

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Date of Decision: April 19th, 2022

1.

CRM-M-9959 of 2021 (O&M)

Dipti Jain and another

.... Petitioners

Versus

Haryana State Pollution Control Board

... Respondent

. . .

2.

CRM-M-25792 of 2021 (O&M)

M/s Vardhaman Spinners & others

.... Petitioners

Versus

Haryana State Pollution Control Board

... Respondent

.. . . .

CORAM: HON'BLE MR. JUSTICE SANT PARKASH

Present: Mr. J.S.Toor, Advocate
for the petitioners.

Mr. Deepak Sabharwal, Advocate
for the respondent.

SANT PARKASH, J.

This judgment shall dispose of afore-mentioned two petitions as they arise out of the same complaint and involve similar questions of facts and law.

Both the petitions have been preferred under Section 482

Cr.P.C. seeking quashing of criminal Complaint No.24/2019 dated

11.07.2019 filed under Section 43/ 44 for violation of Section 24/25 of Water (Prevention & Control of Pollution) Act, 1974 (for short, 'Water Act') and Sections 37 for violation of Section 21 of Air (Prevention & Control of Pollution) Act, 1981 (for short, 'AIR Act'), pending before the Court of Sh.Pracheta Singh, Presiding Officer, Special Environment Court, Kurukshetra and also for quashing summoning order dated 06.02.2020 qua the petitioners.

Brief facts leading to the present case are that a partnership Firm M/s Vardhman Spinners (hereinafter referred to as, 'Firm') was engaged in the business of manufacturing and trading of all types of yarns, blankets, loyee, shawls etc. Earlier four partners namely Ajay Jain, Anand Kumar Jain, Raman Jain and Rahul Jain were the partners and later on, three partners except Ajay Kumar Jain left the Firm and in their place, petitioners along with Hemant Jain entered into the above mentioned Firm on 01.04.2011, being partners in place of its earlier partners. Copies of partnership deeds dated 04.05.2009 and 01.04.2011 are annexed with the file as Annexures P-1 and P-2, respectively. A unit of the said Firm was established at Barsat Road, Bhainswal, Panipat in 2009 and a show cause notice dated 24.07.2018 (Annexure P-5) was issued to the Firm by Regional Officer, Panipat Region, Haryana State Pollution Control Board (hereinafter referred to as, 'Board') with the alleged substantive fact that the said unit of the Firm was visited by the officer of respondent on 19.03.2018 and the said unit was found discharging trade effluent directly on open land and the unit was also found to have established and operated without obtaining prior Consent to Establish (hereinafter referred to as, 'CTE') and Consent to Operate (hereinafter referred to as, 'CTO'). In response thereto, a reply dated 30.07.2018 (Annexure P-6) was submitted on behalf of the Firm with

the submission that no effluent as well as water had been discharged from the said unit run by the Firm. Another show cause notice dated 16.08.2018 (Annexure P-7) was issued by Regional Officer, Panipat Region of the respondent Board, alleging therein that the site was inspected by the Field Officer on 14.08.2018 along with complainant and unit was found engaged in discharge of untreated effluent and no CTE and CTO had been obtained by the unit. Thereafter, the said unit of the Firm was visited by an officer of the Board, who apprised that a complaint had been received against the unit of the Firm and the officer needed signature of any representative of the Firm, in order to send the reply to the complaint against the Firm. Pursuant to that, signatures of Ajay Kumar Jain, one of the partners of the Firm were obtained on some blank proformas on the pretext of mere formality for the inspection. Thereafter, an order of closure dated 13.09.2018 (Annexure P-8) was passed, pursuant to which, the said unit of the Firm was sealed on 19.09.2018 (Annexure P-9) and the impugned complaint dated 11.07.2019 (Annexure P-3) was filed against the petitioners, wherein the trial court took cognizance on 06.02.2020 against the petitioners and issued the summoning order dated 06.02.2020 (Annexure P-4), whereby all the said accused persons have been summoned to face trial under Sections 24 and 25 read with Sections 43 and 44 of Water Act and under Section 21 read with 37 of the AIR Act.

