

HIGH COURT OF CHHATTISGARH, BILASPUR
WPCR No. 704 of 2021

M/s Golchha Chemiclas S/o Late Shri Kewal Chand Golchha, Aged About 67 Years, Through Its Proprietor Shri Prakash Golchha, Address 64, Light Industrial Area, Bhilai R/o 19/2, Nehru Nagar West Bhilai Tehsil and District Durg, Chhattisgarh.

---- **Petitioner**

Versus

Chhattisgarh Pollution Control Board (Earlier Madhya Pradesh Pollution Control Board) Through Regional Officer, Office-5/32 Bangla, Bhilai Tehsil and District Durg, Chhattisgarh.

--- **Respondent**

For Petitioner	:	Ms. Aditi Singhvi, Advocate.
For Respondent	:	Mr. Yogendra Pandey, Advocate on behalf of Mr. Animesh Tiwari, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

29/10/2021

Heard.

1. Petitioner filed this writ petition under Article 226 of the Constitution of India seeking following reliefs :-

“(i). That, this Hon'ble Court may kindly be pleased to quash and set aside the proceedings before the 8th Additional Session Judge, Durg, (CG) in Criminal Appeal No.98/2018 and also quash the judgment dated 14.05.18 passed by the Judicial Magistrate First Class, Durg, (CG) in Criminal Complaint Case No.2323/1987.

(ii). Any other relief, which this Hon'ble Court deems fit in the facts and circumstances may also be granted in favour of the petitioner.”

2. Learned counsel for petitioner submits that complaint case was filed against the petitioner under the provisions of Water (Prevention and Control of Pollution) Act, 1974 by Chief Chemist and Regional Officer initially in the year 1987 before Court of CJM, Durg. The Magistrate decided said complaint case after full fledged trial vide order dated

11.05.2000 and passed an order of conviction against the petitioner. Order of conviction passed by Magistrate was put to challenge in an appeal before the 5th Additional Sessions Judge, Durg which came to be decided on 10.04.2001, wherein order of conviction against petitioner was upheld. Order passed in appeal was put to challenge in Criminal Revision No.149/2001 before the High Court which was decided vide order dated 24.08.12, and while allowing the revision in part, remitted back the case to the Court of CJM, Durg for deciding the case afresh recording that there was contradictory findings in Para Nos.10 to 12 & 13 of its judgment. After receiving the case back on remand, JMFC again considered the case afresh and passed final judgment on 14.05.18 convicting the petitioner for commission of alleged offence as mentioned in complaint. This order was challenged by petitioner in an appeal which is pending consideration before 8th Additional Sessions Judge, Durg, (CG).

3. Learned counsel for petitioner submits that under Section 49 of the Act of 1974, the Competent authority for lodging complaint under the Act is Board. Subsequently, by way of amendment Authority prescribed for lodging complaint under Section 49 of the Act of 1974 other officer authorized by Board is also mentioned. As on the date of lodging complaint, Regional Officer was not authorized to file complaint, complaint itself is not maintainable as it was filed by the officer who is having no jurisdiction or authority. Hence, entire proceedings is liable to be quashed.
4. Learned counsel for respondent opposes the submission made by learned counsel for petitioner and submits that grounds raised by petitioner in this writ petition was never raised earlier either at the time of

trial or in the appeal. Petitioner after passing of order of conviction by Judicial Magistrate, preferred an appeal before Session Court, Durg which is pending consideration, hence, petitioner can raise all the grounds available to him before Session Court. Writ petition in its form is not maintainable as it has been filed with inordinate delay. The CJM has initially decided the complaint on 11.5.2000 where no such grounds have been taken by the petitioner. Hence, writ petition is liable to be dismissed.

5. Heard learned counsel for the parties.
6. It is not disputed by learned counsel for petitioner that order passed by Judicial Magistrate is under challenge before Session Court, Durg in appeal and the appellate Court can very well consider all the legal grounds available with petitioner.
7. Considering the entire facts and circumstances of this case, submissions made by learned counsel for the parties, grounds raised by petitioner in writ petition with regard to jurisdiction of Authority of lodging complaint during pendency of appeal cannot be entertained. I do not find any merits in this writ petition. Petition is liable to be and is hereby dismissed. However, petitioner can raise all the grounds available to him under law, in appeal and to be decided by the Court strictly in accordance with law.
8. For the foregoing reasons, writ petition deserves to be and is accordingly dismissed being sans merits.

Sd/-
(Parth Prateem Sahu)
Judge

Jamal/-