that behalf by the Central Government. Any private person can also file complaint alleging such offences by making necessary compliance as stated in Section 19 of the said Act. However, in the instant case, proceedings are initiated against the petitioner/accused on the basis of the police report filed after investigation of the FIR lodged by the Circle Officer. No complaint by the authorities prescribed under Section 19 of the Environment (Protection) Act is lodged against the petitioner alleging violation of provisions of Environment (Protection) Act by him, which may constitute offences under the said Act.

11 Incidentally, it needs to be mentioned here that the petitioner was sought to be prosecuted under stringent provisions of the Maharashtra Control of Organized Crimes Act (hereinafter referred to as MCOC Act for the sake of brevity) by the State and for that purpose, charge-sheet filed against him in the instant case was sought to be made use of. However, the Special Court held that no offence under the MCOC Act can be invoked against the petitioner herein. Feeling aggrieved by the said order dated 7th October 2011 passed by the learned Judge of Special Court, the State as well as First Informant in said crime regarding murder of Prafulla K. Patil preferred Criminal Appeals bearing nos.722 of 2012 and 1325 of 2011. The Division Bench of this court while dismissing those appeals was pleased to observed thus in paragraphs 33 and 38 of its judgment :

“33 Admittedly, what has been submitted by the police in respect of an offence punishable under Section 15 of the Environment Act, is a police report under Section 173 of the Code. A police report is specifically excluded from the definition of a complaint, as given in Section 2(d) of the Code. Therefore, the police report erroneously filed by the

police cannot be treated as a complaint.”

“38 Clearly, the court would have no jurisdiction to take cognizance of the offence punishable under Section 15 of the Environment Act, on the basis of the document submitted to it by the police. Even if any action has been taken by the Court pursuant to the filing of such document, such action would be without jurisdiction, void and *ab initio*. The cognizance taken in violation of a specific provision would be no cognizance at all, and would be *non-est*.”

12 It is, thus, clear that even the Division Bench of this court has held that supplementary charge-sheet in the instant case filed against the petitioner and the resultant cognizance, if any taken in violation of specific provision of Section 19 of the Environment (Protection) Act, would be non-est.

13 In the light of foregoing discussion, it needs to be held that the impugned order passed by the learned Additional Sessions Judge allowing the revision petition and quashing the

order of discharge passed by the learned trial Magistrate suffers from error of law and needs to be set aside. The proceedings in the case in hand were not commenced by filing of the complaint by the authorities mentioned in Section 19 of the Environment (Protection) Act. Rather, it is on the basis of police report lodged under Section 173 of the Cr.P.C. after conclusion of investigation of Crime No.II-30 of 2008 registered on the basis of FIR lodged by Javed Ali Akbar Shaikh, Circle Officer. Therefore, the order :

ORDER

The petition is allowed by making Rule absolute in terms of Prayer Clause (a).

(A. M. BADAR, J.)