A. F. R.

Reserved on: 30.07.2020

Delivered on: 20.10.2020

Court No. - 14

Case :- U/S 482/378/407 No. - 1954 of 2020

Applicant :- M/S Daurala Sugar Works Thru. Managing Director
Opposite Party :- State Of U.P. & Another
Counsel for Applicant :- Sudeep Kumar, Avdhesh Kumar Pandey

Hon'ble Chandra Dhari Singh,J.

(1) The instant petition under Section 482/483 of the Cr.P.C. has been filed against order dated 11.11.2019 passed by Special Judicial Magistrate (Pollution)/CBI, Lucknow in Complaint Case No.774 of 1989 (Uttar Pradesh Pollution Control Board, Lucknow v. M/S Daurala Sugar Works (Distillery Division) and Ors.) rejecting the application of the petitioners for their discharge under Section 245 of the Cr.P.C. from the prosecution lodged by the Uttar Pradesh Pollution Control Board, Lucknow under Section 44 of the Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred as 'Act of 1974') and the consequential confirming order passed by the Additional Sessions Judge, Court No.1, Lucknow dated 17.07.2020 in Criminal Revision No.688 of 2019 (M/S Daurala Sugar Works (Distillery Division) and Ors. v. State of U.P. & Anr.) dismissing the criminal revision preferred by the petitioners under Section 397 of the Cr.P.C.

(2) Brief facts as borne out from the petition are as under:-

(i) M/s Daurala Sugar Works (Distillery Division) is owned by M/s DCM Limited, Delhi having its registered Office at Kanchenjunga Building, 18, Barakhamba Road, New Delhi. The Distillery was installed in the year 1943. There is

rearrangement of Company 'DCM Limited' along with three other Companies, i.e., DCM Industries Limited, DCM Shriram Industries Limited and Shriram Industrial Enterprises Limited, approved by Delhi High Court vide order dated 16.04.1990 under Section 391-394 of Companies Act, 1956 (hereinafter referred to as "Act, 1956"). Daurala Sugar Works, Daurala is now a unit of M/s DCM Shriram Industries Limited, New Delhi with effect from 01.04.1990.

(ii) Since installation of Distillery, the Trade Effluent discharged by it, is used to be consumed by nearby growers to irrigate their fields and for that purpose petitioner/company constructed a channel running in about five kilometers. This channel joins a drain (sewer) known as kali Nadi which is neither a river nor watercourse nor stream.

(iii) The Parliament enacted Act, 1974 and State of U.P. framed Rules, namely U.P. Water (Consent for Discharge of Sewage and Trade Effluent) Rules, 1981 (hereinafter referred to as "Rules of 1981"). It constituted 'Board' for the purpose of giving effect to provisions of Act of 1974 and Rules framed by State Government. Sections 25 and 26 of Act of 1974 required a running Industry to obtain consent from Board for discharging 'Trade Effluent' in a stream or well or sewer or on land. State Government issued Notification dated 21.09.1981 specifying 31.12.1981 as the date on or before which consent application should be filed by existing industries. Board vide Notification dated 06.04.1983 laid down effluent standards for discharge in stream and on land fixing BOD level at 100 MG per liter for existing Distilleries.

(iv) For the purpose of setting up "Effluent Treatment Plant", the petitioners made an application to Collector on 13.07.1981 requesting for allotment of 31.38 acres land in Village Daurala

and Machri, adjacent to petitioner-Distillery which was taken by State Government under U.P. Imposition of Ceiling on Land Holdings Act, 1960 (hereinafter referred to as "Act of 1960"). Correspondence continued but petitioners could not get land as desired for setting up "Effluent Treatment Plant" whereupon the petitioners made its own efforts with individual farmers and could get land in June 1984 and June 1985 measuring 18.43 acres. The Board passed an order rejecting the application of petitioners for consent vide order dated 07.05.1983 and 16.08.1984. The petitioners again moved an application on 09.03.1985 to the Board requesting for grant of consent in which it also mentioned a time bound programme for setting up "Effluent Treatment Plant". The Board again declined consent vide order dated 25.06.1985/10.07.1985. The petitioner, however was permitted to continue on the plant of setting up "Effluent Treatment Plan".

(v) Board issued a notice to the petitioners under Sections 25 and 26 read with 44 of Act, 1974 with further advise to complete installation of "Effluent Treatment Plant". Since petitioners' unit continuously was running without consent of the Board under Section 25/26, Board filed application in March 1986 under Section 33 of Act, 1974 before Chief Judicial Magistrate for a direction to petitioner-distillery to stop discharge of effluent. An order was passed by Magistrate on 29.03.1986 restraining Distillery from discharging effluent in sewer. The petitioners filed objection and thereafter learned Magistrate passed order on 17.05.1986 suspending interim order dated 29.03.1986 and directing petitioners to submit progress report of "Effluent Treatment Plant" to Board. The petitioner/D.C.M. Ltd. was also directed to ensure that it does not discharge polluted effluent without treatment.

(vi) The Magistrate passed an order on 31.08.1987 directing petitioner-factory to bring down pollution level in 'Trade Effluent' upto prescribed standard by 15.10.1987. On 09.09.1987, sample was taken and BOD content in the sample were found as 775 MG/Liter and 725 MG/Liter. The petitioners made all efforts to bring down BOD level but could not reduce BOD level as required, though it could be reduced by over 97 per cent. The petitioners sought further time from Magistrate to bring down BOD level as required. The Magistrate did not extend time and passed stop order on 17.10.1987.

