

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO.910 OF 2021

Sunil s/o Baburao Mendhe

Vs.

The State of Maharashtra through Sub Divisional Police Officer, Bhandara,
District Bhandara

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. N. B. Kalwaghe, Advocate for petitioner.

Mr. I. J. Damle, APP for respondent/State.

CORAM : AVINASH G. GHAROTE, J.

DATE : 25/02/2022

Heard Mr. Kalwaghe, learned counsel for the
petitioner and Mr. Damle, learned APP for
respondent/State.

2. The petition challenges the order dated 20.03.2021, passed by the learned Additional Chief Judicial Magistrate, Bhandara, whereby the petitioner was directed to remain present for framing of charge and the subsequent judgment dated 04.09.2021, passed by the learned Sessions Court, Bhandara, dismissing the revision challenging the aforesaid order.

3. Mr. Kalwaghe, learned counsel for the petitioner by inviting my attention to the complaint, contends that the learned Magistrate could not have taken cognizance of the same, as it was filed by the SDPO, Bhandara, who was not a person as contemplated by Section 19 (a) of the Environment (Protection) Act,

1986 ("EP Act" for short). The order dated 02.02.2022 records the nature of dispute in the present petition as under:

"2] Heard Mr. Kalwaghe, learned counsel for the petitioner, who contends that the complaint filed by the SDPO/respondent was without jurisdiction, as Section 19 (a) of the Environment (Protection) Act, 1986, permits cognizance of offences only by way of a complaint made by the Central Government or any authority or officer authorized in this behalf and by inviting my attention to the notification dated 16.4.1987 (page 108), it is submitted that the respondent does not fall within the categories 1 to 5 listed therein. He further contends that the cognizance of offence can be taken by a Court under clause 19(b) of the Environment (Protection) Act, 1986, on the complaint by a person who has given a notice of not less than 60 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 authorized as per Section 19(a) of the said Act and contends that there is no notice as contemplated by Section 19(b) of the said Act on record. For these reasons it is submitted that the Court therefore under Section 19 of the said Act was barred from taking cognizance of the complaint. He further contends that the communication dated 23.9.2016 (page 28) issued by the Superintendent of Police, Bhandara in favour of the respondent cannot be considered to be an authorization which will fulfill the requirement of Sec 19(a) of the Environment (Protection) Act, 1986 and therefore, the contention that the FIR was permissible to be filed under the said authorization is equally without substance. It is further contended that the notification dated 6.5.2016 was not under the provisions of the Environment (Protection) Act, 1986, but under the Maharashtra Police Act and as such did not satisfy the requirement of Sec 19(a) of the Environment (Protection) Act, 1986, on which count also the lodging of the complaint was infirm and the reliance placed by the learned Sessions Court upon the authorization letter dated 23.9.2016 (page 28) was clearly infirm, considering which issue notice to the respondent returnable on 09.02.2022."

4. Mr. Damle, learned APP for respondent/State opposes the petition and relies upon the notification dated 16.04.1987 at page 108 and the notification dated 06.05.2016 in support of his contention that the learned SDPO is the authorised Officer to institute the complaint and the directions issued by the learned Division Bench in ***PIL No.173 of 2010, Dr. Mahesh Vijay Bedekar Vs. State of Maharashtra and others, decided on 16.08.2016***, in pursuance to which, it is contended that the prosecution has been lodged.

5. It is not disputed, that the complaint has been filed by SDPO, Bhandara. The notification dated 16.04.1987, as amended from time to time, appoints the Collector as the authority or authorised Officer under Section 19(a) of the EP Act to file complaint. Admittedly, the SDPO is not a person authorised to file a complaint under Section 19(a) of the EP Act under the notification dated 16.04.1987. The notification dated 06.05.2016 (page 30) relied upon by Mr. Damle, learned APP for respondent, is not a notification under the provisions of the EP Act but is a notification under the Bombay Police Act and is thus of no avail. The directions, as contained in ***PIL No.173 of 2010*** (supra) have to be construed in light of the Section 19 (a) and (b) of the EP Act, which require cognizance to be taken by the Court only if the requirements as contemplated under Section 19 (a) or (b) are satisfied. It cannot be said that the directions have to be enforced dehors of the provisions of Section

19 of the EP Act. Since the provisions of Section 19 (a) are not attracted, Mr. Damle, learned APP for respondent falls back upon the provisions of Section 19(b), for which he relies upon the communication dated 04.08.2017 (page 68) which is a notice by the SDPO, to the petitioner.

6. A perusal of Section 19(b) of the EP Act would demonstrate that a notice as required to be issued before a complaint can be taken cognizance of by the Court, has to be in the manner prescribed, and to the Central Government. Rule 11 of the EP Rules 1986, indicate the manner of giving the notice and Rule 11(1) requires that such a notice shall be in writing in Form IV. Rule 11 (2)(b) further requires that such a notice is not to be given to the person accused of an offence, but in case the offence has taken place in a State to the entities stated in sub-clauses A to C therein. Admittedly, the notice dated 04.08.2017 does not comply with the requirements of Rule 11, neither it is in Form IV considering which, no assistance can be placed by the learned APP upon the same.

7. In view of the above discussion, it is clearly apparent that there is absolutely no compliance of the requirements of Section 19 of the EP Act. It is further material to note Section 19 starts with a prohibition that no Court shall take cognizance of any offence under the Act, except on a complaint made by the persons as

provided in sub-clauses A and B thereunder. The reliance placed upon the definition of the word “authority” as occurring in Section 2 (c) of the Noise Pollution (Regulation and Control) Rules, 2000, in support of his submission regarding maintainability of the complaint by learned APP is clearly misplaced, for the reason that under Rule 7 of the aforesaid Rules, the authority is merely empowered to entertain a complaint in case the noise levels cross the ambient noise standards. In fact, Rule 7 (2) enjoins upon the authority as defined in Rule (2) (c) of the Noise Pollution Rules to take action against the violator in accordance with the provisions of the said Rules and with any other law in force. It is material to note, that these rules have been framed in exercise of the powers conferred by clause (ii) of sub-section (2) of Section 3, sub-section (1) and clause (b) of sub-section (2) of Section 6 and Section 25 of the EP Act and therefore, would be subservient to Section 19 in the matter of taking cognizance. This being the position, in my considered opinion, the order dated 20.03.2021 passed by the learned Additional Chief Judicial Magistrate, Bhandara as well as the judgment passed by the learned Sessions Court, Bhandara dated 04.09.2021, cannot be sustained and it is held that the complaint as filed by the learned SDPO, at page 28, is not maintainable, in view of non-compliance of the provisions of Section 19 (b) of the EP Act.

(6)

34.wp.910.2021

8. The writ petition is accordingly allowed in the above terms. No costs.

JUDGE

Sarkate