

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: May 23, 2019

+ **CRL.REV.P. 510/2018**

HEM KARAN BIDHURI Petitioner
Through: Mr. Daleep Dhyani, Advocate

Versus

DELHI POLLUTION CONTROL COMMITTEE (DPCC)
..... Respondent
Through: Mr. Biraja Mahapatro, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

J U D G M E N T

1. The Appellate Court vide impugned judgment of 24th May 2018, upholds the petitioner's conviction under Sections 24 read with Section 43, Section 25 read with Section 44, and Section 33A read with Section 41 of *The Water (Prevention and Control of Pollution) Act, 1974* and the minimum sentence of one year and six months and fine imposed by trial court.
2. The facts giving rise to this petition as noted in the impugned judgment are as under:-

Case of complainant namely Delhi Pollution Control Committee (in short "DPCC") in brief is that on 21.02.2000 at 258, Village Tehkhand, New Delhi-20 accused were running the unit engaged in Textile printing in the name and style of M/s Anupam Prints and on inspection conducted by officials of

complainant and area SDM washing of screens used for printing was going on and the untreated trade effluent of the same was discharged in violation of Section 24 of the Water Act and accused were doing the aforesaid acts without consent of board as contemplated under Section 25 and 26 which is punishable under Section 42 and 44. Accused were discharging the trade effluent directly/indirectly permitting the polluting matter to enter into stream/sewer or on land without installing Effluent Treatment Plant (ETP)

3. Challenge to the impugned judgment by Ld. Counsel for the petitioner was on the ground that no sample of water was lifted and analyzed because the unit in question was not a water discharging unit. It was pointed out that after two months of the petitioner's conviction, the respondent had allowed the petitioner to function from the premises in question. It was pointed out that SPAN Consultant Pvt. Ltd. of the respondent had given the report of 12th May, 2000 to the effect that the petitioner's units is not a water polluting unit. So, it was submitted that the conviction and sentence awarded to the petitioner deserves to be set aside.

4. On the contrary, learned counsel for the respondent supported the impugned judgment and submitted that the petitioner was running a textile printing industry. It was submitted that certificate of 12th May, 2000 (*Annexure P-7*) is of no avail as the inspection was done in the instant case on 21st February 2000. It was further submitted that petitioner was found to be using water for washing screens. It was next submitted that non-lifting of the samples is not fatal to the prosecution because use

of the water for screen printing and its discharge into a sewage is established from the evidence of CW-1, CW-2 and CW-3. Attention of this Court has been drawn to paragraph No. 26 of the impugned order which reads as under:-

“26. CW-1, CW-2 and CW-3 were member of the vigilance squad who inspected the unit of appellant (M/s Anupam Prints) on 21st February, 2000. They all deposed regarding inspection report of said unit which is Ex.CW-1/4. The appellant has admitted the factum of inspection of his unit i.e. M/s Anupam Prints. All the three complainant witnesses have categorically deposed that during the inspection, they found that said unit was engaged in activity of textile printing without mandatory consent under the Water Act and without installing an ETP for treating the effluent and same was discharging the untreated effluent. In this regard, CW-1 has deposed that accused are running unit without obtaining mandatory consent under the Water Act and without installation of effluent treatment plant for treating the effluent and discharging untreated effluent. CW-2 has deposed that unit was engaged in the water activity of textile printing without obtaining mandatory consent under the Water and Air Act and without installing an ETP to treat the waste water generated by the unit, thereby causing water pollution contravening the provisions of the said Acts apart from the orders of Hon’ble Supreme Court. CW-3 has deposed that unit was operating without effluent treatment plant and untreated trade effluent was being discharged. And when and wherever, they were given suggestion in their respective cross-examination by the learned counsel for appellant that unit was dry and thinner was being used therein and it was not discharging, they denied the said suggestions. The inspection report (Ex.CW-1/4) is having signature of