It is contended by learned counsel for the petitioners that the petitioners, Dipti jain and Shashi Jain, can not be held responsible for the alleged violation as mentioned in the impugned complaint as they have no concern with the day to day affairs/activities of the unit of the Firm. In the complaint itself, it has nowhere been mentioned that they are responsible to

been categorically mentioned therein that the accused No.2 and 3 (Ajay Jain and Hemant Jain) are having day to day control over business, management and working of the Firm. A letter dated 24.09.2018 issued by Joint Director, District Industries Centre, Panipat showing the detail of partners in the accused No.1-Firm is enclosed as Annexure C-5, which is the proof of the ownership of said unit and copy of acknowledgment of Excise and Taxation Officer -cum- Proper Officer, Ward-2, Panipat regarding enrolment of existing taxpayer showing taxpayer trade name M/s Vardhman Spinners, Barsat Road, Bhainswal, Panipat is attached as Annexure C-6 with the impugned complaint.

It is further contended that a perusal of Section 47 of Water Act and Section 40 of the AIR Act would make it clear that only those who are directly in charge of the process/operation are responsible for the violations.

Learned counsel further contends that learned trial Court has miserably failed to observe that inspection reports dated 19.03.2018 and 14.08.2018 as mentioned in the show cause notices dated 24.07.2018 and 16.08.2018 (Annexures P-5 and P-7 respectively) have not been attached with the impugned complaint and further that the alleged inspection was conducted on 29.08.2018 after issuance of both the aforesaid show cause notices. A perusal of the inspection report dated 29.08.2018 makes it clear that samples were not collected as per provisions of Section 21 of the Water Act, which mandates to afford/provide an opportunity to the representative/owner of the unit in regard to whether he wants to send the sample to the State Laboratory. As no such opportunity was afforded, the resultant analysis report is inadmissible in evidence and no offence under Section 43 of Water Act in violation of Section 24 of the same Act is made

out. Further, signatures of one of the partners were obtained on blank

proformas by the officer of the respondent and all the contents were recorded later on by the said officer and because of this reason, serial Nos.21, 22 and 23 of the inspection report were left blank.

Learned counsel also contends that after getting the notices and closure order from the respondent, the unit has been closed by the Firm despite the fact that it affects livelihood of the partners of the Firm as well as more than hundreds of workers. The said Firm has already started the process of setting up a new unit at some other place and with regard to the same, all requisite statutory permissions from all the departments of the Haryana Government as well as from the respondent Board have already been initiated and even No Objection Certificate from the Senior Town Planner, Panchkula (Annexure P-10) has already been obtained. Therefore, learned counsel requests this Court that while deciding the present petition, heavy financial loss caused to the Firm due to the dismantling of the unit involved may also be considered.

In response thereto, reply on behalf of the respondent Board has been filed and the same is already on record.

Learned counsel for the respondent while opposing the aforesaid submissions made on behalf of the petitioners, contends that the impugned complaint has been filed on the basis of partnership deed dated 01.04.2011, duly confirmed by the Joint Director, District Industries Centre vide memo No.DIC/PNP/1539 dated 24.09.2018 and as per the said partnership deed, the petitioners being partners of the said unit, along with other partners are liable to be prosecuted for the violation(s) found during the inspections conducted by the officers of Board.

He further contends that the petitioner unit was covered under

Industries as per policy order dated 26.02.2018 and required to obtain Consent to Establish and Consent to Operate, prior to the establishment and operation of the unit as per the provisions of Water Act and AIR Act, which the said Firm did not comply with. Reply dated 30.07.2018 filed on behalf of the unit in pursuance of the show cause notices dated 21.03.2018 and 24.07.2018, was not found satisfactory and hence, again a show cause notice dated 16.08.2020 was issued. On 29.08.2018, the said unit was again visited and the sample of the industrial effluent was collected after following due provisions of Section 21 of the Water Act. However, sample of air emissions of the stack was not collected because unit had not provided the sampling facility on the stack attached to Boiler having capacity of 3 TPH.

Learned counsel further contends that show cause notices were issued to the petitioners after providing due opportunity of being heard vide letters bearing No.2892 dated 21.03.2018, 1205 dated 24.07.2018 and 1460 dated 16.08.2018 i.e. Annexure R-2 (colly) and it was only thereafter, that the closure order dated 13.09.2018 was issued and impugned complaint was filed after following provisions of the Water Act and AIR Act.

I have heard learned counsel for the parties and gone through the case file.

