

A

U.P. POLLUTION CONTROL BOARD

v.

M/S. MOHAN MEAKINS LTD. AND ORS.

MARCH 27, 2000

B

[K.T. THOMAS AND M.B. SHAH, JJ.]

Water and Air (Prevention and Control of Pollution) Act, 1974 :

C

Ss. 24, 43, 47—Water pollution—Distillery unit of industrial company—Discharging noxious trade effluents into river Gomti—Complaint by U.P. Pollution Control Board against the company and its Directors and Manager—Magistrate's order to issue process against accused quashed by Sessions Judge on the ground that it was a non-speaking order—Magistrate passing a detailed order—Sessions Judge quashing it again on the ground that no specific role was assigned to accused in the complaint—Revision petition filed by Board dismissed by High Court after 15 years—Held, Sessions Judge erred in quashing orders passed by Magistrate—For issuing summons, Magistrate need not pass a detailed order—When offence has been committed by company, every person incharge of and responsible to company for conduct of its business is also made guilty of offence—Court should not deal with prosecution under the Act in a casual manner—Magistrate would expeditiously proceed with the trial.

D

E

Code of Criminal Procedure, 1973 :

F

S. 204—Issue of process—Ordered by Magistrate—Sessions Judge quashing the order on the ground that Magistrate did not pass a speaking order—Held, there is no legal requirement imposed on a Magistrate for passing detailed order while issuing summons—Sessions Judge erred in quashing the order.

G

The appellant-Board filed a complaint before the Chief Judicial Magistrate arraying respondent No. 1 as first accused, and its directors as accused Nos. 2 to 10 and the Manager as accused No. 11. It was alleged that the distillery unit of respondent No. 1 was discharging noxious trade effluents in river Gomti making the water in the river more polluted to impermissible levels. It was alleged that the company violated s.24 of the Water and Air (Prevention and Control of Pollution) Act, 1974; and thereby committed the offence under s.43. The trial court ordered to issue

H

of process against the accused but the Sessions Judge, in revision petition, moved by the accused, quashed the order on the ground that the Magistrate did not pass "a speaking order" for issuing summons. Thereafter the magistrate passed a detailed order and issued process to the accused. The accused again challenged the order holding that in the complaint no specific role was assigned to accused 2 to 11 in the flowing of the polluted effluents into the river. The revision petition filed by the Board was also dismissed by the High Court after fifteen years. Aggrieved, the Board filed the present appeal.

Allowing the appeal, this Court

HELD : 1. The Sessions Judge was in error in quashing the process at the first round merely on the ground that the Chief Judicial Magistrate had not passed a speaking order. There is no legal requirement imposed on a Magistrate for passing detailed order while issuing summons under s.204 Cr.P.C. what is to be looked at during the stage of issuing process is whether there are allegations in the complaint by which the Managers or Directors of the company can also be proceeded against, when the company is alleged to be guilty of the offence. It was unfortunate that the Sessions Judge himself did not look into the complaint at that stage to form his own opinion whether process could have been issued by the Chief Judicial Magistrate on the basis of the averments contained in the complaint. Instead the Session Judge relegated the work to the trial magistrate for doing the exercise over again. [558-E; 573-B-C; 570-F]

Kanti Bhadra Shah v. State of West Bengal, [2000] 1 SCC 722, relied on.

2. In view of s.47 of the Water and Air (Prevention and Control of Pollution) Act, 1974, where an offence under the Act has been committed by a company, every person who was in charge of and was responsible to the company for the conduct of its business is also made guilty of the offence by the statutory creation. Any Director, Manager or other officer of the company, who has consented to or connived in the commission of the said offence, is made liable for the punishment of the offence. [572-D-E]

Municipal Corporation of Delhi v. Ram Kishan Rohtagi, [1983] 1 SCC 1, distinguished.

Municipal Corporation of Delhi v. Purshotam Dass Jhunjunwala, AIR (1983) 1 SCC 9, referred to.

