

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

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Date of decision: 18.05.2022

1. CRM-M-41277-2021 (O &M)

PANKAJ KUMAR

.... Petitioner

Versus

HARYANA STATE POLLUTION CONTROL BOARD .. Respondent

2. CRM-M-50459-2021 (O &M)

RASAMOY DAYAMOY CHAKRABORTY AND ORS

..Petitioners

Versus

HARYANA STATE POLLUTION CONTROL BOARD ...Respondent

3. CRM-M-50858-2021 (O &M)

NARINDER KUMAR VEDI AND ANR

..Petitioners

Versus

HARYANA STATE POLLUTION CONTROL BOARD ...Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present : Mr. Jagjot Singh, Advocate and
Mr. Kunal Dawar, Advocate
for the petitioners in all the petitions.

Mr. Sahil Gupta, Advocate
for the respondent
in case **CRM-M-50459-2021 and CRM-M-50858-2021.**

Mr. Pawan Girdhar, Advocate
for the respondent in case **CRM-M-41277-2021.**

SURESHWAR THAKUR, J. (ORAL)

1. Since the afore three petitions arise from a common thereto
complaint bearing no.25/20 dated 24.08.2020 titled *Haryana State*

Pollution Control Board Vs. M/s Imperial Auto Industries Ltd. and Ors., instituted before the Special Environment Court, Faridabad, therefore, all the above CRMs are amenable for a common verdict being made thereons.

2. The apposite complaint is carried in Annexure P-3, as becomes appended, with **CRM-M-41277-2021**, and, is titled as *Haryana State Pollution Control Board Vs M/s Imperial Auto Industries Ltd. and others*. In the petition complaint, it is averred that the private limited company nomenclatured as M/s Imperial Auto Industries Ltd., is engaged in the manufacturing of hose pipes.

3. The above private limited company becomes arrayed as co-respondent No. 1, in the petition complaint. Co-respondents No. 2 to 12 are also arrayed therein, as accused/as they respectively are the directors, CEOs, Company Secretary, of the above private limited company.

4. The learned Counsel for the petitioner, does not deny, the fact, that there are effluent discharges from the manufactory concerned. Therefore, obviously unless the effluent discharges are treated through the installation of a treatment plant, rather at the manufactory concerned, thereupon, there would be a breach of the mandate embodied in Sections 24 and 25 of Water (Prevention and Control of Pollution) Act, 1974, hereinafter referred to 'the Act'.

5. The respondent-complainant, had constituted the petition complaint against the accused named therein, and, it became anived, upon, an inspection report, and, the report of the analyst, both whereof reveal, that the discharge of effluents from the manufactory concerned,

hence polluting the adjoining thereto, water bodies/streams, thereupon, breach being caused to the provisions embodied in Section 24 and 25 of the Act (Supra).

6. After the institution of the petition complaint, before the learned Court concerned, and, after the recording of preliminary evidence, the accused named therein became summoned. The summoning order, has been challenged through the instant petitions.

7. The learned counsel appearing for the petitioner, has argued that since accused No. 1, had obtained the consent to operate, the manufactory hence per se thereupon, there was no necessity at all for treatment, through the installation of a treatment plant, qua therethrough treatment(s) being made of effluent discharges, as emanated from the manufactory concerned, and, also he proceeds to make an argument before this Court, that the consent to operate per se tantamounts to condonation(s), of the purportedly committed statutory breaches (supra) rather allegedly at the instance(s) of the accused concerned.

8. However, the above argument is completely misplaced, as the consent to operate can never be assigned any meaning, that if it ipso facto, completely condones the purported breaches visited qua apposite statutory provisions. The above inference becomes galvanized from the evident factum qua the manufactory being engaged in the manufacturing of hose pipes, in manufacturing processes whereof, rather evidently effluent discharges do occur, and, necessarily they were required to be treated through installation of a well capacitated ETP plant in the manufactory concerned. Even otherwise, the above

argument is shred of its efficacy, given rather at the manufactory concerned, an ETP Plant becoming installed.