(vii) A Writ - C No.9513 of 1989 was filed before this Hon'ble Court assailing orders passed by Uttar Pradesh Pollution Control Board rejecting the consent application filed by the petitioner and also for quashing the consequential proceedings under Section 33 and Section 44 of the Act of 1974. The said writ petition was dismissed vide order dated 21.07.2016. The said order was challenged in Petition for Special Leave to Appeal (C) bearing No.1944 of 2014 and the same was disposed of vide order dated 05.07.2018.

(viii) The Pollution Board filed a complaint under Section 44 of the Act of 1974 before the Chief Judicial Magistrate, Meerut in the year 1989 by alleging inter alia that M/s Daurala Sugar Works (Distillery Division), Daurala is a unit of M/s DCM Ltd., which is a company within the meaning of Section 47 of the Act of 1974 and has been discharging the polluting material (effluent) ultimately into stream Kali River. According to the allegations made in the complaint, initially the consent application of the Industry under Section 25/26 of the Act of 1974 was rejected on June 25, 1985 and thereafter, the industry was inspected on April 3, 1986 and the representatives of the Pollution Board collected sample of the effluent discharged by the Industry. It was contended in the complaint that the trade

effluent was found not meeting the norms laid down by the Pollution Board and therefore, the consent given by the industry dated January 4, 1986 was rejected by the Pollution Board through order dated May 6, 1986. It is further contended that since the industry was running without consent of the Pollution Board as is required under Section 25/26 of the Act of 1974, therefore, the complaint under Section 44 of the Act of 1974 was filed against the petitioners-company. The complaint was filed against the then Chairman, Senior Managing Director and Directors. In support of the complaint, the Pollution Board has relied upon letter dated June 25, 1985 by which the consent application was initially rejected, inspection report, notice of inspection, notice dated December 11, 1985 under Section 25/26 of the Act of 1974, order dated May 6, 1986 and the Board resolution dated June 8, 1987.

(ix) The said complaint filed by the Pollution Board under Section 44 of the Act of 1974 in the Court of Chief Judicial Magistrate, Meerut was transferred to the Special Judicial Magistrate (Pollution)/CBI, Lucknow and after transfer of the complainant, a Complaint Case No.774 of 1989 was registered before the Special Judicial Magistrate (Pollution)/CBI, Lucknow.

(x) During the pendency of the said Complaint Case No.774 of 1989 before the Court of Special Judicial Magistrate (Pollution)/CBI, Lucknow, the Law Officer namely Shri Chandra Bhal Singh, who was authorized by the Pollution Board to file the complaint under Section 44 of the Act of 1974, expired some time in the year 1998.

(xi) On behalf of the Pollution Board, statements of Shri J.S. Yadav and Shri Prakhar Kumar were recorded as P.W.-1 and P.W.-2 under Section 244 of the Cr.P.C.. Both the witnesses

produced by the Pollution Board were duly cross examined by the petitioners.

(xii) After completion of evidence under Section 244 of Cr.P.C., a discharge application under Section 245 of Cr.P.C. was filed by the petitioners on September 26, 2019 on the grounds that the prosecution had made an attempt to establish their case on the basis of photocopies of documents, which is wholly impermissible in view of the provisions of Section 64/65 of the Indian Evidence Act, 1872. The U.P. Pollution Control Board filed an objection on October 4, 2019.

(xiii) The Court of Special Judicial Magistrate (Pollution)/CBI, Lucknow rejected the discharge application filed by the petitioner under Section 245 of Cr.P.C. on November 11, 2019. Being aggrieved by the said order passed by the Court below, the petitioners have preferred Criminal Revision No.688 of 2019. The said revision was also rejected by revisional Court vide order dated 17.07.2020. Hence, the instant petition has been filed challenging both orders dated 11.11.2019 and 17.07.2020 passed by the Courts below.

(3) Shri Prashant Chandra, learned Senior Counsel assisted by Shri Sudeep Kumar, learned counsel appearing for the petitioners has submitted that while rejecting consent application preferred by the petitioners, the statutory procedure for conducting an inquiry for disposing of discharge application as provided under U.P. Water (Consent of Discharge of Sewage and Trade Effluents) Rules, 1981 was not followed. It is submitted that their valuable right of re-testing of the sample allegedly collected by the Pollution Board in view of the procedure given in Sub-Sections 3, 4 & 5 was contravened.

(4) Learned Senior Counsel by relying upon ***Amrey Pharmaceuticals and Ors. v. State of Rajasthan - (2001) 4***

SCC 382 and ***State of Haryana v. Unique Formed (P) Ltd. - (1999) 8 SCC 190*** has submitted that no criminal prosecution can continue against the petitioners once it is established that their valuable right of re-testing of sample has been denied. Learned Senior Counsel has submitted that the aforesaid ratio has been discarded by both the Courts below on the ground that the aforesaid judgments are related with the provisions of Drug and Cosmetic Act, 1990, Insecticide Act, 1968 and Prevention of Food Adulteration Act, 1954 without appreciating that the provisions of re-testing in the Act of 1974 are almost *pari materia* to the Drug and Cosmetic Act, 1990, Insecticide Act, 1968 and Prevention of Food Adulteration Act, 1954.

(5) Learned Senior Counsel has further submitted that the revisional Court has specifically observed that though all the issues raised by the petitioners while pressing the discharge application under Section 245 of Cr.P.C. have not been addressed by learned Magistrate while dismissing the discharge application, even then no jurisdictional error was found by the learned Revisional Court on the ground that there is no alleged illegality or impropriety in the final outcome of the discharge application, and while doing so, the learned Revisional Court has failed to appreciate that unless all the points raised by the petitioners would have been considered and discussed by the learned Magistrate, rejection of discharge application on some of the grounds by ignoring the material grounds cannot be said to be justified as it is the duty of the Courts to consider and decide all the points pleaded.

