

HIGH COURT OF GUJARAT

**LUPIN LIMITED AND ORS
V/S
STATE OF GUJARAT AND ORS**

Date of Decision: 09 February 2015

Citation: 2015 LawSuit(Guj) 166

Hon'ble Judges: [Vipul M Pancholi](#)

Case Type: Special Criminal Application (Quashing)

Case No: 286 of 2007

Subject: Constitution, Criminal, Labour and Industrial

Head Note:

A. Code of Criminal Procedure, 1973 - Sec.482 - Quashing - Environment (Protection) Act, 1986 - Hazardous Wastes (Management and Handling) Rules, 1989 - Indian Penal Code, 1860 - Sec.428, 429 - It is alleged that Deputy Environment Engineer and Scientific Officer visited the sight which was near Tapi Lodge on National Highway No. 8, on the receipt of the telephonic message as well as newspaper reports in respect of death of cows on eating grass - At that time Mamlatdar, Ankleshwar and one Ramubhai Bharvad were present there - Said Shri Ramu Bharwad pointed out the place where the cows were grazing. Ramu Bharwad shown some papers and documents of M/s. Lupin Limited, Ankleshwar, which were in his possession, but were not handed over to the officers of the GPCB - AI-Aas Trade Link has not obtained necessary permissions under the Rules from GPCB with respect to the said places - Due to irresponsible and negligent handling of hazardous waste being thrown in the area where the cows were grazing when the death of the cows appeared to have occurred. (Para 3)

B. FSL report does not disclose presence of any poisonous chemical and there is no material about identity of the sample being of a particular company - However, two other companies in the said area are manufacturing the aforesaid substance i.e. Cheminova Company and United Phosphorus Limited - However, surprisingly the respondent No. 1 complainant has not filed complaint against these two companies - It is clear that the learned JMFC has not applied his mind while issuing the process against the applicant No. 3 - Thus, from the record, it appears that the issuance of process against the applicant No. 3 is nothing but an abuse of process of the Court and therefore, to secure the ends of justice, the same is required to be quashed and set aside while exercising powers u/s. 482 - Application allowed. (Para 5, 7, 13)

Acts Referred:

[Constitution Of India Art 226](#)

[Indian Penal Code, 1860 Sec 405, Sec 428, Sec 429, Sec 406](#)

[Code Of Criminal Procedure, 1973 Sec 482, Sec 202](#)

[Employees Provident Funds And Miscellaneous Provisions Act, 1952 Sec 14A](#)

Final Decision: Petition allowed

Advocates: [K S Nanavati](#), [K P Raval](#)

Reference Cases:

[Cases Referred in \(+\): 3](#)

Judgement Text:-

Vipul M Pancholi, J

[1] This petition is filed under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973, wherein, the petitioners have prayed that the order dated 16.01.2007, passed by learned Judicial Magistrate First Class, Ankleshwar in Criminal Inquiry No. 96 of 2005, which is subsequently registered as Criminal Case No. 218 of 2007 be quashed and set aside.

[2] Brief facts leading to the filing of the present cases are That the respondent No. 2

has filed complaint being Criminal Case No. 218 of 2007 against one Al-Aas Trade Link and 24 others under Sections 428 and 429 of Indian Penal Code as well as under the provisions of Environment (Protection) Act, 1986 ('the Act, 1986' for short) read with Hazardous Wastes (Management and Handling) Rules, 1989 ('the Rules, 1989' for short).

[3] 1 In the said complaint, which was filed by the original complainant of Criminal Case No. 218 of 2007 against one Al-Aas Trade Link and 24 others under Sections 428 and 429 of Indian Penal Code as well as under the Act, 1986 read with the Rules, 1989, it is alleged that on 04.12.2005, Deputy Environment Engineer and Scientific Officer visited the sight which was near Tapi Lodge on National Highway No. 8, on the receipt of the telephonic message as well as newspaper reports in respect of death of cows on eating grass. At that time Mamlatdar, Ankleshwar and one Ramubhai Bharwad were present there. Said Shri Ramu Bharwad pointed out the place where the cows were grazing. Ramu Bharwad shown some papers and documents of M/s. Lupin Limited, Ankleshwar, which were in his possession, but were not handed over to the officers of the GPCB.

3.2 Both the officers inspected open place and inspected the heap of wastages having grass and other materials. On 13.12.2005, during inquiry, it was revealed that the said plot was belonging to one Thakorebhai who had given the said plot to Ashfak Khan for business. Samples were collected from this heap of waste for laboratory analysis.

