

HIGH COURT OF CHHATTISGARH, BILASPURCriminal Misc. Petition No.496 of 2020Order reserved on: 7-8-2020Order delivered on: 13-8-2020

Sunil Agrawal, S/o Late Omprakash Gupta, Aged about 56 years,
Address: 38/1, Nehru Nagar (East), Bhilai, District Durg (C.G.) Pin:
490020

---- Petitioner

Versus

1. Chhattisgarh Environment Conservation Board, Through its Chairman,
Address: Paryavas Bhawan, North Block, Sector-19, Naya Raipur (C.G.)
Pin 492101
2. Regional Officer, Chhattisgarh Environment Conservation Board, Address:
No.5, 32, Bungalows, Bhilai, District Durg (C.G.) Pin 490009
3. State of Chhattisgarh, through the District Magistrate, Durg (C.G.) Add:
Durg Collectorate Premises, District Durg (C.G.) Pin 491001

---- Respondents

For Petitioner: Mr. Prashant Kumar Mishra, Advocate.
For Respondents No.1 & 2: -
Mr. Animesh Tiwari, Advocate.
For Respondent No.3 / State: -
Mr. Ravi Kumar Bhagat, Deputy Govt. Advocate.

Hon'ble Shri Justice Sanjay K. AgrawalC.A.V. Order

1. Proceedings of this matter have been taken-up through video conferencing.
2. Invoking the jurisdiction of this Court under Section 482 of the CrPC, the petitioner herein who is standing trial for commission of offence under Sections 37 and 40 of the Air (Prevention and Control of Pollution) Act, 1981 (for short, 'the Air Act'), has filed this petition calling in question the impugned order dated 23-9-2019 passed by the 1st Additional

Sessions Judge, Durg, in Criminal Revision No.191/2019, by which the learned Additional Sessions Judge has affirmed the order of the trial Magistrate rejecting his preliminary objection on the maintainability of the complaint filed before the jurisdictional criminal court for commission of the aforesaid offences on the complaint under Section 200 of the CrPC filed by the respondent Chhattisgarh Environment Conservation Board (for short, 'the Board').

3. On the complaint filed by the respondent Board for violation of Sections 21 and 22 of the Air Act and for commission of the aforesaid offences by the petitioner herein who is the Director of M/s. Niro's Ispat Pvt. Ltd., the petitioner appeared and filed preliminary objection that by virtue of Section 43 of the Air Act, cognizance of the aforesaid offences can be taken either by the Board or by any officer authorised in this behalf by it, but, in the instant case, the Regional Officer of the Board has been authorised by the Chairman of the Board by order dated 11-9-2002 to file complaint against the petitioner, as such, such a complaint is not maintainable and is hit by Section 43(1)(a) of the Air Act. The said objection was rejected by the learned trial Magistrate and in revision filed by the petitioner, the revisional Court has affirmed that order and dismissed the revision. Calling in question that order, the instant petition has been preferred in which return has been filed by respondents No.1 & 2 Board supporting the order taking cognizance stating inter alia that subsequently, the Board by order dated 22-12-2007 (Annexure R-1) has authorised the Regional Officer of the Board to file complaint against the petitioner, therefore, the defect, if any, stands cured and the complaint as filed and cognizance taken is maintainable.

4. Mr. Prashant Kumar Mishra, learned counsel appearing for the petitioner, would submit that Section 43 of the Air Act is mandatory and no court shall take cognizance of the offence under the said Act except on the complaint made by the Board or any officer authorised in this behalf by it. Admittedly, in the present case, the Regional Officer of the Board was not authorised by the Board constituted under Section 4 of the Air Act and the complaint was filed by the Regional Officer authorised by the Chairman of the Board vide order dated 11-9-2002 (Annexure A-4), therefore, the complaint is hit by Section 43(1)(a) of the Air Act. Mr. Mishra, learned counsel, relied upon the decision of the Supreme Court in the matter of P. Pramila and others v. State of Karnataka and another¹ to buttress his submission. Therefore, the impugned order be set aside and the complaint be dismissed.
5. Mr. Animesh Tiwari, learned counsel appearing for respondents No.1 & 2, would submit that subsequently, after filing of complaint, by order dated 22-12-2007, the Board has authorised the Regional Officer to file complaint against the petitioner which has been filed as Annexure R-1, therefore, the legal defect, if any, in authorisation has been rectified. He would alternatively submit that if ultimately, the complaint is quashed, liberty be granted to the respondent Board to file complaint in accordance with law.
6. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the records with utmost circumspection.
7. In order to decide the dispute, it would be appropriate to notice Section

¹ AIR 2015 SC 2495

43 of the Air Act which states as under: -

“43. Cognizance of offences.—(1) No court shall take cognizance of any offence under this Act except on a complaint made by—

(a) a Board or any officer authorised in this behalf by it; 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 Board or officer authorised as aforesaid,

and no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

(2) Where a complaint has been made under clause (b) of sub-section (1), the Board shall, on demand by such person, make available the relevant reports in its possession to that person:

Provided that the Board may refuse to make any such report available to such person if the same is, in its opinion, against the public interest.”