(6) It has further been submitted that no finding has been recorded by the Courts below on the specific submission/contention of the petitioners regarding admissibility of evidence in view of Section 21(3) of the Act of 1974 as well as filing the Complaint against wrong persons.

(7) Learned Senior Counsel has further submitted that no finding has been given by both the Courts below on the aspect as to whether authorization/sanction given to Shri Chandra Bhal Singh (now dead) for filing complaint under Section 44 of the Act of 1974 against M/s Daurala Sugar Works, Meerut can hold good or competent against the present petitioners.

(8) It has been submitted that perusal of the impugned orders passed by learned Magistrate as well as learned Revisional Court, would reveal that both the Courts below while rejecting the discharge application as also the criminal revision, have misread the provisions of Act of 1974 because no case of framing of charge is made out after taking into consideration the entire evidence.

(9) Learned Senior Counsel has submitted that petitioners no.3 to 8 are aged persons and are residing at different part of India and it is not practicably possible for them to come to Lucknow for facing trial.

(10) The specific argument of learned Senior Counsel appearing for the petitioners is that there is substantial difference at the stage of issuing process under Section 204 of Cr.P.C. and at the stage of framing of charge under Section 245 of Cr.P.C., The scope of Section 245 of Cr.P.C. is more enlarge to the state of inquiry conducted by the trial Court under Sections 200/202 of Cr.P.C.. It is submitted that under Section 245 of Cr.P.C., a statutory duty is casted upon the trial Court to consider the discharge of the accused if after taking of the evidences referred to in Section 244 of Cr.P.C., the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out.

(11) Learned Senior Counsel has submitted that while deciding the application under Section 245 of Cr.P.C., the Magistrate

concerned has not considered the aforesaid legal position and the revisional Court has also erred to not take into consideration the aforesaid legal position while rejecting the criminal revision filed by the petitioners/applicants.

(12) It has further been submitted that an application for discharge was filed by the petitioners on the ground that no case under Section 44 of the Act of 1974 is made out against the petitioners. The cause of action for filing the complaint under Section 44 of the Act of 1974 pertains to the year 1985-1986 and therefore, in view of the provisions of Section 49 of the Act of 1974, the authorization/consent for initiating prosecution has been given by the Board against M/s Daurala Sugar Works and whereas the complaint has been filed against M/s Daurala Sugar Works (Distillery Division), Meerut and against M/s DCM and also against its directors and officers.

(13) It is submitted that from perusal of the authorization annexed with the complaint reveal that relying on some resolution of the year 1981, the Board has authorized Shri Chandra Bhal Singh, Law Officer to file prosecution against M/s Daurala Sugar Works, Meerut. It is submitted that P.W.-2 Shri Prakhar Kumar, Assistant Environmental Engineer in his cross examination has deposed that Daurala Sugar Works, Meerut and Daurala Sugar Works (Distillery Division), Meerut are two different entities and their consent applications are decided separately. On the basis of the note sheet by which authorization has been given, it is evident that the said authorization relates to the Daurala Sugar Works and not Daurala Sugar Works (Distillery Division). Learned Senior Counsel has submitted that this point has also not been considered by both the Courts below.

(14) Learned Senior Counsel has also submitted that the Courts below have also not considered that the statute categorically

prohibits for consideration of result of any analysis of a sample of any sewage or to a different to be admissible in evidence unless the provisions of sub-sections 3, 4 and 5 of the Act of 1974 have been complied with. It has been submitted that the statutory rules farmed for disposal of the consent application namely U.P. Water (Consent for Discharge of Sewage and Trade Effluents) Rules, 1981 do not provide for collection of sample of the trade effluent, even then the sample was collected in utter violation to provisions of sub-section 3, 4 and 5 of Section 21 of the Act of 1974.

(15) It is further submitted that both the Courts below have considered the evidence of the prosecution witness namely Shri Jai Singh Yadav, and though the said witness has categorically admitted that there is no analysis report, no notice for collecting sample to the representative of the unit, second part of the sample to the representative of the unit and therefore, the consent application was wrongly rejected, even then the learned trial Court as well as the revisional Court have not considered the aforesaid evidence in true spirit for the purpose of consideration of discharge application.

(16) Learned Senior Counsel appearing for the petitioner has submitted that for proving any document, there is a requirement of original to be produced before the trial Court and perusal of the complaint as well as the evidences under Section 244 of Cr.P.C., would reveal that only photocopies have been filed by the complainant/Pollution Board, even then the learned trial Court as well as the revisional Court has considered the evidences filed by the complainant/Pollution Board in disregard to the provisions of Section 64/65 of the Indian Evidence Act.

(17) Learned counsel for the respondents has vehemently opposed the submissions made by learned counsel for the petitioners and

submitted that the instant petition is nothing but a gross misuse of process of law. He has submitted that the petitioners are knowingly avoiding the trial in Complaint Case No.774 of 1989 before the Court of Special Judicial Magistrate (Pollution)/CBI, Lucknow.

(18) It has been submitted that on earlier occasion Writ C No.9513 of 1989 was filed before this Court and the same was dismissed with cost vide judgment and order dated 21.07.2016 passed by Division Bench. Thereafter, the petitioner preferred Special Leave to Appeal (C) No(s).1944 of 2017 before the Hon'ble Supreme Court. The said SLP was also disposed of vide order dated 05.07.2018 dispensing with presence of petitioners no.3 to 8 herein before the trial Court. It was also directed that the trial be expedited and concluded as early as possible, preferably within a period of 1 and 1/2 years.