9. However, irrespective of its' installation at the manufactory concerned, yet as unveiled, by the above inspection report, and, the report of the analyst, the effluent discharge(s) from manufactory concerned are not yet sufficiently treated, therefore, theirs making their intrusions into the water body concerned, hence, in the vicinity of the manufactory, and, ultimately leading to the apposite water bodies becoming purportedly polluted.

10. It is argued by the learned Counsel for the respondents, that the above dis affirmative report of the analyst qua the petitioner-accused, may appear to spur from the factum, that the ETP plant installed for the relevant purpose, at the manufactory, may be not be holding the imperative apposite treating capacity rather commensurate to discharge(s) therefroms rather of polluting effluents.

11. Be that as it may, the above is a matter of evidence, and, obviously, it cannot be determined by this Court.

12. The learned Counsel for the petitioner, has yet contended that in the learned Court concerned, rather summoning the accused concerned, he has not made an objective analysis qua the mandate carried in Section 47 of the Act, provisions whereof becomes extracted hereafter :-

“ 47. 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 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.

13. His above argument is rested upon the factum, that there was no prima facie evidence available before the learned Magistrate concerned, with respect to the mandate of sub section 1 of Section 47 of the Act, being disproved, in as much as, there was, also no material available before the learned Judge concerned, to make a conclusion, that all the natural persons, arrayed as accused, in the petition complaint, were incharge, and, were responsible to the company for the conduct, and, business of the company.

14. However, the vigor of above made argument also, becomes unhinged, as there are candid averments in respect thereof, in the petition complaint.

15. If the above averments are carried in the petition complaint, and, are prima facie, obviously in consonance with the mandate incorporated in sub section 1 of Section 47 of the Act, therefrom they are at this stage creditworthy, unless they are proved to

be false, and, or, are endeavoured to be not amenable for any credence becoming assigned thereto. Moreover, evidence to disprove the above averment(s), never existed before the learned trial Judge, nor exists before this Court, rather may only emerge when the trial in respect of the complaint offences hence opens, and, would not obviously surge forth either at the summoning stage or, at the pre-charge stage.

16. Necessarily, if evidence to disprove, the apposite averments, averments whereof are prima facie in consonance with the mandate carried in sub section 1 of Section 47 of the Act, can be adduced only upon opening of the trial in respect of the charge(s) drawn against the accused, thereupon, upto the arrival of the afore stage, evidence in disproof of the apposite averments, as, made in the petition complaint, can never arise nor can be argued to exist, nor any disputation of credence can become assigned to the apposite averments.

17. Moreover, as above stated, if any of the accused in the complaint claims the benefit of the proviso (supra) to sub section 1 of section 47 of the Act, then the evidence in consonance therewith, rather especially for rebutting the incriminating statutory presumption contemplated against them in sub section 1 of Section 47 of the Act, rather can become adduced only upon the opening of the trial, and, not earlier thereto.

18. However, if there is any credible evidence available with the petitioners, as, comprised, in the Memorandum of Association of the Private Limited Company, suggesting that not all the Directors/Officers of the Company, being in-charge of the Company

responsible for the conduct, and, business of the Company, but only some specifically named persons, being so in incharge, and, also being responsible to the Company for the conduct, and, business of the company, and, or, as, comprised in the existence of a resolution candidly pronouncing, that not all the natural persons arrayed as accused in the petition/complaint, became assigned the statutory duty concerned, but only some of them, hence, became assigned the apposite statutory duty. Therefore, even at the stage of drawing of a charge in respect of the petition complaint, it is open to the aggrieved accused to an anvil thereof, hence ask for their discharge. In case, the above motion is made before the learned trial Judge concerned, he shall proceed to in accordance with law make a decision thereon, and, if yet the accused are aggrieved, they may recourse appropriate remedies in accordance with law.

19. The summoning order(s) is/are upheld, and, the petitions are dismissed.

20. The afore observations are meant only for the disposal of the present petitions, and, shall not affect the merits of the trial arising from the complaint (supra).

18.05.2022
kavneet singh

(SURESHWAR THAKUR)
JUDGE

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*