

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

255CRM-M No. 1596-2018 (O&M)
Date of Decision: 08.02.2024

Ravi Shanker Gupta.....Petitioner

Versus

State of Haryana and another.....Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Bikram Chaudhary, Advocate for the petitioner.
Mr. Vikas Bhardwaj, AAG, Haryana.
Mr. Pawan Girdhar, Advocate and
Ms. Manju Goyal, Advocate for respondent No. 2.

HARPREET SINGH BRAR, J.(ORAL)

1. This petition has been filed under Section 482 of the Code of Criminal Procedure seeking quashing of FIR No. 99 dated 17.03.2016 registered under Section 188 IPC, under Section 33A of the Water (Prevention and Control of Pollution) Act, 1974 and under Section 33A of The Air (Prevention and Control of Pollution) Act, 1981 at Police Station Mujessar, District Faridabad.

FACTUAL BACKGROUND

2. The facts, in brief, are that the petitioner is the proprietor of the M/s Mahadev Forgings & Components Firm. The said unit was installed in the year 2005 after obtaining the necessary permissions and engaged in manufacturing the automobile parts by forging and compressing the raw material in hot furnaces. The Haryana State Pollution Control Board issued

an order dated 12.09.2014 for closure of the unit being run by the petitioner on grounds that the same was being run without obtaining necessary permissions. The aforesaid order of closure was challenged before the Appellate authority concerned but appeal was dismissed vide order dated 21.11.2014 (Annexure P-2), upon which the unit was again sealed by the authorities. During an inspection on 30.12.2015, the unit of the petitioner was found to be operating illegally after breaking the seal imposed by HSPCB, Ballabgarh Region, i.e., in contravention to the provisions of Section 33-A of the Water Act, 1974 and 33-A of the Air Act, 1981. Thereupon, the impugned FIR (Annexure P-1) came to be registered against the petitioner on complaint received from Sh. KL Nagpal alleging that the said unit was operating by tempering and breaking the seal affixed by the authorities.

CONTENTIONS

3. Learned counsel for the petitioner *inter alia* contends that as per Section 49 of the “The Water (Prevention and Control of Pollution) Act, 1974 (hereinafter Water Act), no Court shall take cognizance of any offence under the Act except on a complaint made by the Board or any authorised person and similar provisions exists under Section 43 of the “The Air (Prevention and Control of Pollution) Act, 1981(hereinafter Air Act). He further submits that even FIR under Section 188 of the Indian Penal Code cannot be registered in view of the bar created under Section 195 of the Cr.P.C. The impugned FIR is liable to be quashed in view of the statutory provisions contained in Section 49 of the Water Act, Section 43 of the Air Act and Section 195 of the Code of Criminal Procedure, 1973.

4. Learned State counsel submits that the Investigating Agency has already concluded the investigation and filed the final report and the petitioner can raise all the pleas taken in the present case at the time of framing of the charges.

OBSERVATION AND ANALYSIS

5. Having heard learned counsel for the parties and after perusing the record, this Court is of the opinion that for proper appreciation of the arguments advanced by the learned counsel for the parties, the following provisions need to be examined:

Section 43 of “The Air (Prevention and Control of Pollution) Act, 1981

Cognizance of offences

(1) No court shall take cognizance of any offence under this Act except on a complaint made by—

(a) a Board or any officer authorised in this behalf by it; or

(b) any person who has given notice of not less than sixty days, in the manner prescribed, of the alleged offence and of his intention to make a complaint to the Board or officer authorised as aforesaid, and no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

(2) Where a complaint has been made under clause (b) of sub-section (1), the Board shall, on demand by such person, make available the relevant reports in its possession to that person:

Provided that the Board may refuse to make any such report available to such person if the same is, in its opinion, against the public interest.

Section 49 of the “The Water (Prevention and Control of Pollution) Act, 1974

49. Cognizance of offences.

[(1) No court shall take cognizance of any offence under this Act except on a complaint made by—

(a) a Board or any officer authorised in this behalf by it; or

(b) any person who has given notice of not less than sixty days, in the manner prescribed, of the alleged offence and of his intention to make a complaint, to the Board or officer authorised as aforesaid, and no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.]

2 [(2) Where a complaint has been made under clause (b) of sub-section (1), the Board shall, on demand by such person, make available the relevant reports in its possession to that person:

Provided that the Board may refuse to make any such report available to such person if the same is, in its opinion, against the public interest.]

3 [(3)] Notwithstanding anything contained in section 29 of the Code of Criminal Procedure, 1973 (2 of 1974), it shall be lawful for any Judicial Magistrate of the first class or for any Metropolitan Magistrate to pass a sentence of imprisonment for a term exceeding two years or of fine exceeding two thousand rupees on any person convicted of an offence punishable under this Act.

