



2026:AHC-LKO:5912

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

APPLICATION U/S 482 No. - 1253 of 2020

T.T. Ltd. through Occupier and others

.....Applicant(s)

Versus

State of U.P. and others

.....Opposite
Party(s)

Counsel for Applicant(s) : AaroHi Bhalla, Saima Khan, Shilpi Jain
Sharma, Sunil Kumar Singh
Counsel for Opposite Party(s) : G.A., A.K.Verma

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HON'BLE BRIJ RAJ SINGH, J.

1. The present application has been filed seeking quashing of the entire proceedings of Complaint Case No.368 of 2011, U.P. Pollution Control Board Vs. M/s T.T. Limited and others, under Section 43/44 of the Water (Prevention and Control of Pollution) Act, 1974 (for short “the Act, 1974”) as well as the order dated 23.01.2020 passed by the IVth Additional Sessions Judge/Special Judge, E.C. Act, Lucknow in Criminal Revision No.303 of 2015 and the orders dated 08.07.2015 and 19.02.2020 passed by the Special Judicial Magistrate, Pollution/C.B.I., Lucknow.

2. The facts giving rise to the present dispute are that applicant no.1, T.T. Limited, is a company having its registered office at 879, Master Prithvi Nath Marg, Opp. Azmal Khan Park, Karol Bagh, New Delhi engaged in the business of Cotton Yarn and Knitted Fabric. It carries out the non-polluting process of manufacturing yarn through its mill, namely, Gajroula Spinning Mill at Gajroula, which is 100% eco friendly and there is no use of water in the factory and as such no trade effluent is discharged from the factory. Applicant no.2 was the Chairman and Managing Director of the company at that time and he has engaged Sri. B.C. Jain, applicant no.5, as Factory Manager (Occupier) and Vice President (Technical), who was responsible for the day-to-day affairs of the Gajroula Unit. Applicant no.3 was the Director of the company at the relevant time and was not looking after the day-to-day activity of the

Gajroula Unit. Applicant no.4 was the Secretary of the company at that time and he was also not looking after the day-to-day activity of the Gajroula Unit. Applicant no.5 was the Factory Manager (Occupier) and Vice President (Technical) of the company and was responsible for the day-to-day affairs of the Gajroula Unit. Applicant no.6 was the Director of the company at that time and he was not looking after the day-to-day activity of the Gajroula Unit. Applicant no.7 was the Vice President (Sales and Marketing) of the company at that time. Moreover, he is sitting and working at the Corporate Office, New Delhi only and has nothing to do with the day-to-day activity of the Gajroula Unit. Applicant no.8 was the Administrative Officer of the company at that time and he was also sitting and working at the Corporate Office, New Delhi and had nothing to do with the day-to-day activity of the Gajroula Unit and presently he is retired. Applicant nos.9, 10 and 11 were independent non-executive Directors of the company at that time and were not involved in day-to-day affairs of the company.

3. It is stated that the Companies Act, 1956 does not provide the specific definition of an independent Director, but independent Directors are non-executive Director of a company, who helps the company in improving corporate credibility and governance standards. It is pertinent to mention here that all the Directors of applicant no.1 are respectable personalities having good reputation in the society and applicant no.9 is the recipient of the Padam Shree Award.

4. It is further stated that applicant no.1 had established a residential colony 500 meters away from the factory for the residential purpose of the employees working in its factory at Gajroula. Further, establishment of applicant no.1 is engaged in the manufacturing of yarn from cotton, in which there is no scope of any kind of water pollution as there is no industrial use of water at all and there is no effluent generated, hence no trade effluent is being discharged. It is alleged that while establishing its unit in the name and style of "M/s Gajroula Spinning Mills", applicant no.1 applied vide its application dated 25.04.1989 for No Objection Certificate under Section 25(2) of the Act, 1974 and the same was obtained from the U.P. Pollution Control Board in 1992 vide letter dated 17.12.1992. It is worthwhile to mention here that in the said No Objection

Certificate, applicant no.1 was permitted to discharge 2500 Litres water for the purpose of domestic use via Soak Pit and Septic Tank. It is stated that since 1992, applicant no.1 *bona fide* and continuously has been moving an application for consent from opposite party no.2 and deemed acceptance was always granted under Section 25(7) of the Act, 1974. It is worthwhile to mention here that opposite party no.2 sometime also granted specific consent.