A **3. The courts should not deal with the prosecution for offences under the Act in a casual or routine manner. Parliamentary concern in the matter is adequately reflected in strengthening the measures prescribed by the statute. The court has no jurisdiction for ignoring the seriousness of the subject. [574-B-C]**

B **4. The plea to absolve the Directors of the company from the trial on the ground of lapse of a long time since the institution of the complaint cannot be accepted. Lapse of seventeen years is no doubt considerable, but the Board is not the least to be blamed for it. The trial court would expeditiously proceed with the trial. If any of the accused applies for dispensing with his personal presence in the court, after making the first appearance, the trial court can consider his request in the light of this judgment. [573-G; 574-C-D]**

C

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal no. 302 of 2000.

D From the Judgment and Order dated 27.7.99 of the Allahabad High Court in CrI.R. No. 681 of 1984.

K.N. Rawal, Additional Solicitor General and Pradeep Misra, for the Appellant.

E Rakesh Dwivedi, P. Chidambaram, K.K. Mohan and Ms. Geetanjali Mohan for the Respondents.

The Judgment of the Court was delivered by

F **THOMAS, J.** River "Gomti" is a tributary of Ganga. It is a bane that almost all rivers in India are now saturated with pollutants and the holy river is not spared from that malady. What causes greater concern to those for whom rivers flowed sanctified waters, and to those, for whom rivers supplied potable water, is the frightening gallop of pollution level in recent decades. The measures evolved by the Parliament to control the escalating poisoning of our streams have not yielded the desired results due to a variety of causes. The present is a case in which the trade effluents discharged by an industrial unit of a premier liquor processing company made the water in Gomti more polluted to impermissible levels. So the State Pollution Control Board ('the Board' for short) initiated proceedings for prosecuting M/s Mohan Meakins Limited and its Directors way back in 1983. Alas, the canoe remains at the

G

H

starting point itself in spite of lapse of long seventeen years till now.

A

Though the trial court issued process against the accused at the first instance, they desired the trial court to discharge them without even making their first appearance in the court. When the attempt made for that purpose failed they moved for exemption from appearance in the court. In the meanwhile the Sessions Judge, Lucknow (Shri Prahlad Narain) entertained a revision moved by the accused against the order issuing process to them and, quashed it on the erroneous ground that the magistrate did not pass "a speaking order" for issuing such summons.

B

The Chief Judicial Magistrate, (before whom the complaint was filed) thereafter passed a detailed order on 25.4.1984 and again issued process to the accused. That order was again challenged by the accused in revision before the Sessions Court and the same Sessions Judge (Shri Prahlad Narain) again quashed it by order dated 25.8.1984.

C

The Board moved the High Court in a revision against the said order. Though the motion was made in 1984 itself it took fifteen years for the High Court to dismiss that revision petition as per the order passed by a learned Single Judge on 27.7.1999. The special leave petition to appeal is filed in challenge of the said order. Special leave granted.

D

We may point out at the very outset that the Sessions judge was in error for quashing the process at the first round merely on the ground that the Chief Judicial Magistrate had not passed a speaking order. In fact it was contended before the Sessions Judge, on behalf of the Board, that there is no legal requirement in Section 204 of the Code of Criminal Procedure (For short the 'Code') to record reasons for issuing process. But the said contention was spurned down in the following words:

E

F

"My attention has been drawn to Section 204 of the Code of Criminal Procedure and it has been argued that no reasons for summoning an accused persons need be given. I feel that under Section 204 aforesaid, a Magistrate has to form an opinion that there was sufficient ground for proceeding and, if an opinion had to be formed judicially, the only mode of doing so is to find out express reasons for coming to the conclusions. In the impugned order, the learned Magistrate has neither specified any reasons nor has he even

G

H

A formed an opinion much less about there being sufficient ground for not proceeding with the case.”

