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**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

**BEFORE
HON'BLE SHRI JUSTICE PREM NARAYAN SINGH**

ON THE 10th OF JULY, 2023

CRIMINAL APPEAL No. 9584 of 2022

BETWEEN:-

**M.P. POLLUTION CONTROL BOARD
ADD-E-5, ARERA COLONY BHOPAL THROUGH ITS THEN
REGIONAL OFFICER (DHAR) SHRI ALOK SINGHA,
SCHEME NO. 78-C-II, PLOT NO. 1, ARANYA, INDORE,
PRESENTLY: M.P. POLLUTION CONTROL
BOARD, REGIONAL OFFICE PITHAMPUR THROUGH K.L.
CHOUDHARY, REGIONAL OFFICER (PITHAMPUR),
ADD: VIKAS BHAWAN CENTRE-2, INDUSTRIAL AREA, P
(MADHYA PRADESH)**

.....APPELLANT

(SHRI ANIKET NAIK AND SHRI PRADYUMNA KIBE - ADVOCATES).

AND

- 1. NAGAR PALIKA PARISHAD PITHAMPUR
PITHAMPUR (MADHYA PRADESH)**
- 2. SHRI MADHU SAXENA,
CHIEF MUNICIPAL OFFICER
PITHAMPUR (MADHYA PRADESH)**

.....RESPONDENTS

(SHRI KAMLESH MANDLOI - ADVOCATE FOR RESPONDENT NO.1)

(SHRI AMOL SHRIVASTAVA, ADVOCATE FOR RESPONDENT NO-2.)

*This appeal coming on for admission this day, the court passed the
following:*

JUDGMENT

This appeal under Section 378(3) of Cr.P.C has been filed against the judgment dated 27.03.2021 passed in complaint case No.1938/2015 by Judicial Magistrate First Class, District Dhar.

2. Learned counsel for the appellant contended that this judgment of acquittal has been passed mainly on the ground that the a sanction under Section 197 of Cr.P.C is required for the prosecution of Govt. Department or Govt. Servant, hence the complaint/prosecution is not maintainable, which is in contravention of judgment passed by Hon'ble Apex Court in the case of ***V.C. Chinappa Goudar vs. Karnataka State Pollution Control Board and Anr.*** reported as ***(2015)14 SCC 538*** wherein it has been held that no prior sanction as contemplated under Section 197 of Cr.P.C is required for a prosecution under a special law such as the Act of 1974. Therefore it is prayed that the impugned judgment be set aside.

4. Learned counsel for the respondents have opposed the prayer, however, submitted that provisions of Section 48 of Water (Prevention and Control of Pollution) Act, 1974 is pari materia with Section 17 of the Environment Protection Act, 1986.

Section 48 of this Act provides as under:

"48. Offences by Government Departments.—Where an offence under this Act has been committed by any Department of Government, the Head of the Department 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 section shall render such Head of the Department liable to any punishment 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."

The Provisions of Section 17 of the Environment Protection Act, 1986 is as under:-

"17 Offences by Government Departments.

(1) Where an offence under this Act has been committed by

any Department of Government, the Head of the Department 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 section shall render such Head of the Department liable to any punishment 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 Department of Government 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 officer, other than the Head of the Department, such officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly."

5. On this aspect, this Court in ***Vijay Bahadur Singh vs. M.P. Pollution Control Board*** reported in 2017(2) JLL 305 referring to the aforesaid provisions articulated that it may be seen that these two provisions of *pari materia*, and therefore, *the principle laid down by Hon'ble apex Court in the case of V.C. Chinnappa (Supra)*, applies on present case also.

6. After recording legal provisions of the Act, this Court in the case of ***Vijay Bahadur Singh (Supra)*** observed in para 13as under:

"13 Taking all these observations made by various Court, it is apparent that in the present case, no sanction under Section 197 of Cr.P.C is required."

7. In view of the aforesaid this Court is of the considered opinion that there is no scope for invoking Section 197 of Cr.P.C even though the appellant is stated to be public servant. Therefore, the matter is remitted back to the trial Court to decide afresh in accordance with law within three months from the date of receipt of certified copy of this order. Parties are directed to appear before the trial Court on 25th July, 2023.

Accordingly, Cr.A. No.9584/2022 stands disposed of.

A copy of this order along with the record be sent back to the concerned trial Court.

Certified copy, as per Rules.

(PREM NARAYAN SINGH)
JUDGE

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