5. It is stated that on 05.05.2011, officials of opposite party no.2 visited the Gajroula Unit for the purpose of enquiry under Section 25/26 of the Act, 1974 without any notice to the Occupier or any other authorized Person. It is worthwhile to mention here that they took sample from the input of soak pit meant for domestic discharge of the residential premises without compliance of the provisions of Section 21 of the Act, 1974. It is also to be mentioned that upon enquiry under Section 25(3) of the Act, 1974, the Pollution Control Board may refuse to grant the consent under Section 25(4) of the Act, 1974. However, in the present case, application filed by applicant no.1 on 25.03.2011 was neither refused nor returned; thus, it deemed as granted under the purview of Section 25(7) of the Act, 1974. Moreover, Section 27 of the Act, 1974 provides that Board may refuse or withdraw its consent, which is appealable under Section 28 of the Act, 1974. Further, Section 21 of the Act, 1974 provides power to take samples of effluents and procedure to be followed in connection therewith, which provides the mandatory requirement of service of notice on person in-charge of or having control over i.e. Occupier, but the same was never complied with by opposite party no.2.

6. It is further stated that on 23.12.2011, opposite party no.2 filed Complaint Case No.368 of 2011 with the allegation that the industry is discharging "Trade Effluent" without having any consent and made Directors, employees and independent Directors as party to the complaint without any averments against them under Section 47 of the Act, 1974. It was also alleged in the complaint that site of the industry was inspected on 05.05.2011 in presence of Sri. P.L. Lohia, who is neither Occupier nor his agent nor authorized person, and it was found that the industry was functional despite the fact that it had no consent under the provisions of the Act, 1974 and the same time sample was collected from its premises.

The sample was sent to the Laboratory and according to the analysis report dated 11.05.2011, it was not found to be within the standards laid down by the Board. It is said that the complaint was itself contradictory to the inspection report annexed to it, which only points out mere suspicion of pollution by domestic discharge. The inspection report is also defective as admitted sample from domestic discharge was compared with the standard laid down for Trade Effluent. However, the Special Judicial Magistrate, Pollution/C.B.I Lucknow without applying its judicial mind, took cognizance vide order dated 28.02.2012.

7. Being aggrieved, applicants approached this Court by filing Application U/s 482 Cr.P.C. No.5183 of 2012 challenging the complaint as well as the summoning order and had raised various legal procedures/provisions of the Act, 1974, which were not followed, violated by the opposite parties while conducting the alleged inspection on 05.05.2011. It is also prayed by the applicants that provisions of Section 43/44 of the Act, 1974 are not attracted in the present case. A coordinate Bench of this Court after hearing the parties, passed an order on 09.07.2013 with the observation that all the factual and legal aspects advanced by the applicants cannot be looked into by this Court and it is the trial court which can appreciate the entire facts.

8. In pursuance of the direction issued by this Court, applicants furnished personal bond of each applicant and filed an application under Section 245 Cr.P.C. before the trial court. However, the trial court rejected the said application vide order dated 08.07.2015. Being aggrieved by the said order, the applicants approached this Court again by filing Application U/s 482 Cr.P.C. No.3959 of 2015, but the said application was rejected as withdrawn on 19.08.2015 with liberty to the applicants to approach the appropriate forum. Thereafter, applicants filed Criminal Revision No.303 of 2015 before the revisional court, which too was dismissed by the revisional court vide order dated 23.01.2020.