The petitioners being partners of Firm, “M/s Vardhman Spinners, Barsat Road, Bhainswal, Panipat” are accused in impugned complaint filed for the alleged offence under Section 43/44 for violation of Section 24/25 of the Water Act and under Section 37 for violation of Section 21 of the AIR Act. The *de facto* complainant filed a complaint before the concerned jurisdictional Magistrate who took cognizance of the same and the impugned summoning order was passed.

it is the specific and un rebutted stand of the petitioners that after getting the notices and closure order from the respondent – Board, the unit of the Firm has been closed.

For proper adjudication of the matter in controversy, relevant provisions of the Water Act and AIR Act need to be gone into. Sections 24, 25, 43 and 44 of the Water Act are reproduced below:-

“24. Prohibition on use of stream or well for disposal of polluting matter, etc.- (1) Subject to the provisions of this section.-

- (a) no person shall knowingly cause or permit any poisonous, noxious or polluting matter determined in accordance with such standards as may be laid down by the State Board to enter (whether directly or indirectly) into any stream or well or sewer or on land; or
- (b) no person shall knowingly cause or permit to enter into any stream any other matter which may tend, either directly or in combination with similar matters, to impede the proper flow of the water of the stream in a manner leading or likely to lead to a substantial aggravation of pollution due to other cause or of its consequences.

(2) A person shall not be guilty of an offence under sub-section (1), by reason only of having done or caused to be done any of the following acts, namely:-

- (a) constructing, improving or maintaining in or across or on the bank or bed of any stream any building,

bridge, weir, dam, sluice, dock, pier, drain or sewer or other permanent works which he has a right to construct, improve or maintain;

- (b) depositing any materials on the bank or in the bed of any stream for the purpose of reclaiming land or for supporting, repairing or protecting the bank or bed of such stream provided such materials are not capable of polluting such stream;
- (c) putting into any stream any sand or gravel or other natural deposit which has flowed from or been deposited by the current of such stream;
- (d) causing or permitting with the consent of the State Board, the deposit accumulated in a well, pond or reservoir to enter into any stream.

(3) The State Government may, after consultation with, or on the recommendation of, the State Board, exempt, by notification in the Official Gazette, any person from the operation of sub-section (1) subject to such conditions, if any, as may be specified in the notification and any condition so specified may be a like notification be altered, varied or amended.

25. Restrictions on new outlets and new discharges.- (1)

Subject to the provisions of this section, no person shall, without the previous consent of the State Board.-

- (a) establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition

thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land (such discharge being hereafter in this section referred to as discharge of sewage); or

- (b) bring into use any new or altered outlet for the discharge of sewage; or
- (c) begin to make any new discharge of sewage:

Provided that a person in the process of taking any steps to establish any industry, operation or process immediately before the commencement of the Water (Prevention and Control of Pollution) Amendment Act, 1988, for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent, within the said period of three months, till the disposal of such application.

(2) An application for consent of the State Board under sub-section (1) shall be made in such form, contain such particulars and shall be accompanied by such fees as may be prescribed.

(3) The State Board may make such inquiry as it may deem fit in respect of the application for consent referred to in sub-section (1) and in making any such inquiry shall follow such procedure as may be prescribed.

(4) The State Board may—

- (a) grant its consent referred to in sub-section

- (1) subject to such conditions as it may impose,

being—

- (i) in cases referred to in clauses (a) and (b) of subsection (1) of section 25, conditions as to the point of discharge of sewage or as to the use of that outlet or any other outlet for discharge of sewage;
 - (ii) in the case of a new discharge, conditions as to the nature and composition, temperature, volume or rate of discharge of the effluent from the land or premises from which the discharge or new discharge is to be made; and
 - (iii) that the consent will be valid only for such period as may be specified in the order, and any such conditions imposed shall be binding on any person establishing or taking any steps to establish any industry, operation or process, or treatment and disposal system of extension or addition thereto, or using the new or altered outlet, or discharging the effluent from the land or premises aforesaid; or
- (b) refuse such consent for reasons to be recorded in writing.
- (5) Where, without the consent of the State Board, any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, is established, or any steps for such establishment have been taken or a new or altered outlet is brought into use for the discharge of sewage or a new discharge of sewage is made, the State Board may serve on the person who has established or taken steps to establish

any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, or using the outlet, or making the discharge, as the case may be, a notice imposing any such conditions as it might have imposed on an application for its consent in respect of such establishment, such outlet or discharge.

