

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

2023:PHHC:157773

CRM-M No.39837 of 2021
Reserved on: November 22nd, 2023
Pronounced on: December 7th, 2023

Umesh Rajaak

.....Petitioner

Versus

Punjab Pollution Control Board, Patiala

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Sunil Chadha, Senior Advocate
with Mr. Rahul Bhargava, Advocate
for the petitioner.

Mr. Aman Sharma, Advocate
for the respondent.

MANJARI NEHRU KAUL, J.

Petitioner has invoked the inherent jurisdiction of this Court under Section 482 Cr.P.C. for quashing of criminal complaint bearing No.COMA-20-2021 dated 20.04.2021 titled as 'Punjab Pollution Control Board Versus M/s Ansal Lotus Melange Projects Private Limited and others' filed under Sections 15 and 16 read with Section 19 of The Environment (Protection) Act, 1986 (hereinafter referred to as 'Act') and all the subsequent proceedings arising therefrom including the summoning order dated 28.07.2021 passed by learned Judicial Magistrate First Class, Kharar.

2. Submissions of learned senior counsel appearing for the petitioner:-

2 (i) That the petitioner has been erroneously summoned vide the impugned order; on a perusal of the complaint, which has been annexed as Annexure P-2, it is abundantly clear that the essential ingredients required to attract the offences alleged are absent therein.

2 (ii) That on a perusal of the complaint (Annexure P-2), it transpires that the petitioner has been arraigned as an accused on behalf of the company for contravening the provisions of EIA notification dated 14.09.2006. However, it is a matter of record and not disputed by the complainant-respondent that the purported violations/offences had taken place much prior to the year 2018, whereas the petitioner was appointed as an Additional/Non-Executive Director of M/s Ansal Lotus Melange Projects Private Limited (hereinafter referred to as 'company'), only on 20.11.2018. In support, learned senior counsel has drawn the attention of this Court to Annexure P-1 (Form No.DIR-12).

2 (iii) That on the asking of the respondent-complainant, although a list of Directors of the company had been provided to it but it only showed the names of the Directors of the company on that particular date; merely because the petitioner was a Director on the date when the list of Directors of the company was sought for by the respondent-complainant, he could not be held accountable in any manner for the alleged violations which had admittedly taken place prior to his joining as Director of the company.

2 (iv). That the complaint did not fulfill the twin conditions outlined under Section 16 of the Act, which was *pari materia* to Section 141 of the Negotiable Instruments Act. Being an additional Director, coupled with the fact that he was appointed only in the year 2018; petitioner was neither directly managing or overseeing the affairs of the company nor was he responsible for its operations when the alleged offence was committed.

3. A prayer has, therefore, been made for quashing of the complaint in question. In support, learned senior counsel has placed

reliance upon judgment of Hon'ble Gujarat High Court in *Shri Moosa Raza Versus State of Gujarat and another 2010 (3) CCR 418*.

4. Submissions of learned counsel appearing for the respondent.

4 (i). That the petitioner was the Director of the company, which had shown flagrant disregard for the environmental regulations and the provisions of law.

4 (ii). That initially, the company had been granted environmental clearance for a project spanning 69,388.316 square metres on 23.04.2008, however, subsequently the company, without seeking any additional clearance, expanded the operations of the project to encompass 104,388.87 square metres-an action which, on the face of it, was unlawful and significantly detrimental to the environment. The environmental damage has endured since the petitioner's company illegally expanded its project. The offence was ongoing, and the petitioner, as the Additional Director, had been profiting from the illegal expansion and violations committed by the company.

4 (iii). That the illegal expansion of the project had caused substantial and irreversible environmental harm, for which the sole responsibility was attributable to both the company and its Directors including the petitioner.

4 (iv). That when pointed inquiries were made from the company as to who all were responsible for the alleged violations, a comprehensive list of individuals responsible for the affairs of the company was received from it in their Terms of Reference (ToR) applications, which have been annexed as Annexures A-6, A-7, wherein the name of the petitioner finds mentioned as being one of

those responsible persons.

4 (v). That while highlighting the specific implication of the petitioner by the company itself, learned counsel has thus vehemently opposed the prayer made by the petitioner for quashing the complaint in question and has further argued that in the complaint, notably in paragraph 3, the pivotal role played by the petitioner in the day to day affairs of the company stands outlined, thereby satisfying the requisites stipulated in Section 16 of the Act.