9. It is stated that while rejecting the application under Section 245 Cr.P.C moved by the applicants, the Magistrate failed to appreciate the fact that applicants have also voluntarily got installed a Sewage Treatment Plant (STP) to discharge the residential colonies toilet water. The residential

colonies have been constructed exclusively for the employees and their families in a separate compound. The sample collected from these residential colony Pit is not an "Industrial Effluent" or "Trade Effluent" as defined in the Act, 1974. A bare perusal of the complaint itself indicates the aforesaid fact. The trial court also failed to appreciate the fact that applicants no.9 to 11 were the independent Directors of the company and hence they were not responsible for the day-to-day activity as well as running the business of the Industry. Moreover, in the complaint itself nothing has been pleaded nor any role has been alleged or assigned to these applicants. It is stated that the trial court failed to appreciate the fact that only B.C. Jain is handling the day-to-day affairs of the company in the capacity of 'Occupier' while rest of the applicants were not personally responsible.

10. It is further stated that residential colony of the employees of the company is more than 500 meters away from the factory premises and the sample, as per the complaint itself, has been alleged to have been collected from the pit of the residential colony. Thus, it is clear that the factory is situated at different premises and the residential colony is situated at different premises. A bare perusal of the definition makes it clear that domestic sewage does not fall within the ambit of "trade effluent", hence the instant complaint *prima facie* is not maintainable under Section 43/44 of the Act, 1974 as there is no violation of the provisions of Section 24, 25 and 26 of the Act, 1974. It is also relevant to mention here that for invocation of Section 21 of the Act, 1974 for collection of sample, the pre-requisite has been elaborated under sub-section (3), (4) and (5) of Section 21 of the Act, 1974. However, in the instant case, the pre-requisite has been completely done away with by the authority concerned, who allegedly took the sample from the septic tank installed in the residential colony of the employees. The prosecution has failed to bring on record any notice to have been served on the person elucidated under sub-section (3) (a) of Section 21 of the Act. Non-observance of the mandatory requirement as defined under the provisions of the Act, 1974 vitiates the entire proceedings.

11. Sri Murtaza Ali, learned Senior Advocate, for the applicants has submitted that as per Section 25(7) of the Act, 1974, it is clear that

application given by the applicants for the consent shall, unless given or refused earlier, be deemed to have been given unconditionally on the expiry of a period of four months of the making of an application in this behalf complete all in all respects to the State Board. The trial court failed to appreciate the fact that applicants have also voluntarily got installed a Sewage Treatment Plant (STP) to discharge the residential colonies toilets water. The sample collected from the residential colony is not an “industrial effluent” or “trade effluent” as defined in the Act, 1974. In this regard, learned counsel for the applicants has drawn the attention of the Court towards Section 2(k) of the Act, 1974, which postulates that “trade effluent” includes any liquid, gaseous or solid substance which is discharged from any premises used for carrying on any industry, operation or process, or treatment and disposal system other than domestic sewage. It has been submitted that the sample was collected from the Sewage Treatment Plant installed for the residential purposes, but the same was tested treating it to be “trade effluent”, but this material fact has been ignored by the trial court while issuing summons against the applicants.

12. Learned Senior Advocate for the applicants has further submitted that while collecting the sample, the statutory requirement as envisaged under Section 21 of the Act, 1974 has been done away by the authority concerned. The sampling of the sewage is pertaining to the residential colony and the same is not pertaining to trade affluent, therefore, the proceedings instituted by opposite party no.2 is vitiated in fact and law both. In support of his contention, learned Senior Advocate for the applicants has placed reliance upon the following decisions:-

1. ***Century Spinning and Manufacturing Co. Ltd. and others Vs. State of Maharashtra***, (1972) 3 SCC 282;

2. ***Kewal Krishna S/o Lachman Das Vs. Suraj Bhan and another***, AIR 1980 SC 1780: 1980 Supp(1) SCC 499.