(6) Every State Board shall maintain a register containing particulars of the conditions imposed under this section and so much of the register as relates to any outlet, or to any effluent, from any land or premises shall be open to inspection at all reasonable hours by any person interested in, or affected by such outlet, land or premises, as the case may be, or by any person authorised by him in this behalf and the conditions so contained in such register shall be conclusive proof that the consent was granted subject to such conditions.

(7) The consent referred to in sub-section (1) shall, unless given or refused earlier, be deemed to have been given unconditionally on the expiry of a period of four months of the making of an application in this behalf complete in all respects to the State Board.

(8) For the purposes of this section and sections 27 and 30,—

(a) the expression “new or altered outlet” means any outlet which is wholly or partly constructed on or after the commencement of this Act or which (whether so constructed or not) is substantially altered after such commencement;

(b) the expression “new discharge” means a discharge which is not, as respects the nature and composition, temperature, volume, and rate of discharge of the effluent substantially a continuation of a discharge made within the preceding twelve months (whether by the same or a different outlet), so however that a discharge which is in other respects a continuation of previous discharge made as aforesaid shall not be deemed to be a new discharge by reason of any reduction of the temperature or volume or rate of discharge of the effluent as compared with the previous discharge.

xx

xx

xx

43. Penalty for contravention of provisions of section 24.- whoever contravenes the provisions of section 24 shall be punishable with imprisonment for a term which shall not be less than one year and six months but which may extend to six years and with fine.

44. Penalty for contravention of section 25 or section 26.- Whoever contravenes the provisions of section 25 or section 26 shall be punishable with imprisonment for a term which shall not be less than one year and six months but which may extend to six years and with fine.”

Similarly, Sections 21, 37 and 40 of the AIR Act are reproduced below:-

21. Restrictions on use of certain industrial plants.— (1)

Subject to the provisions of this section, no person shall,

without the previous consent of the State Board, establish or operate any industrial plant in an air pollution control area:

Provided that a person operating any industrial plant in any air pollution control area immediately before the commencement of section 9 of the Air (Prevention and Control of Pollution) Amendment Act, 1987 (47 of 1987), for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent within the said period of three months, till the disposal of such application.

(2) An application for consent of the State Board under sub-section (1) shall be accompanied by such fees as may be prescribed and shall be made in the prescribed form and shall contain the particulars of the industrial plant and such other particulars as may be prescribed:

Provided that where any person, immediately before the declaration of any area as an air pollution control area, operates in such area any industrial plant, such person shall make the application under this sub-section within such period (being not less than three months from the date of such declaration) as may be prescribed and where such person makes such application, he shall be deemed to be operating such industrial plant with the consent of the State Board until the consent applied for has been refused.

(3) The State Board may make such inquiry as it may deem fit in respect of the application for consent referred to in sub-

section (1) and in making any such inquiry, shall follow such procedure as may be prescribed.

(4) Within a period of four months after the receipt of the application for consent referred to in sub-section (1), the State Board shall, by order in writing, and for reasons to be recorded in the order, grant the consent applied for subject to such conditions and for such period as may be specified in the order, or refuse such consent:

Provided that it shall be open to the State Board to cancel such consent before the expiry of the period for which it is granted or refuse further consent after such expiry if the conditions subject to which such consent has been granted are not fulfilled:

Provided further that before cancelling a consent or refusing a further consent under the first proviso, a reasonable opportunity of being heard shall be given to the person concerned.

(5) Every person to whom consent has been granted by the State Board under sub-section (4), shall comply with the following conditions, namely:—

- (i) the control equipment of such specifications as the State Board may approve in this behalf shall be installed and operated in the premises where the industry is carried on or proposed to be carried on;
- (ii) the existing control equipment, if any, shall be altered or replaced in accordance with the directions of the State Board;

- [\(iii\)](#) the control equipment referred to in clause (i) or clause (ii) shall be kept at all times in good running condition;
- [\(iv\)](#) chimney, wherever necessary, of such specifications as the State Board may approve in this behalf shall be erected or re-erected in such premises;
- [\(v\)](#) such other conditions as the State Board may specify in this behalf; and
- [\(vi\)](#) the conditions referred to in clauses (i), (ii) and (iv) shall be complied with within such period as the State Board may specify in this behalf:

Provided that in the case of a person operating any industrial plant in an air pollution control area immediately before the date of declaration of such area as an air pollution control area, the period so specified shall not be less than six months:

Provided further that—

- [\(a\)](#) after the installation of any control equipment in accordance with the specifications under clause (i),
or
- [\(b\)](#) after the alteration or replacement of any control equipment in accordance with the directions of the State Board under clause (ii), or
- [\(c\)](#) after the erection or re-erection of any chimney under clause (iv), no control equipment or chimney

shall be altered or replaced or, as the case may be, erected or re-erected except with the previous approval of the State Board.

(6) If due to any technological improvement or otherwise the State Board is of opinion that all or any of the conditions referred in to sub-section (5) require or requires variation (including the change of any control equipment, either in whole or in part), the State Board shall, after giving the person to whom consent has been granted an opportunity of being heard, vary all or any of such conditions and thereupon such person shall be bound to comply with the conditions as so varied.

(7) Where a person to whom consent has been granted by the State Board under sub-section (4) transfers his interest in the industry to any other person, such consent shall be deemed to have been granted to such other person and he shall be bound to comply with all the conditions subject to which it was granted as if the consent was granted to him originally.

xx xx xx

37. Failure to comply with the provisions of section 21 or section 22 or with the directions issued under section 31A.—

(1) Whoever fails to comply with the provisions of section 21 or section 22 or directions issued under section 31A, shall, in respect of each such failure, be punishable with imprisonment for a term which shall not be less than one year and six months but which may extend to six years and with fine, and in case the failure continues, with an additional fine which may extend to

five thousand rupees for every day during which such failure continues after the conviction for the first such failure.

(2) If the failure referred to in sub-section (1) continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which shall not be less than two years but which may extend to seven years and with fine.

XX XX XX

40. Offences by companies.— (1) Where an offence under this Act has been committed by a company, every person who, at the 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 shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence

and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) “company” means any body corporate, and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.”

Further, it would also be relevant to take note of Section 141 of Negotiable Instruments Act, 1881 (for short, ‘NI Act’), which is reproduced here-in-below:-

141 Offences by companies. —

(1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was 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 shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence:

Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial

corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.— For the purposes of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

Undoubtedly, Explanations appended to Section 141 of the NI Act and Section 40 of the AIR Act, uses the expression "company" so as to include a firm or association of persons. It is necessary to bear in mind the principle of law that a partnership is a compendious expression to denote the partners who comprise of the firm. The first principle of the interpretation is that when the language of the provision is clear, it has to be read as it is without any external aid. Secondly, when the legislature in its wisdom intends to cast a specific meaning to the expression and the words casting such specific meaning are clear and unequivocal, they must be given its due and appropriate meaning. Keeping in view the purpose and/or the object to

be achieved, the legislature may provide different meanings and attributes to

the same expression in different statutes. The words "company" means any body corporate....." used in section 141 indicate that the legislature was conscious that "company" is a body corporate and thereafter it proceeded to state "and includes a firm...", indicating its intention to include a firm amongst other entities in explanation (a) to section 141 of the N.I. Act and Explanation (b) to Section 40 of AIR Act. The clear legislative intent is again demonstrated in clause (b) of the above explanation when it defines directors in relation to a firm, to mean a partner in the firm. The expression "firm" used in Explanation (b) to Section 40 of AIR Act is not to be understood in the limited sense of it being only a juristic person but would include even non juristic persons as intended by the legislature.

Now, the first and foremost point to be noted is that both the AIR Act and Water Act contain provisions/sections for prosecution of the persons who were in charge of and were responsible to the firm for the conduct of its business. Section 40 of the AIR Act clearly states that where an offence is committed by a firm that every person, who was directly in charge of and was responsible for the conduct of its business can be prosecuted. Therefore, a plain language interpretation of this section would show that the person who is charged with the offence must be “directly in charge of the affairs of firm” and should be responsible to it for the conduct of its business. A reading of the section makes it clear that only if a person is “directly” in charge of the affairs of the firm and the said affairs of the firm lead to the actual commission of the offence, then only he can be charged. It is a settled proposition of law that every person connected with business of the firm or holding an office in the firm cannot be made liable. The liability would arise when the person was in charge of and responsible for the conduct of the business at the time the offence was committed. Mere holding