4 (vi). That once there was compliance of Section 16 of the Act and specific allegations had been levelled against the petitioner in the complaint, the petitioner's plea regarding he not being in-charge of the affairs of the company was at best his defence, which could not be delved into at this stage and would instead be a matter of trial.

5. In support, learned counsel for the respondent has placed reliance upon judgment of Hon'ble Supreme Court in *Ashfaq Ahmed Quereshi and another Versus Namrata Chopra and others 2014 (1) R.C.R. (Criminal) 528*.

6. I have heard learned counsel for the parties and perused the relevant material on record.

7. This Court does not find any merit in the submissions made by the learned senior counsel for the petitioner that the alleged violations relating to the complaint in question had been committed well before the petitioner was appointed as Additional Director. Learned senior counsel for the petitioner, while inviting the attention of this Court to Annexure P-6, asserted that the said letter clearly indicated that no expansion or construction activities had taken place during his tenure between 20.11.2018 to 03.11.2020, however, on a careful

perusal of proceedings of personal hearing given to the company by the Punjab Pollution Control Board on 07.02.2019 (Annexure P-6), it stands revealed that it does not explicitly deny qua any construction activity having been undertaken during his tenure. Furthermore, in the submissions made by Er. Gulshan Rai during the course of personal hearing on 20.02.2018, a decision was taken that the project proponent would get revised environmental clearance from Ministry of Environment, Forest and Climate Change of India (hereinafter referred to as 'MoEF') and a directive "till then stop the construction activities" was also given, which *prima facie* indicated that construction continued even after the environmental clearance had expired. Additionally, the inspection report dated 26.02.2021 of Assistant Executive Engineer of Punjab Pollution Control Board (Annexure F) points to expansion and additional construction, even though it noted cessation of construction work, and most significantly the report does not specify when the construction work was actually halted. Whether the construction work stopped before the petitioner took over as Additional Director of the company or continued even afterwards remains a contentious matter, which would be determined only during trial. Moreover, it would also be a matter for the trial to ascertain whether the company took necessary steps to obtain environmental clearance during the tenure of the petitioner as Additional Director, or not.

8. The learned senior counsel for the petitioner further also argued that since being an Additional Director, he was not drawing any salary nor was even involved in the day to day affairs of the company, no liability under Section 16 of the Act could be fastened upon him and furthermore, mere directorship of a company would not warrant any

liability. It would, therefore, be apposite to reproduce Section 16 of the Act, which reads as under:-

“16. OFFENCES BY COMPANIES.- (1) Where any 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;*
- (b) "director", in relation to a firm, means a partner in the firm.”*

A perusal of the above makes it abundantly clear that in

order to fix vicarious liability of a person on behalf of the company, it must be specifically alleged in the complaint that he was in-charge of, and was in control over the affairs/business of the company. In the instant case, being Additional Director, the petitioner cannot claim exoneration solely based on his designation. As per Form No.DIR-12 (Annexure P-1), the petitioner was an Additional Director of the company. A perusal of the complaint reveals due compliance of provisions of Section 16 as specific averment has been made in the complaint, Annexure P-2 that the petitioner, along with accused No.2- Rajender Kumar Gautam, was in-charge and responsible for the conduct and day to day affairs of the company along with the details of the role played by the petitioner. Furthermore, the company provided a list of persons responsible for the violations to the Secretary, State Expert Appraisal Committee, Punjab, vide letter dated 14.08.2020 (Annexure A-7), wherein the name of the petitioner along with his designation as Director, clearly finds mentioned. Therefore, *prima facie*, there is sufficient material to summon the petitioner to face trial.

9. Moreover, when exercising its jurisdiction under Section 482 of the Cr.P.C., this Court cannot delve into disputed questions of fact, such as whether the petitioner was actually in-charge and responsible for the business of the company or not. During trial, the petitioner would get ample opportunity to test the evidence led by the prosecution and to lead evidence in support of his defence, for proving his innocence.

10. As a sequel to the above, the instant petition stands dismissed.

11. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

December 7th, 2023
Puneet

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No