(19) Learned counsel for the respondents has submitted that since presence of petitioners no.3 to 8 herein has already been dispensed with by the Hon'ble Supreme Court itself, therefore, the ground taken by the petitioners in the instant petition under Section 482/483 Cr.P.C., that the petitioners are old aged persons and therefore, the entire proceedings against them may be quashed, has no force. It has been submitted that there are no illegalities in the impugned orders dated 11.11.2019 passed by Special Judicial Magistrate (Pollution)/CBI, Lucknow and 17.07.2020 passed by Additional Sessions Judge, Court No.1, Lucknow. Both the Courts below have passed impugned orders after considering the entirety of the matter and after coming at the conclusion that *prima-facie* a case is made out against the petitioners and sufficient material is available to initiate the trial and their conviction.

(20) It is further submitted that at the stage of Section 245 Cr.P.C., the Court below is to take into consideration whether the material is sufficient to initiate the trial against the accused. The trial Court while rejecting the application considered each and every points categorically and found that there is no merit in the contentions made in the said application and therefore, the same was rejected. It is also submitted that the revisional Court has also not found any error in order dated 11.11.2019 passed by the Magistrate concerned.

(21) Learned counsel for the respondent has submitted that all points which are raised by the petitioners herein maybe dealt with by the Special Judicial Magistrate (Pollution)/CBI, Lucknow at the appropriate stage during trial. It has been submitted that there is no force in the instant petition and the same may be dismissed.

(22) I have heard learned counsel for the parties *in extenso* and perused the record.

(23) Before adverting to consider the contentions raised by learned counsel for the petitioners it is relevant to discuss the relevant provisions.

(24) Section 44 of the Act provides that whoever contravenes the provisions of Section 25 or Section 26 of the Act of 1974 shall be punishable with imprisonment for a term which shall not be less than six months but which may be extend to six years and with fine.

(25) Section 25 of the Act of 1974 deals with the restrictions on new outlets and new discharges and postulates that subject to the provisions of this section, no person shall, without the previous consent of the State Board, bring into use any new or altered outlet for the discharge of sewage or trade effluent into a stream or well.

(26) Section 26 of the Act of 1974 provides that where immediately before the commencement of this Act any person was discharging any sewage or trade effluent into a stream or well, the provisions of Section 25 shall, so far as may be, apply in relations to such person as they apply in relation to the person referred to in that section subject to the modification that the application for consent to be made under sub-section (2) of that section shall be made within a period of three months of the constitution of the State Board.

(27) Now before discussing the provisions of Section 49 of the Act of 1974 it is necessary to make it clear that the provisions of Section 49 of the Act of 1974 has undergone drastic changes by Act No.53 of 1988 published in the Gazette of India on 03.10.1988 whereby old provisions of Section 49 have been repealed and in its place new provisions have been substituted. Thus, since the amendment came into force with effect from 03.10.1988 and the complaint in question was filed on 26.05.1988, i.e. prior to the amendment, therefore, the complaint in question was required to have been filed in accordance with the unamended provisions of Section 49 of the Act, so, for the decision of this case, provisions of Section 49 as they stood on the date of complaint, are relevant and they read as under:

> *"49. COGNIZANCE OF OFFENCES:—*
> *(1) No Court shall take cognizance of any offence under this Act except on a complaint made by, or with previous sanction in writing of the State Board, and no Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence punishable under this Act.*
>
> *(2) Not With Standing anything contained in S. 32 of the Code of Criminal Procedure 1898 (5 of 1898) it shall be lawful for any Magistrate of the first class or for any Presidency 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."

(28) A perusal of above quoted provision makes it crystal clear that if the complaint is filed by the Board, the provision does not require any sanction and if the complaint is filed by person other than the Board, there should be previous sanction of the Board. It would not be out of place to mention here that the provisions of Section 49 of the Act of 1974 as they stand today do not require any sanction of the Board irrespective of the fact whether the complaint is filed by the Board or any other person.

(29) In the instant case, the application under Section 245 Cr.P.C. was filed before the Court below for discharging the petitioners from all the charges as levelled against them. Vide order dated 11.11.2019, the Special Judicial Magistrate (Pollution)/CBI, Lucknow rejected the said application recording the following reasons:-

पत्रावली के अवलोकन से यह स्पष्ट है कि परिवादी की ओर से पत्रावली में संलग्न प्रपत्र छायाप्रतियां हैं। प्रस्तुत परिवाद उन्मोचन प्रार्थनापत्र के स्तर पर है। दौरान विचारण यह सिद्ध करने का भार परिवादी पर है कि वह अपने प्रपत्रों तथा अभियुक्तगण के उत्तरदायित्व को संदेह से परे सिद्ध करे। माननीय उच्चतम न्यायालय की विधि व्यवस्था उड़ीसा राज्य बनाम देवेन्द्र नाथ पादी में माननीय उच्चतम न्यायालय ने यह अभिनिर्धारित किया कि आरोप विरचन के स्तर पर न्यायालय को मात्र यह देखना है कि क्या प्रथम दृष्टया मामला अभियुक्तगण के विरूद्ध बनता है या नहीं। न्यायालय इस स्तर पर सूक्ष्म साक्ष्य विश्लेषण एवं मिनी ट्रायल नहीं कर सकता है। अतः उपरोक्त समस्त विश्लेषण के आधार पर न्यायालय का यह मत है कि अभियुक्त संख्या-अभियुक्त संख्या 1, 2, 3561314 तथा 15 की ओर से प्रस्तुत उन्मोचन प्रार्थनापत्र दिनांक 26.09.2019 न्यायहित में स्वीकार किये जाने योग्य नहीं है।