of an office is not the criteria. The person should be connected with the affairs of the firm and also connected with business of the firm that leads to the commission of the crime at that point of time. In the case in hand, there is no reference to the role of the petitioners in the entire complaint. As there are five accused including the Firm, the complaint should have spelt out with clarity the roles of each accused. The liability under criminal law would arise only if necessary averments are made in the complaint itself. By virtue of the office that the persons are holding, they cannot be made liable unless it is shown that they are personally responsible for conduct of the business and that this conduct of business lead to the offence. It is a settled legal proposition that liability arises on account of the conduct, act or omission on the part of the person and not merely on account of the office that he is holding. In the present case, respondent – Board has not pleaded or mentioned anything about the exact role that might have played by the petitioners. The statutory requirement is that a necessary averment should be made in the complaint of the exact role played by an accused before cognizance can be taken or process can be issued against him.

As regards the impugned summoning order, the trial court while taking cognizance of an offence should have applied its mind which should be visible from reading of the order. The complaint has been filed under the provisions of Water Act and AIR Act. The trial court must have examined the provisions of the Act before taking cognizance. The trial court should have been conscious of the fact that unless specific averments are there in the complaint itself about the role of the accused, cognizance cannot be taken. The trial court should have seen as to whether necessary ingredients are present to prosecute the Firm or its partners for the alleged offence. Moreover, adequate and proper notice was not given to take

cognizance of the alleged offence, which was the necessary ingredient of Section 24 of the Water Act.

Section 24 of the Water Act specifically provides for the knowledge by the offender of his actions, which is a conscious inclusion by the legislature, intending that a person who does not have the requisite knowledge about his action or the consequences could not be deemed to have contravened the provisions of Section 24 of the Water Act. The petitioners were not aware about the fact of discharging trade effluent beyond prescribed limit. No person shall knowingly cause or permit to enter into any stream or any other matter, which has the propensity to directly or in combination with other similar matters, to affect the proper flow of the water of the stream leading to or likely to lead to a substantial aggravation of pollution to its consequences. The legislative intent of Section 24 of the Water Act reflects that the mens rea or knowledge must be associated with the act. Violation of Section 24 is not an offence of strict liability whereby the mere act which is prohibited would constitute the offence in the absence of knowledge on the part of the doer that his actions were proscribed by Section 24. In this view of the matter, it can safely be held that the trial court did not apply its judicial mind before taking cognizance of the complaint against all the petitioners and passed the order in a mechanical manner.

Considering the complaint and version of the complaint as far as present petitioners are concerned, except the fact that they are partners, nothing is alleged. Besides, inspection reports dated 19.03.2018 and 14.08.2018 as mentioned in show cause notices dated 24.07.2018 and 16.08.2018 were not attached with the impugned complaint. Thus, it can be held that while taking cognizance of the impugned complaint and issuing summons to the petitioners, the trial court miserably failed to observe

contents of the inspection reports and analysis report dated 05.09.2018 (Annexure P-12). Another inspection was also conducted on 29.08.2018 after issuance of show cause notices, a perusal of which shows that Serial Nos.21, 22 and 23 of the report were blank. As per Section 21 of the Water Act, it is mandatory to afford/provide an opportunity to the representative/owner of the unit in regard to whether the concerned wants to send the sample to State Laboratory. However, in the present case, no such opportunity was afforded and resultantly, the analysis report is inadmissible. A valuable and indefeasible right of the petitioners to get the sample analysed from the State Laboratory was taken away by not affording such opportunity. It is the specific contention on behalf of the petitioners that signatures of one of the partners of the Firm were obtained on blank performae by the officer of the respondent – Board and all the contents were recorded lateron by the concerned officer. Perusal of the inspection report makes it evident that samples were not collected as per the provisions of Section 21 of the Water Act, thus, the same is inadmissible because of its procedural illegality.

In view of the aforesaid discussion, both the petitions are allowed. The impugned complaint do not survive and is accordingly quashed alongwith consequent proceedings, qua the petitioners. Impugned summoning order dated 06.02.2020 is also set aside. Miscellaneous application, if any, pending shall also stands closed.

**(Sant Parkash)
Judge**

April 19th, 2022
avin

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No