3.3 It is further alleged in the said complaint that during inquiry, the officers inspected the premises of M/s. Lupin Limited. They also contacted one Samirbhai of Al-Aas Trade Link who had informed the officers about purchase of empty drums from ISAGRO (Asia) Agrochemicals Private Limited, situated at Panoli. It is alleged that Al-Aas Trade Link has not obtained necessary permissions under the Rules from GPCB with respect to the said places. It is alleged in the said complaint that when the officers had visited ISAGRO (Asia) Agrochemicals Private Limited, situated at Panoli, they found the empty drums and Works Manager Shri R.G. Desai was interrogated. It was revealed that empty drums were given to ISAGRO (Asia) Agrochemicals Private Limited on 24.11.2005.

3.4 However, as regards the grass, it was pointed out by the Works Manager

that said grass was usually and generally given to Bharvad Sureshbhai, who in turn, was providing milk and curd to canteen of the company.

3.5 It is further stated in the complaint that there was entry noted by Ankleshwar Rural Police Station on 04.12.2005 in respect to the death of cows and it was believed that due to irresponsible and negligent handling of hazardous waste being thrown in the area where the cows were grazing when the death of the cows appeared to have occurred.

3.6 Hence, it is alleged that the persons responsible for throwing hazardous waste in open place are responsible for contravention of provisions of the Environment (Protection) Act, 1986 read with Hazardous Wastes (Management and Handling) Rules, 1989 and under Section 428 and 429 of the Indian Penal Code.

3.7 It is the case of the petitioners that learned Judicial Magistrate First Class, Ankleshwar, passed an order of inquiry under Section 202 of the Code. The concerned Investigating Officer recorded statements of number of witnesses, collected documentary evidences during the course of inquiry and on completion of inquiry submitted his report before the learned Magistrate, wherein, it was stated that the death of cows was as a result of poisonous insecticides 'Monocrotophosh', a poisoning substance. In the said report, it is stated by the Investigating Officer on the basis of the material collected during the course of inquiry that in respect of the grass collected from the heap of the waste material and water of the lake, no chemical poison was found in the samples of grass and water of lake. It is further stated in the said report that ISAGRO (Asia) Agrochemicals Private Limited company and Lupin Company were not manufacturing Organo Phosphorus or using such Organo Phosphorus Non-Thio Type Monocrotophosh. It is further stated in the report of the Investigating Officer that one Cheminova Company situated at Panoli, GIDC and one United Phosphorus Limited, situated at Ankleshwar GIDC are manufacturing Monocrotophosh.

3.8 The learned Judicial Magistrate First Class, after receipt of the report from the Investigating Officer submitted in pursuance to inquiry under

Section 202 of the Criminal Procedure Code, and after considering the contentions of the original complainant, issued the process against the present petitioners and other accused.

3.9 The petitioner No. 1 is a company registered under the provisions of Companies Act of 1956 and its factory situated at GIDC, Ankleshwar. This Court passed an order on 19.02.2007, wherein, it has been observed that learned advocate appearing for the petitioners does not press this petition qua petitioner No. 1. This petition therefore stands disposed of qua petitioner No. 1. Thus, now this petition is required to be considered qua petitioners No. 2 to 15.

[4] Heard learned Senior Counsel Shri K.S. Nanavati for the petitioners and learned APP Shri K.P. Raval for respondent No. 1-State and learned advocate Shri Rutvij Oza for respondent No. 2.

[5] Learned Senior Counsel Shri Nanavati for the petitioners mainly submitted the following points.

5.1 Learned Judicial Magistrate First Class, Ankleshwar, has not properly considered the report submitted by the Investigating Officer and the material produced alongwith the said report and thereby without proper application of mind, issued the process against the petitioners and therefore the order of issuance of process against the petitioners is required to be quashed and set aside.

5.2 The ingredients of Sections 428 and 429 of Indian Penal Code are not made out against the petitioners herein. It is further submitted that Investigating Officer recorded the statements of the witnesses and collected the documentary evidences such as the FSL report and opinion of Veterinary Doctor. Relying upon the said report, learned advocate for the petitioners further submitted that according to the statements of witnesses, the cows had eaten grass near the place of offense in an area of about 18 feet which is alleged to be forming part of heap of grass with other chemical containing material. The sample of this grass material was sent to FSL, Surat. FSL report does not disclose presence of any poisonous chemical and there is no

material about identity of the sample being of a particular company.