8. A careful perusal of the aforesaid provision would show that the Air Act has given statutory power of giving sanction to the Board and the criminal court would take cognizance of the complaint filed by the Board or any officer authorised in this behalf by the Board. The Court would not take cognizance of the offence if the complaint is filed of any offence of the Air Act except on the complaint filed by the Board or any officer authorised in this behalf by the Board as such, the provision contained in Section 43(1)(a) of the Air Act is mandatory in nature.

9. Section 43 of the Air Act came to be considered by their Lordships of the Supreme Court in P. Pramila (supra) in which their Lordships have held that by virtue of Section 43 of the Air Act, proceeding can be initiated by the Board or by any officer authorised by the Board and further held that the complaint filed by the Regional Officer having been authorised by the

Chairman of the Board is illegal holding that the delegated power cannot be further delegated. It has been observed as under: -

“8. Section 43 of the Air Act has already been extracted hereinabove. It is apparent therefrom, that Courts would take cognizance of complaints filed by the Board, or any officer authorised by the Board, in that behalf. The notification/resolution dated 29-3-1989 indicates, that the officer authorised was the Chairman of the Board. The Board could delegate the above power to the Chairman of the Board, because Section 43(1) of the Air Act, authorised the Board to do so. In that view of the matter, either the Board or the Chairman of the Board could have filed the complaints in terms of the mandate contained in Section 43(1) of the Air Act. The power to file the complaint could not be exercised by any other authority/officer. Under the principle of 'delegatus non potest delegare', the delegatee (the Chairman of the Board) could not have further delegated the authority vested in him, except by a clear mandate of law. Section 43 of the Air Act vested the authority, to file complaints with the Board. Section 43 aforementioned, also authorised the Board to delegate the above authority to any "officer authorised in this behalf by it". The "officer authorised in this behalf" was not authorised by the provisions of Section 43 of the Air Act, or by any other provision thereof, to further delegate, the authority to file complaints. The Chairman of the Board, therefore, had no authority to delegate the power to file complaints, to any other authority, for taking cognizance of offences under the Air Act. It is apparent, that the determination to initiate action against the appellants, and other similarly placed persons, against whom action was proposed to be taken, by the Chairman of the Board, vide his order dated 4-4-2006, was not in consonance with law. Annexure P-11, appended to Criminal Appeal No.152/2012 reveals, that the complaint was filed, and the proceedings were initiated before the Judicial Magistrate, First Class-II, Karwar, by the Regional Officer (Deputy Environmental Officer) Sri Gopalakrishna B. Sanatangi, in his capacity as a complainant. The Regional Officer (Deputy Environmental Officer) Sri Gopalakrishna B. Sanatangi, had no jurisdiction to prefer such complaints. Accordingly, we are of the view, that the aforesaid complaints dated 28-4-2006 are liable to be set aside, on the instant technical ground itself. Ordered accordingly.”

10. Reverting to the facts of the case in the light of the provisions contained in

Section 43 of the Air Act and the principle of law laid down by their Lordships of the Supreme Court in P. Pramila (supra), it is quite vivid that in the instant case, by order dated 11-9-2002 (Annexure A-4), the Chairman of the Board authorised all the Regional Officers of the Board including respondent No.2 herein to file complaint under the Air Act and accordingly, complaint for offence punishable under Sections 37 and 40 of the Air Act was filed on 26-6-2007 against the petitioner. Thus, it is quite clear that the complaint as filed was not filed either by the Board or by any officer authorised by the Board. The Regional Officer of the Board who was an officer having been authorised by the Chairman of the Board had filed the impugned complaint and therefore such an authorisation is clearly hit by Section 43(1)(a) of the Air Act and also in the teeth of the principles of law rendered by the Supreme Court in P. Pramila (supra). Accordingly, the impugned order dated 23-9-2019 passed by the 1st Additional Sessions Judge, Durg, in Criminal Revision No.191/2019 and the order of the trial Magistrate dated 14-5-2019 passed by the Judicial Magistrate First Class, Durg in Criminal Complaint Case No.3659/2007 (Chhattisgarh Environment Conservation Board v. M/s. Niro's Ispat Pvt. Ltd. and others) are set aside and consequently, Criminal Complaint Case No.3659/2007 pending in the Court of Judicial Magistrate First Class, Durg is hereby quashed. However, liberty is reserved in favour of the respondent Board to initiate fresh proceedings in accordance with law, within two months from today.

11. The petition is allowed to the extent indicated herein-above.

Sd/-
(Sanjay K. Agrawal)
Judge