B In a recent decision of the Supreme Court it has been pointed out that the legislature has stressed the need to record reasons in certain situations such as dismissal of a complaint without issuing process. There is no such legal requirement imposed on a magistrate for passing detailed order while issuing summons vide *Kanti Bhadra Shah v. State of West Bengal*, [2000(1) SCC 722]. The following passage will be apposite in this context:

C “If there is no legal requirement that the trial court should write an order showing the reasons for framing a charge, why should the already burdened trial courts be further burdened with such an extra work. The time has reached to adopt all possible measures to expedite the court procedures and to chalk out measures to avert off roadblocks causing avoidable delays. If a Magistrate is to write detailed orders at different stages, the snail-paced progress of proceedings in trial courts would further be slowed down. We are coming across interlocutory orders of Magistrates and Sessions Judges running into several pages. We can appreciate if such a detailed order has been passed for culminating the proceedings before them. *But it is quite unnecessary to write detailed orders at other stages, such as issuing process, remanding the accused to custody, framing of charges, passing over to next stages in the trial.*”

(Emphasis supplied)

F It was unfortunate that the Sessions Judge himself did not look into the complaint at that stage to form his own opinion whether process could have been issued by the Chief Judicial Magistrate on the basis of the averments contained in the complaint. Instead the sessions judge relegated the work to the trial magistrate for doing the exercise over again. After the Chief Judicial Magistrate passed the second order issuing process, the Sessions Judge quashed the said order on the second occasion also and stated thus:

G “Having scrutinized the array of accused persons in this complaint, I have felt that since no specific role in the flowing of the polluted effluents into the river Gomti has been assigned to any of the present applicant Nos., 2 to 11, the law laid down in the Delhi Municipal Corporation case referred to above requires that the impugned order H summoning the present applicant Nos. 2 to 11 must be quashed.”

Learned Sessions Judge relied on the decision of this court in *Municipal Corporation of Delhi v. Ram Kishan Rohtagi*, [1983] 1 SCC 1. Though an attempt was made before the Sessions Judge to offset the impact of the said decision by citing a later decision of this Court in *Municipal Corporation of Delhi v. Purshotam Dass Jhunjunwala*, AIR (1983) 1 SCC 9 it did not deter the Sessions Judge from quashing the order passed by the magistrate issuing summons on the second occasion. Learned single judge of the High Court who heard the revision confirmed the said order as per the impugned judgment in which it is stated, *inter alia*, thus:

“In the present case the revisionist has not been able to show that the directors (opp. parties Nos. 5 to 13) were in charge of or responsible to the company for the conduct of the business of the company. No effort was made at the hearing before this Court to show that such allegations were contained in the complaint filed by the revisionist.”

In *Municipal Corporation of Delhi v. Ram Kishan Rohtagi & Ors.*, [1983] 1 SCC 1 cited by the Sessions Judge, and sought to be relied on here also by the learned counsel for the respondents, a two Judge Bench of this Court considered the validity of prosecution proceedings taken under the Prevention of Food Adulteration Act. The Delhi High Court had quashed the complaint filed by the Municipal Corporation of Delhi against a company and its manager as well as the directors, against whom the offence under Section 7 read with Section 16 of the FPA Act was alleged. On the factual position this Court noticed that “so far as the Directors are concerned, there is not even a whisper nor a shred of evidence nor anything to show, apart from the presumption drawn by the complainant, that there is any act committed by the Directors from which reasonable inference can be drawn that they could also be vicariously liable.” It was only on the said fact situation that the complaint as against the Directors was quashed. In *Municipal Corporation of Delhi v. Purshottam Dass* (supra) the same Bench of two Judges pointed out the different factual position therein that “a clear averment has been made regarding the active role played by the respondents (the Directors of the company) of the extent of their liability,” and hence the court declined to quash the complaint.