son of appellant namely Anil Bidhuri (DW-1) and one Dev Vrat Mishra. All the three complainant witnesses' specifically deposed that Dev Vrat Mishra is representative/employee of the appellant. DW-1 who is the son of the accused, had admitted his signature on inspection report Ex.CW-1/4 and on sealing order Ex.CW-1/5. It is clearly mentioned in said inspection report that "no ETP installed to treat the trade effluent. washing of screen used for printing ongoing of without an ETP". In column of "whether water polluting or non-polluting as per inspection" of said inspection report, "water polluting" phrase/word is clearly mentioned. CW-3 has denied the suggestion that in the inspection report words "water polluting" and "going on" were wrongly mentioned. It is clearly found mentioned in the testimony of all the three complainant witnesses and inspection report (Ex.CW-1/4) that unit was engaged/running and discharging untreated effluent or said unit was water polluting or washing of screens used for printing going on without ETP. In respect of source of water in or around the unit different stand/defence has been taken by appellant. In his statement under Section 313 of the Code, appellant has stated that only source of water was from DJB supply which used to come in very limited quantity that too for domestic purposes. Whereas, son of appellant namely Anil Bidhuri (DW-1) testified in his cross-examination that there was no drainage system in his house and there was no tank in the unit; that there is no toilet also in his house and unit and people used to go outside for the same; that the water for the drinking purpose was to be brought from outside in cane; that there was no source of water supply in the premises where the unit was situated however, there was a hand pump outside the premises from where used to be brought in. Hence, as per appellant, source of water in unit was from DJB supply

whereas his witness (DW-1) testified that there was no source of water supply in the premises where the unit was situated however, there was a hand pump outside the premises. In case of M/s Sri Durga Glass Works (supra), Hon'ble Allahabad High Court observed that no industry can exist without water. The judgment relied upon by the learned counsel for the appellant i.e., M/s N.P.N. Nachiammal Achi is not applicable in the present case because in para number 9 of the complainant, the specific place of discharge is mentioned. It is stated in said para that by discharging the untreated effluent from his industrial unit into a drain sewer causing a severe pollution."

5. Learned counsel for the petitioner relies upon Supreme Court's decision in *Gujarat Pollution Control Board Vs. NICOSULF Industries & Exports (P) Ltd.* (2009) 2 SCC 171, where samples were not lifted from a unit which had permission to run the unit and the acquittal under Section 24 and 25 of *The Water (Prevention and Control of Pollution) Act, 1974* was upheld.

6. Counsel for the respondent submits that the petitioner's unit was running without consent whereas in *Gujarat Pollution Control Board* (supra), the unit was running with consent.

7. After having heard learned counsel for the parties and on scrutiny of the impugned judgment and the evidence on record, I find that non-lifting of samples of water for analysis is not fatal to the case of the respondent as it is evident from the Inspection Report of 21st February, 2000 that no effluent treatment plant was installed by petitioner to treat the effluent. Since petitioner was engaged in the activity of textile

printing, without any mandatory consent under the Water Act, therefore, reliance placed upon Supreme Court's decision in *Gujarat Pollution Control Board* (supra), is of no avail as in the said decision, the mandatory consent was obtained.

8. In the face of evidence of CW-1, CW-2 and CW-3, who were members of the vigilance squad of the inspection team, I find that the conviction and the sentence awarded to petitioner cannot be faulted with. Reliance placed by petitioner's counsel upon certificate of 12th May, 2000 (Annexure P-7) is of no assistance to the case of petitioner as the inspection in question was done on 21st February, 2000. De-sealing of petitioner's premises later on cannot be a ground to upset the conviction and the sentence awarded to petitioner as the conduct of petition has to be seen on the date of the inspection and the subsequent conduct cannot be taken into consideration. A bare perusal of the impugned order reveals that the trial court has meticulously examined and analyzed the evidence led and has thereafter rightly concluded that petitioner is guilty of the offences with which he has been charged. The sentence awarded to appellant also appears to be just and adequate.

9. Finding no illegality or infirmity in the impugned order, this petition is accordingly dismissed while vacating the interim order of 29th May, 2018.

(SUNIL GAUR)
JUDGE

MAY 23, 2019
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