13. On the other hand, Sri A.K. Verma, learned counsel for the U.P. Pollution Control Board has taken serious objection against the arguments advanced by the learned counsel for the applicants and has submitted that applicants had earlier approached this Court by filing Application U/s 482

No.5183 of 2012 challenging the summoning order and the entire criminal proceedings. The said application was disposed of by a coordinate Bench this Court vide order dated 09.07.2013 with the observation that all the factual and legal aspects advanced by the applicants cannot be looked into by this Court and it is the trial court, which can appreciate the entire facts. This Court has further observed that whether the sample has been properly collected after observing the statutory formalities, is also a question of fact which can be scanned by the trial court. Similarly, this Court has further observed that whether the consent was refused or not, is also a question of fact, for which evidence is required. The question of facts are to be seen on the basis of material available on record by the trial court and this Court cannot go into the factual matrix of the case like the trial court.

14. Learned counsel for the Pollution Board has invited the attention of the Court towards the provisions of Section 25 of the Act, 1974, according to which the consent shall be given after completing all the formalities in all respects to the State Board. In the present case, all the formalities were not completed and the application filed by the applicants was returned by the Board to complete the necessary formalities. He has also invited the attention of the Court towards Section 2(d), which says that “occupier” means in relation to any factory or premises means the person who has control over the affairs of the factory or the premises, and includes in relation to any substance, the person in possession of the substance and the “sewage effluent” means effluent from any sewerage system or sewage disposal works and includes sullage from open drains.

15. Learned counsel for the Pollution Board has further submitted that the inspection report dated 05.05.2011 itself shows that the factory is using cotton as a material and there is production of cotton yarn and fabrics. The only outlet being the safety tank, from there the sample was collected and it was found that the discharge was obnoxious and not even conforming to the norms prescribed for sewage. Therefore, the complaint has been filed and it is a matter of evidence to be proved during the trial that whether there was any trade effluent in the sample or not, and for that purpose consent was necessarily to be obtained.

16. Learned counsel for opposite party no.2 has further submitted that while exercising its powers under Section 482 Cr.P.C. and hearing the discharge application, this Court has got very limited jurisdiction. After bare perusal of the complaint, the charges are made and this Court cannot weigh the evidence. It has been submitted that applicants have already challenged the summoning order as well as the entire proceedings by filing Application U/s 482 Cr.P.C. No.5183 of 2012, which was disposed of by this Court vide order dated 09.07.2013 with the observation that all the issues raised by the applicants have to be decided by the trial court; thus, this Court cannot be review the finding recorded by this Court in the earlier round of litigation.

17. Heard learned counsel for the parties and perused the record.

18. The arguments advanced by the learned Senior Advocate for the applicants regarding Section 25(7) of the Act, 1974 as well as the mandatory requirement of collecting the sample as envisaged under Section 21 of the Act, 1974 can be looked into by the trial court. This Court while exercising its power under Section 482 Cr.P.C., cannot weigh the evidences for a definite finding, for which the evidences are to be adduced and this Court lacks that jurisdiction to do trial. The evidences also required on the point whether the effluent was pertaining to trade effluent or pertaining to a Sewage Treatment Plant installed by the company for the residences of the employees. The applicants have already challenged the summoning order as well as the entire criminal proceedings by way of filing Application U/s 482 Cr.P.C. No.5183 of 2012 and the said application was disposed of by this Court vide order dated 09.07.2013 with the observation that for all the factual and legal aspects advanced by the applicants' counsel, the only remedy is trial. For the sake of convenience, the order dated 09.07.2013 is quoted below:-

“Heard learned counsel for the petitioner and learned counsel appearing on behalf of the pollution board and learned AGA.

A criminal complaint having No. 368 of 2011 (U.P. Pollution Control Board Vs. M/s T.T. Limited & 11 others) has been filed for prosecution of the accused persons under Section 43/44 of the Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as the Act).