<u>आदेश</u>

अभियुक्त संख्या 1, 2, 3, 5, 6,13, 14 तथा 15 की तरफ से प्रस्तुत उन्मोचन प्रार्थनापत्र दिनांकित 26.09.2019 निरस्त किया जाता है। तद्नुसार प्रार्थनापत्र निस्तारित। पत्रावली वास्ते आरोप विरचन दिनांक 18.11.2019 को पेश हो। प्रस्तुत परिवाद प्राचीनतम वादों में से एक है। अतः अभियुक्त संख्या 1, 2, 3561314 तथा 15 व्यक्तिगत रूप से स्वयं उपस्थित हों, जिससे वाद अग्रसारित किया जा सके।

(30) The revisional Court while dismissing Criminal Revision No.688 of 2019 vide order dated 17.07.2020 assigned the following reasons:-

> पुनरीक्षणकर्ता /अभियुक्तगण के विद्वान अधिवक्ता द्वारा यह भी तर्क दिया गया है कि सी०बी० सिंह की मृत्यु वर्ष 1995 में हो गयी, जबकि उनके बाद प्रखर कुमार, सहायक पर्यावरण अभियन्ता को वाद की कार्यवाही संचालित करने का प्रार्थना-पत्र दिनांक 29-04-2019 को परिवादी बोर्ड की अनुमति से प्रस्तुत किया गया, जिसे विद्वान अवर न्यायालय द्वारा दिनांक 11- 09-2019 को धारा 305 दण्ड प्रक्रिया संहिता के अन्तर्गत स्वीकार करते हुए उन्हें परिवाद संचालित करने की अनुमति दी गयी। अवर न्यायालय का आदेश दिनांकित 11-09-2019 अवैध है। प्रखर कुमार को लम्बे अन्तराल के बाद परिवाद संचालित करने की अनुमति नहीं दी जा सकती थी। परिवादी बोर्ड के अधिवक्ता द्वारा उपरोक्त का प्रतिवाद किया गया है/ स्पष्ट है कि प्रस्तुत पुनरीक्षण याचि पुनरीक्षणकर्ता/ अभियुक्तगण द्वारा विद्वान अवर न्यायालय के आदेश दिनांकित 11-11-2019 के विरुद्ध संस्थित की गयी है, जिसके द्वारा अवर न्यायालय द्वारा पुनरीक्षणकर्ता / अभियुक्तगण के उन्मोचन का प्रार्थना-पत्र निरस्त किया गया। यदि पुनरीक्षणकर्ता/अभियुक्तगण को अवर न्यायालय के आदेश दिनांकित 11-09-2019 की वैधानिकता पर कोई संदेह था तो उनके पास उक्त आदेश के विरुद्ध सक्षम न्यायालय में पुनरीक्षण याचिका संस्थित करने का अधिकार प्रापत था, इस पुनरीक्षण याचिका में उक्त आदेश की वैधानिकता को चुनौती दिये जाने का कोई औचित्यपूर्ण आधार नहीं है। वैसे भी अवर न्यायालय की धारा 305 दण्ड प्रक्रिया संहिता के अधीन परिवाद संचालित करने की अनुमति देने की अधिकारिता एवं शक्ति प्राप्त थी और यदि अवर न्यायालय द्वारा अपनी उक्त अधिकारिता एवं शक्ति का प्रयोग वैवेकिक रूप से किया गया तो उक्त के सम्बन्ध में अन्य आदेश के विरुद्ध संस्थित पुनरीक्षण याचिका में विचार करके विश्लेषित किये जाने का कोई औचित्यपूर्ण आधार नहीं है। पुनरीक्षणकर्ता/अभियुक्तगण के विद्वान अधिवक्ता द्वारा अन्त में यह भी तर्क दिया गया कि अवर न्यायालय द्वारा प्रश्नगत आदेश दिनांकित 11-09-2019 में उनके द्वारा उन्मोचन प्रार्थना-पत्र में उल्लेखित अनेक बिन्दुओं के सम्बन्ध में विश्लेषण एवं निष्कर्ष नहीं दिया गया , इसलिए प्रश्नगत आदेश अवैध एवं अनियमित है। परिवादी बोर्ड के विद्वान अधिवक्ता द्वारा उक्त पर प्रतिवाद किया गया है यह स्पष्ट है कि उन्मोचन प्रार्थना-पत्र में उपरोक्तानुसार जिन बिन्दुओं के सम्बन्ध में अपना तर्क प्रस्तुत किया गया, उन बिन्दुओं को इस न्यायालय द्वारा उपरोक्त के सम्बन्ध में उपरोक्तानुसार विश्लेषण किया गया है और विद्वान अवर न्यायालय द्वारा भी अपने आदेश में उन्मोचन प्रार्थना-पत्र के अनेक बिन्दुओं पर विश्लेषण करके निष्कर्ष दिया गया है, जिसमें प्रत्यक्षतः कोई अवैधानिकता, अनियमितता, अनौचित्यता एवं अशुद्धता 65 प्रदर्शित नहीं होती है। कदाचित यदि कुछ एक बिन्दु अवर न्यायालय से प्रश्नगत आदेश में विश्लेषित या निष्कर्षित होने से शेष रह गये तो मात्र उक्त के आधार पर तब जबकि विद्वान अवर न्यायालय का अन्तिम निष्कर्ष एवं आदेश में

