

Reserved on : 08.08.2024

Pronounced on : 03.09.2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 03RD DAY OF SEPTEMBER, 2024



BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.2350 OF 2024

BETWEEN:

- 1 . M/S. SIDDHASIRI SOUHARDA
SAHAKARI NIYAMIT
SY. NO.239/A, 240/A, 249 AND 250
CHINCHOLI VILLAGE, TALUK
CHINCHOLI, DISTRICT
KALABURAGI – 585 307
REPERSENTED BY ITS CHAIRMAN
SRI BASANAGOUDA PATIL (YATNAL)
S/O RAMANAGOUDA B.PATIL
AGED ABOUT 59 YEARS, OCC: MLA.

- 2 . SRI RAMANGOUDA PATIL
@ RAMANGOUDA, BASANAGOUDA PATIL
S/O SRI BASANAGOUDA PATIL (YATNAL)
AGED ABOUT 29 YEARS
DIRECTOR
M/S. SIDDHASIRI SOUHARDA
SAHAKARI NIYAMIT
SY.NO.239/A, 240/A, 249 AND 250
CHINCHOLI VILLAGE TQ,
CHINCHOLI DISTRICT
KALABURAGI – 585 307.

3 . SRI SHIVKUMAR PATIL
S/O ANNEPPA PATIL
AGED ABOUT 54 YEARS
GENERAL MANAGER PLANT HEAD OF
M/S. SIDDHASIRI SOUHARDA
SAHAKARI NIYAMIT
SY.NO.239/A, 240/A, 249 AND 250
CHINCHOLI VILLAGE, TALUK
CHINCHOLI DISTRICT
KALABURAGI – 585 307.

... PETITIONERS

(BY SRI VENKATESH DALWAI, ADVOCATE)

AND:

KARNATAKA STATE POLLUTION
CONTROL BOARD (KSPCB)
NO.49, PARISARA BHAVAN
CHURCH STREET, BENGALURU - 01
REPRESENTED BY DR.ADAMSAB M.PATEL
DEPUTY ENVIRONMENTAL OFFICER
REGIONAL OFFICE SY.NO.19/P
MANSAFDAR LAYOUT, M.G.ROAD
SANTRASWADI, KALABURAGI – 585 101.

... RESPONDENT

(BY SRI K.SHASHIKIRAN SHETTY, SR. ADVOCATE A/W.,
SRI A.MAHESH CHOWDHARY, ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF
CR.P.C., PRAYING TO QUASH THE ENTIRE PROCEEDINGS PENDING
IN THE FILE OF PRINCIPAL CIVIL JUDGE AND JMFC CHINCHOLI IN
PCR NO.6/2024 AGAINST THE PETITIONERS (ACCUSED NO.1 TO 3
BEFORE THE COURT BELOW) FOR THE OFFENCES ALLEGEDLY
COMMITTED P/U/S.43, 44 AND 47 OF WATER ACT BY ALLOWING
THE PETITIONER FILED BY THE PETITIONER.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 08.08.2024, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: THE HON'BLE MR JUSTICE M.NAGAPRASANNA

CAV ORDER

The petitioners-accused Nos.1, 2 and 3 are before this Court calling in question entire proceedings in P.C.R.No.6 of 2024 pending before the Principal Civil Judge and JMFC, Chincholi filed under Section 200 of the Cr.P.C., for offences punishable under Sections 43, 44 and 47 of the Water (Prevention and Control of Pollution) Act, 1974 ('the Act' for short).

2. The facts, in brief, germane are as follows:-

The 1st petitioner is an industry and petitioners 2 and 3 are its Director and General Manager respectively. The industry is engaged in manufacturing white crystal sugar and co-generating ethanol power plant which is said to have been established with the consent and all other statutory provisions of the Karnataka State Pollution Control Board ('the Board' for short). The issue in the *lis* would commence from a complaint being registered by the Deputy

Environmental Officer of the Board allegedly finding the petitioner/industry discharging untreated trade effluent to Mullamari River and had started the operation of ethanol production without proper disposal of spent water and disposing the waste in unscientific manner. It is based upon the aforesaid allegations a complaint comes to be registered before the jurisdictional Magistrate under Section 200 of the Cr.P.C., for offences punishable under Sections 43, 44 and 47 of the Act. The concerned Court takes cognizance for the aforesaid offences, directs registration of criminal case against accused Nos. 1 to 3 and issues summons to them. Registering criminal case and issuance of summons is what has driven the petitioners to this Court in the subject petition.