Neither of the above decisions has laid down a legal position which can be of any use to the respondents in this case for contending that the Directors

A cannot be prosecuted for the offence alleged. In the complaint filed by the
appellant before the Chief Judicial Magistrate, the company (M/s. Mohan
Meakins Ltd.) has been arrayed as first accused and the other persons who
were arrayed as accused 2 to 10 were described as the Directors of the said
company. The 11th person arrayed in the complaint as accused is described
B as the Manager of the Company. The averments in the complaint show that
the Distillery unit of the company at Daltonganj, Lucknow, has been discharg-
ing noxious trade effluents into the river Gomti and causing continuous
pollution of the river. It was further averred in the complaint that on 19-9-
1982, samples of trade effluents were collected by the officers empowered in
this behalf, from the drain "just outside the plant inside the factory", and from
C the irrigation plant out of which the effluents were pumped into the river.
When the samples were analysed in the Industrial Toxicology Research
Centre, Lucknow, it was revealed that the quality of effluents was beyond the
standard laid down for the purpose. Therefore, it is alleged that the company
has violated Section 24 of the Act and thereby the company is guilty of the
D offence under Section 43 of the Act.

Where an offence under the Act has been committed by a company
every person who was in charge of and was responsible to the company for
the conduct of the business of the company is also made guilty of the offence
by the statutory creation. Any Director, Manager or other officer of the
E company, who has consented to or connived in the commission of the said
offence, is made liable for the punishment of the offence. This is clearly
discernible from Section 47 of the Act.

"47. *Offences by companies.*- Where an offence under this Act has
F 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:

G 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.

H (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.”

In the above context what is to be looked at during the stage of issuing process is whether there are allegations in the complaint by which the Managers or Directors of the company can also be proceeded against, when the company is alleged to be guilty of the offence. Paragraph 12 of the complaint reads thus:

“That the accused persons from 2 to 11 are directors/managers/partners of M/s. Mohan Meakins Distillery, Daliganj, Lucknow, as mentioned in this complaint are responsible for constructing the proper works and plant for the treatment of their highly polluting trade effluent so as to conform the standard laid down by the Board. Aforesaid accused persons are deliberately avoiding to abide the provisions of sections 24 and 26 of the aforesaid Act which are punishable respectively under Sections 43 and 44 of the aforesaid Act, for which not only the company but its directors, managers, secretary and all other responsible officers of the accused company, responsible for the conduct of its business are also liable in accordance with the provision of the Section 47 of the Act.”

The appellant has further stated in paragraph 23 of the complaint that “the Chairman, Managing Directors and Directors of the company are the persons responsible for the act and therefore, they are liable to be proceeded against according to the law.”

Shri P. Chidambaram, learned senior counsel who argued for respondents made a fervent plea to rescue the Directors of the company on the ground of lapse of a long time now since the institution of the complaint. Lapse of seventeen years is no doubt considerable, but the Board is not the least to be blamed for it. Since it is not a pleasant task to probe into the causes which contributed for such a long delay we choose to refrain from doing that exercise. Nonetheless, lapse of such long period cannot be a reason to absolve the respondents from the trial. It must reach its logical culmination. Courts cannot afford to lightly deal with cases involving

A pollution of air and water. The message must go to all concerned. The courts will share the parliamentary concern on the escalating pollution level of our environment. Those who discharge noxious polluting effluents to streams may be unconcerned about the enormity of the injury which it inflicts on the public health at large, the irreparable impairment it causes on the aquatic organisms, the deleteriousness it imposes on the life and health of animals.

B So the courts should not deal with the prosecution for offences under the Act in a casual or routine manner. Parliamentary concern in the matter is adequately reflected in strengthening the measures prescribed by the statute. The court has no justification for ignoring the seriousness of the subject.

C We are, therefore, not inclined to accede to the plea made by Shri Chidambaram on the ground of lapse of long period now. Of course this lapse of long period is a good reason for expediting the trial. Now the deck is clear and hence the trial court can proceed with faster pace and accelerated velocity.

D If any of the accused applies for dispensing with his personal presence in the court, after making the first appearance, the trial court can exempt him from continuing to appear in the court by imposing any condition which the court deems fit. Such conditions can include, inter alia, that a counsel on his behalf would be present when the case is called, that he would not dispute his identity as the particular accused in the case, and that he would be present in court when such presence is imperatively needed.

E

Subject to the above observations, we set aside the impugned judgment of the High Court as well as the order of the Sessions Court. We direct the trial court to proceed with the case in accordance with law and dispose it of as expeditiously as possible.

R.P.

Appeal allowed.