5.3 The final cause of death of cows, as revealed from the FSL report and opinion of Veterinary Doctor, is due to Arsenic Lead, Organo Phosphorus Non-Thio Type Monocrotophosh. The investigation revealed that written reply from GPCB clearly indicated that ISAGRO (Asia) Agrochemicals Private Limited and/or Lupin Ltd., are not, in any manner, dealing with Organo Phosphorus Non-Thio Type Monocrotophosh Insecticide.

5.4 The samples of grass and water collected from the place, when examined by Forensic Science Laboratory, Surat, has clearly ruled out the presence of Organo Phosphorus Non Thio Type Monocrotophosh Insecticide poison from those samples. The samples collected by GPCB have been analyzed by GPCB in their laboratory but that is relating to powder containing chemicals and pastes and there was no sample of chemical contained grass or water. The samples taken by Veterinary Doctor from the place in respect to chemical contained grass and water which were analyzed by FSL, Surat, did not reveal the presence of any chemical poison.

5.5 The petitioners No. 2, 3, 4, 7, 8, and 10 are residing at Mumbai, whereas, the petitioner No. 6 is residing at Noida, whereas petitioner No. 11 is residing at U.S.A. and petitioners No. 12 and 15 are residing at U.K. Thus, most of the petitioners are not residing at Ankleshwar. Therefore, said petitioners are not in charge of day to day affairs of the company, which is having factory situated at Ankleshwar and therefore, they are falsely implicated by the complainant in the aforesaid complaint.

5.6 The Directors of the petitioner No. 1 company are not joined as an accused only because they are the Directors of the company, but no specific allegations are leveled against the petitioners No. 2 to 15. There are no allegations against petitioners No. 2 to 15 that they are in-charge of day to day affairs of the petitioner No. 1 company and therefore, they are liable. Hence, in absence of such an averment, learned Magistrate has wrongly issued the process against the petitioners.

5.7 At no point of time the hazardous waste is disposed of in breach of terms and conditions of the consent order. It is pertinent to note that at no point of time the hazardous waste is permitted to be taken out from the factory premises of the petitioner No. 1 Company. The petitioners state that the hazardous waste which is generated during the manufacturing process is appropriately disposed off after effluent treatment, as provided for, as aforesaid. That an agreement dated 29.01.2004 has been entered into by and between the petitioner company and Bharuch Enviro Infrastructure Limited for the purpose of disposal of hazardous solid to BEIL. For the purpose of transportation of the solid waste is concerned, the same has to be done by a transporter approved by GPCB and the same is to be done as per the guidelines issued from time to time subject to the provisions of law for the time being in force.

5.8 There is no question of any hazardous wastes being disposed of by the petitioner Company in breach of any terms and conditions of GPCB and there is no instance whereby it can be said that any breach have been committed by the petitioner Company in respect of effluent treatment of hazardous wastes and its appropriate disposal.

5.9 That, without application of mind and without following appropriate mandatory provisions, respondent No. 2 has arrayed petitioners as an accused, as aforesaid in respect of the alleged offenses, without there being an iota of evidence against the petitioners. It is further submitted that from bare perusal of the allegations contained in the impugned complaint and reading the said visit report it is amply clear that no offense can be said to have been made out against the petitioners. That even analysis report relied on by the prosecution does not specify that samples that were analyzed were belonging to the petitioner Company.

5.10 That, no panchnama has been drawn at the time of collection of samples from the open site/scene of offence so as to substantiate the allegation contained in the impugned complaint and therefore also the impugned complaint being without any evidence on record, contrary to settled principles of law deserves to be quashed and set aside.

5.11 That from the aforesaid facts and circumstance it is amply clear that drums as well as cutgrass that are found at the open plot/at the place of offense are not of the petitioner Company, which is admitted fact even in the complaint as well as in the visit report, and even report of investigating agency do not support the case of the complainant as aforesaid, however, to the shock and consternation of the petitioners, Id. Magistrate has taken cognizance of the alleged offenses without application of mind to the investigation report dated 06.03.2006 and petitioners are arrayed as an accused in respect of the alleged offenses and therefore also the impugned complaint as well as impugned order of taking cognizance deserves to be quashed and set aside.