3. Heard Sri Venkatesh P Dalwai, learned counsel appearing for the petitioners and Sri K Shashikiran Shetty, learned senior counsel appearing for the respondent.

4. The learned counsel appearing for the petitioners would contend that the show cause notice and the closure order issued to the petitioners had become subject matter of proceedings before

this Court. A Division Bench of this Court by its order dated 29-01-2024 had stayed further proceedings, pursuant to the show cause notice. The Division Bench disposed of Writ Petition No.2769 of 2024 in terms of its order dated 08-02-2024 quashing the proceedings on the score that the petitioners were not heard before passing the closure order against them, however, granting liberty to the petitioner therein who was the industry/accused No.1 to file its reply.

5. It is the submission of the learned counsel for the petitioners that the very closure order that forms the basis for registration of crime is now effaced by the order of the Division Bench. Therefore, these proceedings also should be quashed. He would, apart from the said fact, contend that Section 49 of the Act mandates that no court shall take cognizance if certain aspects are not complied with and one of the aspects which is not complied is, no 60 days notice is issued, is the submission of the learned counsel. He would seek quashment of proceedings on the aforesaid grounds.

6. Per contra, the learned senior counsel Sri K Shashikiran Shetty appearing for the Board would take this Court through the detailed statement of objections filed and contend that the Division Bench of this Court records the undertaking given by the 1st petitioner/industry that no cane crushing activity will be undertaken and therefore, permitting further proceedings would not arise. It is his submission that it is an admission on the part of the petitioner/industry that it was violating the law till it gave an undertaking before the Division Bench. It is his submission that merely because by a subsequent action the closure order is quashed, it would not mean that the petitioners can escape the liability of facing criminal proceedings for offences under the Act. He would seek dismissal of the petition contending that it is for the petitioners to come out clean in a full blown trial.

7. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

8. The petitioners were granted consent for establishment of the industry by the Board on 06-09-2022 on certain conditions. The industry began its operation after fulfilling all the conditions. On 02-02-2023 an inspection is said to have been taken up on the petitioner/industry which resulted in an observation that the industry was functioning without complying with the conditions stipulated in the consent for establishment order. The petitioner/industry was found to be allegedly operating without obtaining any further orders pursuant to the consent for establishment. Several other allegations were meted out in a show cause notice that was issued on 27-02-2023. Reply was submitted by the petitioners. Correspondences galore between the two. On 03-11-2023 the petitioner/industry applied for expansion of consent. While the expansion of consent was pending consideration, closure order comes to be issued on 25-01-2024 prohibiting the industry from functioning.

9. Prior to it, an order was passed on 18-01-2024 invoking Section 32(1)(C) of the Act prohibiting the industry from discharging the effluents. This closure order becomes a subject

matter of writ petition before this Court in Writ Petition No.2769 of 2024. The Division Bench grants an interim order of stay of the orders dated 18-01-2024 and 25-01-2024 in terms of its order dated 29-01-2024. When the matter came up on the next date, the Division Bench disposed of the petition on 08-02-2024 recording the undertaking of the petitioner/industry that no crane crushing activity will be undertaken in the industry. The order of the Division Bench reads as follows:

"5. Learned Advocate General for the respondents submitted that the question of considering the application for 'Consent for Operation' arises only if the application for 'Consent for Establishment for Expansion' is considered. He submitted that the application for 'Consent for Establishment for Expansion' shall be considered within an outer limit of four weeks. His submission is placed on record.

6. Petitioner has sought for quashing of Annexures-C and D. Annexure-C is notice dated January 18, 2024 issued under Section 32(1)(C) of the Act (Water (Prevention and Control of Pollution) Act, 1974) prohibiting petitioner from discharging effluents in the interest of public health. In view of the undertaking given by petitioner that no cane crushing activity will be undertaken, consideration of Annexure-C does not arise.

7. Annexure-D is the order dated January 25, 2024 directing petitioner to close the operation of industry forthwith. Petitioner's main grievance is that he was not heard before passing the said order.

8. In the circumstances, we deem it appropriate to treat Annexure-D as show cause notice granting liberty to

the petitioner to file his reply. Reply shall be considered after hearing the petitioner in accordance with law.