कोई अवैधानिकता या अशुद्धता नहीं है, सम्पूर्ण आदेश को अवैधानिक या अशुद्ध नहीं माना जा सकता है।

उपरोक्त सम्पूर्ण विश्लेषण से स्पष्ट है कि विद्वान अवर न्यायालय के प्रश्नगत आदेश दिनांकित 11-11-2019 में प्रत्यक्षतः कोई अवैधानिकता, अनियमितता, अशुद्धता या अनौचित्यता नहीं है। तदनुसार प्रस्तुत दाण्डिक पुनरीक्षण याचिका बलहीन है और निरस्त किये जाने योग्य है।

आदेश

प्रस्तुत दाण्डिक पुनरीक्षण याचिका बलहीन होने के कारण निरस्त की जाती है। विद्वान अवर न्यायालय का प्रश्नगत आदेश दिनांकित 11-11-2019 पुष्ट किया जाता है

पुनरीक्षणकर्ता/अभियुक्तगण अवर न्यायालय के रामक्ष दिनांक 03-08-2020 को अग्रिम कार्यवाही हेतु उपस्थित हों। निर्णय/आदेश की एक प्रति अवर न्यायालय की पत्रावली के साथ अवलोकनार्थ अविलम्ब प्रेषित हो।

बाद आवश्यक कार्यवाही दाण्डिक पुनरीक्षण की पत्रावली नियमानुसार दाखिल दफ्तर हो।

(31) At the outset, before I decide the legality of the order passed by Special Judicial Magistrate (Pollution)/CBI, Lucknow while rejecting the application for discharge and order of revisional Court, it would be appropriate to discuss Section 245 (1) of Cr.P.C. and scope of criminal revision under Section 397 Cr.P.C. Section 245 (1) of Cr.P.C. reads as under:-

> *"245. When accused shall be discharged.*
>
> *(1) If, upon taking all the evidence referred to in section 244, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him."*

(32) Section 245(1) Cr.P.C. begins with the words that, if upon such consideration. It shows that the Magistrate should consider the evidence adduced under Section 244 Cr.P.C. and if he sees that no case has been made out against the accused, that is, if unrebutted it would warrant a conviction, there is *prima facie* case, then he will not discharge the accused from the case under Section 245(1) Cr.P.C. Otherwise, he will frame a charge under Section 246(1) Cr.P.C.

(33) The quality of consideration, which a criminal court undertakes, of the materials available before it, must certainly vary from circumstance to circumstance and stage to stage. At the initial stage of Section 203/204 Cr.P.C., a criminal court considers the materials available before it for the short purpose of deciding whether "there is sufficient ground to proceed against the accused." In a private complaint alleging commission of a warrant offence under Section 245 Cr.P.C., after the enquiry under Section 244 Cr.P.C., a criminal court is expected under Section 245(1) only to consider whether such a case has been made out "which, if unrebutted, would warrant a conviction." The quality of consideration of the materials available before the court at a later stage of the proceedings - at the stage of deciding whether the accused deserve to be convicted or acquitted - is totally different and more exhaustive. It is at that stage that the exercise of weighing the evidence in golden scales will, can and should be resorted to by a court.

(34) It is true that courts have loosely employed the expression "*prima facie case*" at the stage of Section 203/204 Cr.P.C. and Section 245/246 Cr.P.C. That expression is not used in the Code of Criminal Procedure. But it must be noted that the quality of consideration at the stage of Section 203/204 Cr.P.C. and Section 245/246 Cr.P.C. are definitely different. There is a real and reasonable difference between the quality of consideration of the materials at these two stages. Though loosely referred to as "*prima facie case*" by courts in some decisions, one cannot jump to a conclusion that the quality of consideration of the materials at these two stages are identical. They are certainly different.

(35) It is crucial to note that it is not the mandate under Section 245(1) Cr.P.C. that evidence if unrebutted would warrant a conviction, charge has to be framed. The language of Section

245(1) makes it very clear that evidence will have to be adduced and thereafter the court will have to consider whether a case, which, if unrebutted, would warrant a conviction is made out. It is not the mandate of law that the court need only consider whether "evidence if unrebutted, would warrant a conviction." What should be considered is whether a case if unrebutted, would warrant a conviction. I must note that there is a distinction between these two circumstances. A *bona fide* complainant must be given a fuller opportunity to substantiate his allegations. The complainant actuated by oblique motive will have to be shown the door. An innocent accused who does not deserve to endure the trauma of a prosecution must be saved of such predicament.

(36) At this stage of Section 245/246 Cr.P.C. the question is certainly not whether the evidence if accepted would warrant a conviction. The question is only whether the case established, from the materials placed before the court, if unrebutted, would warrant a conviction. In that view of the matter, the consideration of the stage of Section 245/246 Cr.P.C. is one which is more sublime. According to me, the case is certainly one to be considered under Section 245(1) Cr.P.C. When so considered, broad improbabilities in the evidence rendered by P.W. 1 and P.W. 2 and the inherent infirmity in the case or the complainant must all necessarily be taken into account to decide whether such a case which if unrebutted would warrant a conviction has been established.

(37) A bare reading of Section 245(1) Cr.P.C., would reveal that it contemplates the discharge of the accused after recording all the evidence which may be produced under Section 245 Cr.P.C. on behalf of the complainant only if such evidence does not make out any such case against the accused, which if unrebutted, would entail his conviction. In the instant case, the Court below

has dealt with each and every points raised by the petitioners in their applications under Section 245(2) Cr.P.C. in detail and found that *prima-facie* evidences are available on record that would warrant a conviction to the petitioners.