5.12 It is pertinent to note that during the course of inquiry u/s.202, no evidence has been brought on record to connect the present petitioners in respect of the offenses as alleged, rather from bare perusal of investigating report dated 06.03.2006 it is amply evident that the petitioners are not involved in the offenses as alleged in the impugned complaint and therefore the Id. Magistrate was not having any further material and/or any other material amounting to legal evidence to connect the present petitioners in respect of the alleged offenses and therefore on presumptions and surmises the cognizance ought not to have been taken by the Id. Magistrate and therefore also the impugned order dated 16.01.2007 as well as the impugned complaint deserves to be quashed and set aside.

5.13 The learned Magistrate has not at all discussed the aforesaid aspects while issuing process against the present petitioners and therefore, there is a total non application of mind on the part of the learned Magistrate while issuing the process and therefore, the process issued against the petitioners be quashed and set aside.

[6] Learned advocate for the petitioners relied upon the decision of the Hon'ble Supreme Court rendered in the case of [M/s. G.H.C.L. Employees Stock Option Trust v. M/s. India Infoline Limited and allied cases](#), 2013 AIR(SC) 1433 and submitted that summoning of an accused in a criminal case is a serious matter. The order of

Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto.

[7] Learned advocate for the petitioners further relied upon the decision of the Hon'ble Supreme Court rendered in the case of [S.K. Alagh v. State of U.P. and others](#), 2008 2 JT 540 and submitted that Indian Penal Code, save and except some provisions, specifically providing, therefore, does not contemplate any vicarious liability on the part of a party who is not charged directly for commission of an offense.

Learned advocate for the petitioners therefore submitted that the petitioners who are not in-charge of day to day affairs of the company and some of whom are even not residing in India are also joined as an accused by the respondent No. 2 in the complaint and therefore, the process issued against them may be quashed and set aside. In the report submitted by the Investigating Officer, it is specifically stated that M/s. Lupin Limited is not manufacturing Monocrotophosh. However, two other companies in the said area are manufacturing the aforesaid substance i.e. Cheminova Company and United Phosphorus Limited. However, surprisingly the respondent No. 2 complainant has not filed complaint against these two companies. Thus, in substance, learned advocate for the petitioners submitted that learned Magistrate has failed to consider all the aforesaid aspects while issuing the process and therefore it can be said that there is total non application of mind on the part of the learned Magistrate and therefore, the impugned process be quashed and set aside qua petitioners.

[8] On the other hand, learned advocate Shri Rutvij Oza appearing on behalf of respondent No. 2 submitted following points.

8.1 The learned Magistrate has not committed any error while issuing the process against the petitioners. The learned Magistrate has passed a reasoned order while issuing process against the accused and therefore, it is not correct to submit on the part of the petitioners that learned Magistrate has not applied his mind.

8.2 That 31 cows died due to consumption of quantiminated grass and drinking water from the place where the empty drums of the petitioner

company were found. As per the postmortem report of the dead bodies of the cows, it is clear that cows died as a result of poisonous insecticide Organo Phosphorus Non-Thio Type Monocrotophos.

8.3 That, looking to the gravity of the offense, the process issued by the learned Magistrate is fully justified. Mr. Oza relied upon Section 47 of the Companies Act and submitted that when an offense is committed by the company, every person, who, at the time when the offense 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 liable to be proceeded against that, be punished accordingly.

8.4 Learned advocate Shri Oza relied upon the decision of the Hon'ble Supreme Court rendered in the case of [U.P. Pollution Control Board v. Mohan Meakin Limited](#), 2000 CrLJ 1799 and submitted that where an offense under the Act has been committed by a company, every person who was in-charge of the company and was responsible to the company for the conduct of the business of the company is also made guilty of the offenses by the statutory presumption, any director, manager or other officer of the company who has consented to or connivance in the commission of the said offenses, is liable for the punishment of the offenses. Thus, learned advocate for the respondent No. 2 submitted that this Court may not exercise the powers under Section 482 of the Code of Criminal Procedure.

[9] Learned APP Shri K.P. Raval adopted the arguments advanced on behalf of respondent No. 2-Original Complainant.

[10] I have heard learned advocates for the parties. I have also considered the submissions canvassed and the judgments relied upon by the learned advocates for the respective parties and perused the record.

10.1 From the record, it appears that the respondent No. 2-complainant has filed the complaint against 25 accused. However, so far as the petitioners of this petition are concerned, no specific role is attributed to these petitioners.

10.2 It is not alleged in the complaint that how the petitioners are connected with the alleged offenses and how they are vicariously liable for the act or omission on the part of the company.