9. Accordingly, writ petition stands ***disposed of.***

10. In view of disposal of the petition, pending interlocutory applications, if any, do not survive for consideration and they stand disposed of."

(Emphasis supplied)

The order passed under Section 32(1)(C) of the Act prohibiting the petitioner/industry from discharging effluents and the closure order, were directed to be treated as show cause notices and the petitioner/industry was permitted to reply, which would mean that the orders impugned therein were read down as show cause notices.

10. The subject petition concerns certain analogous proceedings initiated against the petitioner/industry. On the ground of an order being passed on 18-01-2024 prohibiting the petitioner/industry from discharging the effluents and the closure order dated 25-01-2024 the crime comes to be registered invoking Section 200 of the Cr.P.C., before the learned Magistrate. A perusal at the complaint so registered is indicative of the fact that

the basis for registration of the complaint were two orders – one being 18-01-2024 and the other being 25-01-2024. Both these orders are now directed to be read down as show cause notices. In that light the substratum of the crime has undoubtedly vanished, as the substratum of the closure order and registration of crime are one and the same. Though the petitioners have not been completely absolved by the Division Bench, the offence under the Act is completely watered down by the Division Bench. But, the other submission of the learned counsel for the petitioner would cut at the root of the complaint itself.

11. It is not in dispute that the complaint is registered on 02-02-2024. It is for offences punishable under Sections 43, 44 and 47 of the Act. Once the complaint is preferred, the learned Magistrate takes cognizance of the offence on the very next day and issues summons to the petitioners in terms of his order dated 03-02-2024 as the complaint was registered on 02-02-2024. The issue now would be whether the learned Magistrate has taken cognizance in accordance with law.

12. Section 49 of the Act deals with cognizance of offence. It reads as follows:

"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**
- (aa) the adjudicating officer or any officer authorised by him in this behalf; 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.

(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."

(Emphasis supplied)

Section 49 mandates that no Court shall take cognizance of any offence under the Act except on a complaint made by a Board or any Officer authorized in this behalf. This would not be applicable as there is authorization in the case at hand. Clause (b) of sub-section (1) of Section 49 mandates that unless any person who has given notice of not less than 60 days in the manner prescribed of the alleged offence and of his intention to make a complaint to the Board or Officer authorized, no court can take cognizance of the offence.

13. The issue is jugglery of dates in the case at hand. It is not in dispute that the complaint is registered on 02-02-2024 and cognizance is taken on 03-02-2024. Cognizance is undoubtedly taken under Section 49 of the Act. Notice issued to the petitioners for the first time alleging offences punishable under Sections 43, 44 and 47 of the Act was on the inspection conducted on 03-01-2024 and drawing up of the sample. Show cause notice was issued to the petitioners on 11-01-2024. Even if it is construed to be a notice, the complaint is filed on 02-02-2024 within 23 days of issuance of notice. The learned Magistrate takes cognizance on 24th day of

issuance of notice, which is admittedly less than 60 days. Therefore, the learned Magistrate ought to have noticed the fact whether a show cause notice was issued to the accused and 60 days have lapsed after issuance of show cause notice and only on noticing the said fact, the concerned Court would be empowered to take cognizance of the offence, as Section 49 of the Act begins with a non-obstante clause that no court shall take cognizance of any offence under the Act except when a person against whom cognizance is sought to be taken has been given 60 days notice in a manner prescribed and the notice should bear observation that the intention of the one who issues notice is to register a complaint.

14. The aforesaid dates are not in dispute. A perusal at the averments in the statement of objections would indicate no answer to the averments in the petition. Therefore, jugglery of dates would be in favour of the petitioners. The aforesaid prime factors – one that the substratum of the crime for offence punishable under the Act being watered down, as the Division Bench of this Court reads down the order of closure as show cause notice and permits the petitioners to reply and that, cognizance could not have been taken

of the offence unless 60 days notice was given to the accused, the petition deserves to succeed, *albeit* with a rider and liberty to the respondent to initiate proceedings, bearing in mind the observations made herein, only if the situation warrants.

15. For the aforesaid reasons, the following:

ORDER

- (i) Criminal petition is allowed.
- (ii) Entire proceedings in P.C.R.No.6 of 2024 pending before the Principal Civil Judge & JMFC, Chincholi including the order taking of cognizance stands quashed, with liberty as observed in the course of the order.

Sd/-
(M. NAGAPRASANNA)
JUDGE

bkp
CT:SS