(38) In the case of ***Dr. Z. Kotasek v. The State of Bihar - 1984 Cri LJ 683***, the Patna High Court ruled that "*when the complainant was the Board itself and not any of its officers and the Board had passed a resolution for filing a complaint against the accused company, there was compliance of the provisions of sanction as laid down in Section 49 of the Act. In the instant case, the complainant is the Board and the Board has passed a resolution for filing a complaint. Thus, there is sufficient compliance of Section 49 of the Act. In this context it is necessary to clarify the legal position that the Board can sue and be sued in its own corporate name, as Board by prescription is a Board of such antiquity that the consent of the sovereign may be presumed. The Board can sue and be sued, but only through its authorised officers, this position is undisputed. Thus, to satisfy the requirements of Section 49 of the Act, it is sufficient that the Board passed the resolution to file complaint and authorised its officer, to be nominated by the Assistant Secretary, to file the complaint.*"

(39) In the instant case, the available materials on record when considered in its totality must certainly lead the Court to the conclusion that such a case had been made out which, if unrebutted, would warrant a conviction of the accused persons. Therefore, the learned Special Judicial Magistrate (Pollution)/CBI, Lucknow was perfectly right in rejecting the application for discharge of the petitioners. On reading the complaint and other materials on record, it cannot be said that the learned Special Judicial Magistrate was wrong in dismissing the said application for discharge. In such circumstances, I do

not find any force in the arguments advanced by learned counsel for the petitioners for setting aside order of the learned Special Judicial Magistrate (Pollution)/CBI, Lucknow while exercising extraordinary jurisdiction under Section 482 Cr.P.C.

(40) I am now required to determine the scope of criminal revision under Section 397 read with Section 398 Cr.P.C. At this stage, it would be appropriate to reproduce Sections 397 & 398 Cr.P.C.

> ***397. Calling for records to exercise powers of revision.-*** *(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order,- recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record. Explanation.- All Magistrates whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub- section and of section 398.*
>
> ***398. Power to order inquiry. -*** *On examining any record under section 397 or otherwise, the High Court or the Sessions Judge may direct the Chief Judicial Magistrate by himself or by any of the Magistrate subordinate to him to make, and the Chief Judicial Magistrate may himself make or direct any subordinate Magistrate to make, further inquiry into any complaint which has been dismissed under section 203 or sub-section (4) of section 204, or into the case of any person accused of an offence who has been discharged:*
> *Provided that no Court shall make any direction under this section for inquiry into the case of any person who has been discharged unless such person has had an opportunity of showing cause why such direction should not be made.*

(41) A perusal of the aforesaid provisions portray that revisionary power is exercised either by the Sessions Judge or by High Court and a dismissal of the complainant by Magistrate under Section 203 Cr.P.C., may be assailed in a criminal revision under Section 397 Cr.P.C. Therefore, the scope of criminal revision under Section 397 Cr.P.C. is very limited and the law in this regard is now well settled by a catena of decisions of the

Hon'ble Supreme Court. It is well settled that the revisionsal Court while exercising its revisional jurisdiction cannot be interfered with the order of the Court below i.e. Special Judicial Magistrate, unless it is perverse.

(42) The Sessions Judge who is exercising revisional power under Sections 397 & 399 Cr.P.C. has only to address himself to the correctness, legality or propriety of the order passed by the learned Magistrate. He cannot examine the case on merits with a view to find out whether or not the allegation in the complaint, if proved, would ultimately aid in conviction of the accused, and further cannot substitute his own discretion for consideration of the Magistrate.

(43) In the present case, the revisional Court examined the order passed by Special Judicial Magistrate (Pollution)/CBI, Lucknow dated 11.11.2019 minutely and did not find any error in the said order. Sub-section 1 of Section 47 of the Act of 1974 shifts the burden on the delinquent officer or servant of the company responsible for commission of offence. The burden is on him to prove that he did not know of the offence or connived in it or that he had exercised all due diligence to prevent the commission of such offence. The non obstante clause in sub-section 2 expressly provides that notwithstanding any contained in sub-section 1, where an offence under the 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, they shall also be deemed to be guilty of that offence, and shall be liable to be proceeded against and punished accordingly.

(44) While rejecting the criminal revision filed by the petitioners by way of passing a speaking and reasoned order, the learned

revisional Court has not found any illegality or perversity in the order passed by learned Special Judicial Magistrate (Pollution)/ CBI, Lucknow. In such circumstances, I do not find any good ground to interfere in the order passed by the revisional Court in the instant case. I also do not find any force in the submissions of learned Senior Counsel appearing for the petitioners that the Courts below while adjudicating the application for discharge has totally lost the vision that there were serious violation of the statutory violation.

