



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.11.2021

DELIVERED ON : 26.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

CrI.O.P.No.821 of 2015

and

M.P.No.1 of 2015

1. R.Mohan
2. R.Ramanarayanan
3. S.Arul Antony
4. N.Ganesan

..Petitioners/A2 to A5

Vs.

The Tamil Nadu Pollution Control Board,
Rep. by its District Environmental Engineer,
Coimbatore (South), K.Ravichandran,
42-D, S.N.R. College Road,
Peelamedu, Coimbatore - 641 004.

..Respondent

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., seeking to call for the records in C.C.No.771 of 2014 and to set aside the docket order dated 26.12.2014, passed by the learned Judicial Magistrate VI, Coimbatore in C.C.No.771 of 2014.

For Petitioners : Mr.M.Aravind Subramaniam

For Respondent : Ms.Shanmugavalli Sekar

O R D E R

Against the summons issued under Section 204 Cr.P.C. by the learned Judicial Magistrate VI, Coimbatore in C.C.No.771 of 2014 dated 26.12.2014, the petitioners are before this Court seeking to set aside the order issuing summons.

2. The brief facts leading to filing of this petition is that, A1 in this case, one M/s.Sree Daksha Property Developers (India) P Ltd., was engaged in the construction of residential flats in S.F.Nos.624/3A1, 624/3C etc., in Vadavalli Village, Coimbatore South Taluk, Coimbatore District. The petitioners herein are the Managing Director and other Directors of the first accused company.



3. The respondent/complainant, Tamil Nadu Pollution Control Board, has filed a complaint, for offences under Section 15 r/w Section 16 and 19(a) of the Environment (Protection) Act, 1986, on the ground that without obtaining prior environmental clearance, neither from the Central Government, nor from the State Level Environment Impact Assessment Authority, the first accused company constructed building in more than 20,000 square meters area, which is in violation of the Environmental Impact Assessment Notification, 2006, dated 14.09.2006, thereby, they have committed an offence under Section 15(1) r/w Section 16(1) of the Environment (Protection) Act, 1986.

4. The complaint has been filed against the company (A1) and the Public Relation Officer of A1 company one Mr.M.Ganesh. In the complaint it is alleged that the above said Mr.M.Ganesh was the Authorised Signatory of A1 company and he is directly in-charge for the conduct of its business and responsible for the day-to-day affairs and administration of first accused company. However, while taking cognizance, the learned Judicial Magistrate VI, Coimbatore issued process to the petitioners herein also, who are all Managing Director and other Directors of the company. Now, challenging the above order of the learned Judicial Magistrate taking cognizance against the petitioners and issuing summons, the present quash petition has been filed.

5. Mr.M.Aravind Subramaniam, learned counsel appearing for the petitioners submitted that, even though the petitioners are Managing Director and other Directors of the company, absolutely there is no averment in the complaint that, they are also directly in-charge and responsible for the conduct of the business of the company at the time the offence was committed and in the absence of any such averment, the petitioners cannot be made vicariously liable for any offence said to have been committed by A1, company.

6. The learned counsel further submitted that, the complaint itself specifically stated that only one Mr.M.Ganesh now arrayed as A6, alone was directly in-charge of the conduct of business and responsible for the day-to-day affairs of the administration of the first accused company. In such circumstances, without any material whatsoever, the learned Judicial Magistrate ought not to have taken cognizance against the petitioners and issue process against them. Hence the summons issued against the petitioners is liable to be quashed.

7. Per contra, Ms.Shanmugavalli Sekar, learned counsel appearing for the respondent would submit that admittedly the petitioners are Managing Directors and other Directors of the company. They are also directly in-charge of the conduct of the business and responsible for the day-to-day affairs and



administration of the first accused company. In such circumstances, the learned Judicial Magistrate on perusing the materials available on record has taken cognizance of the offence against the petitioners and issued summons. Hence, there is no irregularity in it.