10.3 It is not stated in the complaint that the petitioners herein are in-charge of day to day affairs of the Management of the company. From the record it appears that six petitioners are residing at Mumbai, one petitioner is residing at Noida, two petitioners are residing at U.K. and one petitioner is residing at U.S.A. Therefore, in absence of specific averment with regard to involvement of these petitioners in the incident alleged in the complaint, it is not proper on the part of the complainant to join these petitioners as accused in the complaint.

10.4 Learned Judicial Magistrate First Class, Ankleshwar, has also not applied his mind with regard to this aspect. It is further clear from the record that Investigating Officer has submitted his detailed report before the learned Magistrate after recording the statement of witnesses and collecting the documentary evidences.

10.5 From the reports submitted by the Investigating Officer which are produced on record before this Court, it is clear that Investigating Officer has exonerated the petitioners. In the said report, it is stated by him that death of the cows is because of consumption of Monocrotophosh substance. However, it is specifically stated by the Investigating Officer that the petitioner No. 1 Company is not manufacturing the said Monocrotophosh substance. It is further specifically stated by the Investigating Officer that one Cheminova Company and United Phosphorus Limited are manufacturing the said substance viz. Monocrotophosh.

10.6 The respondent No. 2 has filed the additional affidavit which is produced at page 143 with the compilation, wherein, the concerned officer of respondent No. 2 has specifically stated in para No. 2 as under:

"2. I state that after going through relevant records including the copy of

consent (CCA) granted by the GPCB it is found that the petitioner company is neither producing monocrotophas nor organophospharas at the Ankleshwar site. A copy of CCA consent granted to the petitioner company is annexed to this application and marked as Annexure "R1".

10.7 Thus, from the affidavit of the respondent No. 2 also, it is clear that the petitioner No. 1 Company is not manufacturing Monocrotophosh nor it is manufacturing Organo Phosphorus at Ankleshwar site.

10.8 Thus, from the record, it is clear that the learned Magistrate has not applied his mind with regard to the report submitted by the Investigating Officer, nor he has applied the mind with regard to the involvement of the petitioners in the alleged offenses.

[11] At this stage, I refer to the observations made by the Hon'ble Supreme Court in the case of M/s. GHCL Employees Stock Option Trust . The Hon'ble Supreme Court in the said decision held in para No. 14 as under:

"14. Be that as it may, as held by this Court, summoning of accused in a criminal case is a serious matter. Hence, criminal law cannot be set into motion as a matter of course. The order of Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. The Magistrate has to record his satisfaction with regard to the existence of a prima facie case on the basis of specific allegations made in the complaint supported by satisfactory evidence and other material on record."

[12] The Hon'ble Supreme Court in case of S.K. Alagh in paragraphs No. 17 and 21 observed as under:

"17. Indian Penal Code, save and except some provisions specifically providing therefor, does not contemplate any vicarious liability on the part of a party who is not charged directly for commission of an offense.

"21. We may, in this regard, notice that the provisions of the Essential

Commodities Act, Negotiable Instruments Act, Employees' Provident Fund (Miscellaneous Provision) Act, 1952 etc. have created such vicarious liability. It is interesting to note that Section 14A of the 1952 Act specifically creates an offense of criminal breach of trust in respect of the amount deducted from the employees by the company. In terms of the explanations appended to Section 405 of the Indian Penal Code, a legal fiction has been created to the effect that the employer shall be deemed to have committed an offence of criminal breach of trust. Whereas a person in charge of the affairs of the company and in control thereof has been made vicariously liable for the offence committed by the company along with the company but even in a case falling under Section 406 of the Indian Penal Code vicarious liability has been held to be not extendable to the Directors or officers of the company. {See Maksud Saiyed v. State of Gujarat and Ors.}"

[13] Thus, from the aforesaid decisions rendered by the Hon'ble Supreme Court, it is clear that the learned JMFC has not applied his mind while issuing the process against the petitioners. Thus, from the record, it appears that the issuance of process against the petitioners is nothing but an abuse of process of the Court and therefore, to secure the ends of justice, the same is required to be quashed and set aside while exercising powers under Section 482.

[14] In view of the aforesaid, the process issued by the JMFC against the petitioners No. 2 to 15 in Criminal Case No. 218 of 2007 is hereby quashed and set aside.

[15] With the aforesaid observations and directions, this petition stands allowed. Rule is made absolute.