(45) The scope of enquiry under Section 482 has been elaborated in the following judgments:

1. *U.P. Pollution Control Board* v. *Dr. Bhupendra Kumar Modi*, 2009 (1) CTC 84 (SC) : 2009 (1) SCC (Cri) 679;

2. *Central Bureau of Investigation* v. *A. Ravishankar Prasad*, 2009 (6) SCC 351;

3. *Central Bureau of Investigation* v. *V.K. Bhutiani*, 2009 (10) SCC 674;

4. *V.P. Shrivastava* v. *Indian Explosives Limited*, 2010 (10) SCC 361;

(46) In ***U.P. Pollution Control Board v. Dr. Bhupendra Kumar Modi and Anr - (2009) 1 SCC (Cri) 679,*** the following has been held by the Hon'ble Supreme Court:-

> *40. It is true that it is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. While exercising inherent powers either on civil or criminal jurisdiction, the Court does not function as a court of appeal or revision. The inherent jurisdiction though wide has to be exercised sparingly, carefully and with caution. It should not be exercised to do real and substantial justice and if any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent abuse. When no offence is disclosed by the complainant, the Court may examine the question of fact. When complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant had alleged and whether any offence is made out even if the allegations are accepted in toto.*

> *41. When exercising jurisdiction under Section 482 of the Cr.P.C., the High Court could not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it the accusation would not be sustained. To put it clear, it is the function of the trial Judge to do so. The Court must be careful to see that its decision in exercise of its power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. If the allegations set out in the complaint do not constitute offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Cr.P.C. However, it is not necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal."*

(47) In ***Central Bureau of Investigation* v. *A. Ravishankar Prasad - 2009 (6) SCC 351,*** it has been held as follows:

> *"23. The powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. The Court must be careful to ensure that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court should normally refrain from giving a prima facie decision in a case where all the facts are incomplete and hazy, more so, when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of such magnitude that they cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down with regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage.*
>
> *40. Both English and the Indian Courts have consistently taken the view that the inherent powers can be exercised in those exceptional cases where the allegations made in the First Information Report or the Complaint, even if are taken on their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the Accused. When we apply the settled legal position to the facts of this case it is not possible to conclude that the Complaint and the charge-sheet prima facie do not constitute any offence against the Respondents."*

(48) In the judgment reported in ***Inder Mohan Goswami* v. *State of Uttaranchal* - 2007 (5) CTC 614 (SC) : 2007 (12) SCC 1 : 2008 (1) SCC (Cri) 259,** it has been held as follows:

> *"Inherent powers under Section 482, Cr.P.C. though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the Court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the Court, then the Court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the statute."*

The Court in *Goswami case (supra)* also observed that: "inherent power should not be exercised to stifle a legitimate prosecution."

(49) Similarly in ***Dinesh Dutt* v. *State of Rajesthan* - 2001 (8) SCC 570,** it has been held as follows:

> *"6. ..The principle embodied in the Section is based upon the maxim: quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest i.e., when the law gives anything to anyone, it gives also all those things without which the thing itself would be unavailable. The Section does not confer any new power, but only declares that the High Court possesses inherent powers for the purposes specified in the Section. As lacunae are sometimes found in procedural law, the Section has been embodied to cover such lacunae wherever they are discovered. The use of extraordinary powers conferred upon the High Court under this Section are however required to be reserved, as for as possible, for extraordinary cases."*

(50) In the case of ***M.C. Mehta v. Kamal Nath & Ors. - (1997) 1 SCC 388,*** the doctrine and public trust has been propounded and has been adopted in our legal system. In this case vast area of forest has been given for construction of Motel in Kullu-Manali Valley in the river Beas. By various constructions work, the flow of the river was diverted and forest land was destroyed. Hence, for protecting the environment and to restore

the public trust, the provisions and statute relating to the environment should be implemented in a very strict manner.

(51) In the case on hand which had commenced its journey in the year 1989, nonetheless lapse of such a long period cannot be a reason to absolve the respondents from the trial. In a matter of this nature, particularly, when it affects public health if it is ultimately proved, courts cannot afford to deal lightly with cases involving pollution of air and water. The message must go to all persons concerned whether small or big that the courts will share the parliamentary concern and legislative intent of the Act to check the escalating pollution level and restore the balance of our environment. Those who discharge noxious polluting effluents into streams, rivers or any other water bodies which inflicts (*sic* harm) on the public health at large, should be dealt with strictly dehors the technical objections. Since escalating pollution level of our environment affects the life and health of human beings as well as animals, the courts should not deal with the prosecution for offences under the pollution and environmental Acts in a casual or routine manner.

(52) When exercising jurisdiction under Section 482 of the Cr.P.C, the High Court could not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it the accusation would not be sustained. To put it clear, it is the function of the trial Judge to do so. The Court must be careful to see that its decision in exercise of its power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. If the allegations set out in the complaint do not constitute offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Criminal Procedure Code. However, it is not necessary that there should be

meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal.

(53) The last argument of learned counsel for the petitioners that all the private persons are old aged persons and therefore, they may be exempted to appear before the Court below during the trial, has already been adjudicated by Hon'ble Supreme Court vide judgment and order dated 05.07.2018 rendered in Special Leave to Appeal (C) No(S). 1944 of 2017 whereby presence of petitioners no.3 to 8 herein have already been dispensed with. Vide the said order the trial Court was also directed to conclude the trial as early as possible, preferably within a period of 1 and 1/2 years.

(54) In the light of the above discussion and in view of the specific averments in the complaint as well as the other documents on record coupled with statutory provisions namely Sections 25, 26, 44 & 47 of the Act of 1974, I am unable to find out any good ground to interfere in the orders impugned passed by the Courts below by way of exercising jurisdiction under Section 482/483 Cr.P.C.

The Special Judicial Magistrate (Pollution)/CBI, Lucknow is directed to proceed with the complaint and dispose of the same in accordance with law expeditiously, preferably within 1 and 1/2 year from today.

I make it clear that I have not expressed anything on the merits of the contents of the complaint. It is so far the Special Court to decide the same in accordance with law.

(55) In view of the above, the instant petition is ***dismissed.***

Order Date :- 20.10.2020

nishant/-