8. I have considered the rival submissions and also perused the records carefully.

9. Before considering the rival submissions, it is useful to extract the order passed by the learned Judicial Magistrate, which is impugned in this quash petition:

"26.12.2014 CC.No.771/14

Counsel present, represented, heard,
records perused, prima facie case is made out
against the accused, Issue Summons to the

A1 Company - Shree Daksha Property
Developers (India) P.Ltd.,

A2 R.Mohan (M.D.)

A3 R.Ramanarayanan (Director)

A4 S.Arul Antony (Director)

A5 N.Ganesh (Director)

A6 M.Ganesh (PRO)

PPF, the I.O. Police M.S.Vadavalli directed
to serve the summons to all accused for the
offence computed under Section 15, 16 r/w 19(a)
of the Environment (Protection) Act, 1986.

At request of counsel short date given

C/o 08.01.2015."

10. It is settled law that, before taking cognizance of the offence and issuing process, the Judicial Magistrate should satisfy himself that there is sufficient ground available in the complaint or there are materials along with the complaint, for proceeding against the accused. That apart, the orders of the Judicial Magistrate taking cognizance should reflect that, he has applied his mind and satisfied from the materials available on record, a cognizable offence is made out against the accused, which is sufficient to initiate the proceedings against them, though the Judicial Magistrate is not expected to give any elaborate reason, the order should reflect that he has carefully considered the materials brought on record and has examined the nature of allegations made in the complaint placed before him.

11. Under Section 16 of the Environment (Protection) Act, 1986, where any offence is committed by the company, every person who, at that time the offence was committed, was directly in-charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and they shall be



liable to be prosecuted. By virtue of the deeming fiction created under Section 16 of the Act, any person in-charge of and responsible for the conduct of the company would also vicariously liable. For that, there must be a specific averment is necessary in the complaint showing that the petitioners are in-charge of and responsible for the day-to-day affairs of company. From the complaint, filed by the respondent, it could be seen that the petitioners were not shown as the accused, and absolutely there is no averment in the complaint that they are also in-charge and responsible to the day-to-day affairs of the company. In Para 3 of the complaint, it is specifically stated that, one Mr.M.Ganesh, who is now arrayed as A6, alone is the authorised signatory and he alone directly in-charge of the conduct of business and responsible for the day-to-day affairs and administration of the first accused company. The relevant portion of the complaint reads as follows:

"3.....The 2nd accused is the Authorized Signatory of the 1st Accused and he is directly incharge for the conduct of its business and responsible for the day to day affairs and administration of the 1st accused company."

12. Considering these circumstances, in the absence of any allegations regarding the involvement of the petitioners in the commission of offence, the petitioners cannot be prosecuted for the offence committed by the company, merely on the ground that they are the directors of the company.

13. In this regard, it is useful to refer to the the judgment of the Hon'ble Supreme Court, in Pepsi Foods Ltd. v. Special Judicial Magistrate reported in 1998(5) SCC 749, in paragraph 28, the Hon'ble Supreme Court has held as follows:

"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



would be bad in law if the reason given turns out to be ex facie incorrect."

15. In the instant case, the learned Judicial Magistrate, without any material, and without any basis, proceeded against the petitioners. Absolutely no reason has been stated for coming to a conclusion that there is a prima facie case made out against the petitioners. Considering the above circumstance, this Court is of the considered view that, in total non application of mind, the learned Judicial Magistrate has taken cognizance of the offence against the petitioners and has issued summons to them. Hence, the impugned order dated 26.12.2014, made in C.C.No.771 of 2014, on the file of the learned Judicial Magistrate VI, Coimbatore, is liable to be quashed and accordingly the same is quashed.

16. In the result, the criminal original petition is allowed. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

kk

To

The Judicial Magistrate VI,
Coimbatore.

+1cc to Mr.Shanmugavalli Sekar, Advocate, S.R.No.61432

+1cc to Mr.M.Aravind Subramaniam, Advocate, S.R.No.61434

Cr1.O.P.No.821 of 2015
and
M.P.No.1 of 2015

KV(CO)
RGA(08/12/2021)