The allegations in short made in the complaint are that there is contravention of

Section 25 of the Act regarding discharge of sewage. It was also contended that on 5th May, 2011 the industry was inspected by the officer authorised by the Board in presence of opposite party No.2, Sr. P.L. Lohia. It was found that industry was functional the industry was being run without consent under the Act. During inspection, it was further found that effluent treatment plant was not installed by the industry and untreated effluent was being discharged. The notice in this regard was given on the same day. The sample was also taken of the trade effluent discharged from the sewage collection pit of the industry and the sample was analyzed in laboratory authorised by the Board and found substandard. The report was communicated by letter dated 04.10.2011 to the company. The aforesaid act of company was said to be in breach of Section 24 of the Act and as the punishable under Section 43 of the Act. Para 10 of the complaint relates to status of the opposite parties (petitioner in this petition) in the company. They have been shown that they being incharge of day to day business of the company and as such liable to be proceeded against them under the Act. The court took cognizance to issue process based on such allegation against the petitioners and opposite party No.3.

It has been submitted by learned counsel for the petitioner that the company has already nominated the person responsible for running the business and dealing with the issue by specific resolution which has also been communicated under the provision of factories Act to authorities under the Factories Act. It was further submitted that the sample collected in this case is not in conformity with the statutory provision contained in the Act and in view of Section 21 (3) of the Act, the report not is at all admissible. It was further submitted that no notice has been issued before inspection or taking sample. Mr. P.L. Lohia has no concerned with the factory.

It was further submitted that no effluent is being discharged from the manufacturer unit the inspection was made of residential premises of the factory and not of the manufacturing unit.

So far as the liability of the Directors are concerned para 10 of the complaint have averment in this regarding. However, it is a question of fact which has to be decided by the trial court whether person responsible has been arrayed in complaint or the complaint to proceed against whom ?.

Similarly, the question whether sample has been properly collected after observing the statutory formalities is also a question of fact which has been scanned by the trial court.

Whether the consent was refused or not is also a question of fact because it is not in dispute that later seeking consent has been returned to the petitioners company. According to the counsel for the petitioner mere return of application will not amount to refusal. Hence no offence under Section 44 of the Act is made out.

The evidence is required on the point as to whether the treatment plant has been installed in pursuance of the direction issued by the Board after returning of the application or not. As the question of fact are to be scanned on the basis of material available on record by the trial court and it is not expected from this Court to go into factual matrix of the case like a trial court.

Hence petition is finally disposed of with the following directions that in case the petitioners appear before the court below and moved any application raising all these points before trial court, the court shall decide the question on the basis of material

available on record.

It is directed that in case the petitioners' presence is not required for the disposal of the proceedings they should not compel to appear each and every date. Necessary order of exemption may be passed in case any application is moved for that purpose. If the objection, if any, are raised before the trial court, the trial court shall dispose of the same within a reasonable time and preferably within a period of three months from the date of production of certified copy of this order.

In case the petitioner Nos.1 to 11 appear before the trial court, they may be released on personal bond till the disposal of their objections. After disposal of the objection if presence of the petitioners are still required during the trial the court may consider to continue the petitioners either on the personal bond or pass any appropriate order in accordance with law.

With this observation, the petition is finally disposed of."

19. The aforesaid finding recorded by a coordinate Bench of this Court in the earlier round of litigation cannot be reversed while hearing the discharge application. It is settled law that in discharge proceedings, the Court has to see whether the material collected on record do constitute the offence or not. After bare perusal of the complaint and other material on record, it cannot be said that the offence is not made out. This Court while hearing the discharge application cannot do mini trial or weigh the evidences. The grounds raised by the applicants can only be looked into by the trial court after adducing the evidence on record.

20. Application is devoid of merit. It is accordingly **rejected**. Interim order, if any, stands vacated.

21. However, the trial court is directed to release the applicants on the personal bonds already furnished by them as they are very old and infirm. In case appearance of the applicants is required for framing of charges and other proceedings, the trial court is directed to take the assistance of video conferencing. The trial will be concluded expeditiously in accordance with law without giving any unnecessary adjournments.

(Brij Raj Singh, J.)

January 28, 2026

Rao/-