Section 195 of the Code of Criminal Procedure, 1973

“195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.

(1) No Court shall take cognizance—

(a)(i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(ii) of any abetment of, attempt to commit, such offence, or (iii) of any criminal conspiracy to commit, such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b)(i) of any offence punishable under any of the following section of the Indian Penal Code (45 of 1860), (namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or
(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii), except on the complaint in writing of that

Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.

(2) Where a complaint has been made by a public servant under clause (a) of Sub-Section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint;

Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3) In clause (b) of Sub-Section (1), the term “Court” means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, provincial or State Act if declared by that Act to be a Court for the purposes of this section.

(4) For the purposes of clause (b) of Sub-Section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from appealable decrees or sentences of such former Court, or in the case of a civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court is situate;

Provided that—

(a.) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

(b.) where appeals lie to a civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.”

Section 4 of Code of Criminal Procedure, 1973

4. Trial of offences under the Indian Penal Code and other laws

“(1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.”

6. The perusal of the aforesaid statutory provisions as well as the record available, this Court finds that if a special statute provides for a particular procedure excluding the provision of Indian Penal Code, the provisions of IPC cannot be invoked. Section 4(2) of the Code of Criminal Procedure (hereinafter referred to as Cr.P.C) provides that all the offences under any other law are to be investigated, inquired into and otherwise dealt with in accordance with the provisions of the said 'special law' in so far as they are not repugnant to the Code. A bare perusal of the aforesaid provision leads to only logical interpretation that by enacting the provisions of the Water (Prevention and Control of Pollution) Act, 1974 and under Section 33A of The Air (Prevention and Control of Pollution) Act, 1981, the provisions of Indian Penal Code are expressly excluded. Section 43 of the Water (Prevention and Control of Pollution) Act, 1974 and Section 49 of The Air (Prevention and Control of Pollution) Act, 1981 make it abundantly clear that no Court shall take cognizance of an offence under this Act except on a complaint made by the Appropriate Authority (a Board or any officer authorised under the Act).

7. Further, Section 2(d) of Cr.P.C. defines the term 'complaint' as any oral or written allegation made to a Magistrate with a view to taking action under the Code. The definition provided under Section 2(d) of the Cr.P.C. does not include a police report, which is further defined in Section 2(r) of Cr.P.C., which means a report forwarded by the Police Officer to a Magistrate under sub-section 2 of Section 173 Cr.P.C. The statutory scheme under the Water (Prevention and Control of Pollution) Act, 1974 and The Air (Prevention and Control of Pollution) Act, 1981 provides that the

prosecution under them can only be launched by way of a complaint case an FIR cannot be registered under the provisions of the same. Therefore, the impugned FIR and all the subsequent proceedings arising therefrom are *void ab initio* and are liable to be quashed.

8. The Hon'ble Supreme Court has categorically held in **Union of India vs. Ashok Kumar Sharma and others 2021 CriLJ 2006** that under a special statute like Drugs and Cosmetics Act, 1940, as per the provisions of section 32 of the said Act read with the scheme of the Cr.P.C., a police officer cannot prosecute an offender in regard to such offence even if they are cognizable offences and the persons authorized under section 32 of the Act are entitled to do the same. Further reliance in this regard can be placed on ***Ajay Kumar Sandhu vs. State of Haryana in CRM-M-29708-2014 and Jeewan Kumar Raut & Another versus C.B.I (2009) 7SCC 526***, in which it has been held that if a special enactment lays down the provisions regarding procedure that must be adopted for investigation and adjudication of an offence that falls in its purview, general provisions of the IPC or the Cr.P.C. will not be attracted.

9. As such, the very registration of FIR (supra) is bad in the eyes of law, as cognizance of an offence under Water (Prevention and Control of Pollution) Act, 1974 and The Air (Prevention and Control of Pollution) Act, 1981 can only be taken up on a criminal complaint filed by the officer authorized under the respective Act in this regard. Moreover, the FIR (supra) registered under Section 188 IPC cannot sustain due to non-compliance of Section 195 of the Code of Criminal Procedure, as discussed above.

CONCLUSION

10. In view of the above discussion, this Court is of the considered opinion that the police has no power either to investigate, prosecute or deal with any offence either under the Water (Prevention and Control of Pollution) Act, 1974 or under the Air (Prevention and Control of Pollution) Act, 1981. Hence, FIR No. 99 dated 17.03.2016 registered under Section 188 IPC, under Section 33A of the Water (Prevention and Control of Pollution) Act, 1974 and under Section 33A of the Air (Prevention and Control of Pollution) Act, 1981 at Police Station Mujessar, District Faridabad is quashed qua the petitioner.

08.02.2024
Rajeev (rvs)

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes