



CRL.P No. 8067 of 2019

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 2ND DAY OF SEPTEMBER, 2022



BEFORE

THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ

CRIMINAL PETITION NO. 8067 OF 2019

BETWEEN:

SRI. B.V. BYRE GOWDA
S/O LATE B.N. VENKATARAMANA GOWDA
AGED ABOUT 54 YEARS
PROP. M/S CHENNAKESHA STONE CRUSHERS
SITUATED AT CRUSHER 85, BEERA HALLI VILLAGE
NANDAGUDI HOBLI, HOSAKOTE TALUK
ALSO RESIDING AT TAMMEGOWDA EXTENSION (TG)
HOSAKOTE TOWN, HOSAKOTE
BANGALORE RURAL DIST-562114

...PETITIONER

(BY SRI. SHASHI KIRAN SHETTY, SR. COUNSEL FOR
SRI. KARTHIK.V, ADVOCATE-PH)

AND:

1. STATE OF KARNATAKA
REP. BY STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
DR. AMBEDKAR VEEDHI
BANGALORE-560001
2. THE KARNATAKA STATE POLLUTION
CONTROL BOARD
REP. BY ITS DEPUTY ENVIRONMENTAL
OFFICER, SMT. P. SUNITHA
HAVING THEIR OFFICE AT REGIONAL OFFICE
HOSAKOTE, "NISARGA BHAVANA"
GROUND FLOOR, THIMAMIAH ROAD
7TH D CROSS, SHIVANAGAR

Digitally signed
by POORNIMA
SHIVANAGAR
Location: HIGH
COURT OF
KARNATAKA



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OPP. PUSHPANJALI THEATRE
BANGALORE-560010

RESPONDENTS

(BY SRI.GURURAJ JOSHI, ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO CALL FOR RECORDS IN PCR. NO.203/2013, NOW CC NO.667/2015 ON THE FILE OF PRINCIPAL CIVIL JUDGE AND JMFC BANGALORE RURA AT HOSAKOTE AND TO EXAMINE THE SAME AND TO QUASH THE ORDER DATED 25.07.2015 PASSED IN C.C.NO.667/2015 BY THE PRINCIPAL CIVIL JUDGE AND J.M.F.C., HOSAKOTE, BENGALURU RURAL IN TAKING COGNIZANCE OF THE OFFENCE P/U/S 37 OF THE AIR (PREVENTION AND CONTROL OF POLLUTION) ACT 1981 VIDE ANNEXURE-B BY ALLOWING THIS CRIMINAL PETITION WITH EXEMPLARY COSTS.

THIS CRIMINAL PETITION COMING ON FOR ADMISSION, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

1. The petitioner is before this Court seeking for the following reliefs;

1. *To call for records in PCR.No.203/2013, now CC No.667/2015 on the file of Principal Civil Judge and JMFC Bangalore Rural at Hosakote.*
2. *Examine the same and to quash the order dated 25.07.2015 passed in C.C.No.667/2015 by the Principal Civil Judge and J.M.F.C., Hosakote, Bengaluru Rural in taking cognizance of the offence punishable under section 37 of the AIR (prevention and control of pollution) Act 1981 vide Annexure-B by allowing this criminal petition with exemplary costs.*
3. *To issue such other direction or to issue such other orders as deemed fit in the peculiar facts and circumstances of the case.*



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2. Respondent No.2 represented by Deputy Environment Officer (DEO) has filed criminal proceedings in Crime No.667/2015 against the petitioner under Section 200 of Cr.P.C. for offences punishable under Section 21 and 22 of the Air (Prevention and Control of Pollution Act) 1981 ['Air Act' for short] read with Section 37 of the Air Act.
3. Learned Pri. Civil Judge and JMFC, Bangalore Rural upon presentation of the said complaint on 25.07.2015 noting that the complainant was present, heard the counsel, took cognizance and issued summons to the accused returnable by 3.10.2015. It is aggrieved by the same, the petitioner is before this Court.
4. Sri.Shashi Kiran Shetty, learned Senior counsel for the petitioner would submit:
 - 4.1. Firstly that the DEO of his zone is not authorised to file complaint under Section 21 and 22 of the AIR Act since even as per the



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document produced by the said complainant and referred to in para 7 of the complaint as Annexure-G, no such complaint could be filed without prior approval of the Chairman of the Board. There being no such approval by the Chairman of the Board, the initiation of criminal proceedings is bad in law.

4.2. The same is reiterated by the letter issued by the member Secretary of the Board dated 24.03.2007 produced at Annexure-H along with the complaint which also requires that before initiation of any criminal proceedings, the concerned officer has to get approval from the Chairman.

4.3. The verification to the complaint is only as regards para 1 to 7 and there is no verification of para 8 and 9 of the complaint. All the allegations against the petitioner being made in para 8 thereof, there being no verification of



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para 8 which ought to have been taken into consideration by the Magistrate before taking cognizance. Same not having been done, the order of cognizance is required to be quashed.

4.4. Lastly, he submits that the order of cognizance itself is completely bereft of reasons and does not comply with the requirements of law as laid down by this Court from time to time, for example in **Criminal Petition No.101728/2017 (M/s Dream Logistics Company vs. Karnataka State Pollution Control Board)** more particularly para 8.14 and 8.15 thereof which are reproduced hereunder for easy reference:

8.14. *The Magistrate ought to have referred to and recorded the reasons why he believes that an offence is made out so as to take cognisance more so on account of the fact that it is on taking cognisance that the criminal law is set in motion insofar as accused is concerned and there may be several cases and instances where if the Magistrate were to apply his mind, the complaint may not even be considered by the said Magistrate let alone taking cognisance and issuance of summons.*



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8.15. *In view of the above, I am of the considered opinion that the order dated 27.07.2015 taking cognisance is not in compliance with applicable law and therefore is set aside. The matter is remanded to the Magistrate to consider and pass a reasoned order before taking cognisance and issuance of summons.*

4.5. He, therefore, submits that there being no application of mind by the learned Magistrate, the order of cognizance is required to be quashed.

5. Sri.Gururaj Joshi, learned counsel for Pollution Control Board would submit as under:

5.1. Reference to prior approval of the Chairman is only administrative approval. The delegation is complete with the resolution which has been passed authorising the DEO and Asst. Environment Officer (AEO) of the regional office to file cases. The approval by the Chairman only being administrative, same would not have impact on the delegation. On enquiry if there



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was any such administrative direction issued by the Chairman in the present case, he fairly submits that no such direction has been issued.

5.2. He submits that there being a delegation in favour of the DEO, the DEO has rightly filed proceedings and the same cannot be found fault with.

6. Heard Sri.Shashi Kiran Shetty, learned Senior counsel for the petitioner and Sri.Gururaj Joshi, learned counsel for the Pollution Control Board. Perused documents.

7. Having heard the learned counsel for the parties, the following points arise for determination of this Court are:

- 1) Who could file a complaint on behalf of the Pollution Control Board in terms of Section 43 and Section 15 of the AIR (prevention and control of pollution) Act 1981?**
- 2) Whether the order of cognizance taken in the present matter is proper and correct?**
- 3) What order?**



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8. I answer the above points as under:

9. **ANSWER TO POINT NO.1:** Who could file a complaint on behalf of the Pollution Control Board in terms of Section 43 and Section 15 of the AIR (prevention and control of pollution) Act 1981?

9.1. Section 15 and 43 of the Air Act are reproduced hereunder for easy reference:

15. Delegation of powers.—A State Board may, by general or special order, delegate to the Chairman or the member-secretary or any other officer of the Board subject to such conditions and limitations, if any, as may be specified in the order, such of its powers and functions under this Act as it may deem necessary.

43. 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

(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:



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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.]

9.2. A perusal of Section 15 would indicate that the Board may by general or special order delegate to the Chairman or Board or any other officer of the Board subject to such condition, as may be specified in the order as it may deem necessary.

9.3. Thus, the delegation could be to the Chairman, Secretary or any other officer of the Board. In the present matter, the application is made to the DEO and the AEO. The DEO or the AEO is an officer of the Board cannot be disputed. Thus the delegation *per se* would have to be made by the Board in favour of the DEO or AEO. In the present case, the resolution of the Board reads as under:

"This issue was discussed and after verifying the provisions contained in the Water and Air (Prevention and Control of Pollution) Act, it was decided to authorize the DEO and AEO of Regional Offices, to file cases on behalf of the Board under the



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said Acts only after getting approval from the Chairman.”

9.4. A reading of the said resolution along with Section 16 of Air Act indicates that there has been in fact a delegation made to the DEO and AEO and there is a condition and limitation which has been imposed upon the said delgatee that the filing of the cases can be done only after getting approval from the Chairman. This condition and limitation is also authorized to be imposed in terms of Section 15 of the AIR Act.

9.5. Thus, if at all any action is required to be taken by DEO and AEO, such action can be taken after getting prior approval of the Chairman for initiation of such criminal action as detailed in the resolution supra. The letter dated 24.03.2007 which has been referred to as Annexure-H in the complaint reads as under:

Office Memorandum dated: 24.3.2007

Sub: Delegation of power of DEO's and AEO's of the Board of file cases (Criminal and Criminal Miscellaneous) before this



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jurisdictional courts for violations of various provisions of Water and Air Acts and Rules made thereunder.

Under Sec.49 of the Water (Prevention and Control of Pollution) Act, 1974 and Sec.43 of the Air (Prevention and Control of Pollution) Act, 1981, no court shall take cognizance of any offence under the above Acts except on a complaint made by a Board or any officer authorized in this behalf by it.

In view of creation of new posts of different cadres of officers in the Regional Offices, the Board at its meeting held on 13.02.07 deliberated the issue in detail regarding delegation of powers and decided to delegate powers to file cases to Deputy Environmental Officers & Assistant Environmental Officers in this regard.

Therefore, in pursuance of the decision of the Board, the Deputy Environmental Officers & Assistant Environmental Officers of the Regional Offices are hereby authorized, to file cases on behalf of the Board for violations under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981, after getting the approval from the Chairman.

MEMBER SECRETARY

- 9.6. The said letter also imposes a condition on the delegatee to initiate such action only after getting approval from the Chairman. Perusal of the said communication would also indicate that



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any proceedings have to be initiated after getting the approval from the Chairman.

9.7. The said approval of the Chairman has not been produced before this Court. On enquiry, Sri.Guruj Joshi, learned counsel for the respondent submits that there is no administrative approval issued by the Chairman.

9.8. As referred to and dealt with hereinabove any delegation under Section 15 can be made with certain conditions and limitations. A perusal of the Board resolution dated 13.02.2007 indicates that there is a condition and limitation imposed on the delegatee exercising powers under the resolution. In that without obtaining approval from the Chairman, no such proceedings could be initiated even though the delegate is otherwise or authorized to do so. Thus, I am of the considered opinion that the approval of the Chairman is not administrative



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decision but is a condition precedent and/or limitation imposed by the Board on the delegatee exercising power under Section 15 of the AIR Act.

9.9. Section 43 of AIR Act requires that no Court shall take cognizance of any offence except on a complaint filed by the Board or any officer authorised in that behalf. In the present case, though the DEO is authorised do so, there is limitation on the authorisation as detailed hereinabove without obtaining prior approval of the Chairman, DEO could not have initiated proceedings thereby coming within the mischief of 45 of AIR Act and this aspect ought to have been considered by the Magistrate before taking cognizance of the offence.

9.10. In view of the above, I am of the considered opinion that in the situation as it stands in terms of resolution dated 13.02.2007, the DEOs and AEOs of regional office could initiate



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criminal proceedings against the defaulter subject to obtaining prior approval from the Chairman on a case to case basis. Without such approval of the Chairman, no such proceedings could be initiated.

10. ANSWER TO POINT NO.2: Whether the order of cognizance taken in the present matter is proper and correct?

10.1. The order of cognizance reads as under:

25/7/15

Complainant-MM

Accused-

Hearing

Complainant present. Heard the counsel, perused the record, as complainant is public authority, sworn statement is dispensed with. Cognizance for the offense punishable under section 37 of AIR (Prevention & Control of Pollution) Act is taken. Register as CC. Issue summons to Accused returnable by 3/10/15.

10.2. This Court in several matters including Criminal Petition No.101728/2017 as detailed out the manner in which the Magistrate is required to take cognizance. The said order of cognizance does not indicate any application of mind on



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part of the Magistrate as regards the complaint and the cognizance thereof. It is required of all the Magistrates to follow the dicta laid down by the Apex Court and this Court in various matters.

10.3. In view of the above, I am of the considered opinion that the order of cognizance not being in accordance with law would be required to be quashed.

10.4. The Registrar Judicial is directed to forward a copy of the order passed in Criminal Petition No.101728/2017 to all Magistrates and/or Judicial officers dealing with Pollution control matters so as to enable them to follow the dicta laid down by the various courts including the Apex Court in the matters of this kind.

11. ANSWER TO POINT NO.3: What order?

11.1. The manner in which the complaint has been filed and prosecuted leaves much to be desired.



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11.2. As aforesaid, the verification is only from paragraphs 1 to 7 and not to paragraphs 8 and 9. Whereas all the material allegations have been made in paragraph 8. The averments made in paragraph 7 are contrary to the resolution dated 13.02.2007 which has been produced along with the complaint as Annexure-G and contrary to the contents of Official Memorandum/letter dated 24.03.2007 which has been produced at Annexure-H. It is required of the statutory authorities like the Board to comply with the requirements of law so as to avoid unnecessary litigations like the present petition under Section 482 of Cr.P.C. and to suffer an order of quashing on account of the office of the Board not following the required procedure.

11.3. The Chairman, Karnataka Pollution Control Board is directed to hold necessary workshops to educate and train the officers of the Pollution



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Control Board as regards initiation of criminal proceedings under Air and Water Act, by taking the Assistance of the Environment Law Centre, National Law School of India University, Bangalore. The Chairman of the Board is also directed to place on record the topics that would be covered in such workshops along with the material that would be distributed in the said workshops within three months from the date of receipt of this order

11.4. Considering verification of the complaint made by the DEO is contrary to the applicable law, the Chairman is also directed to initiate action against the said DEO, as also any other official who is responsible for filing such a defective complaint which has resulted in its quashing by this Court.

12. In view of the above, I pass the following:

ORDER

- i. The writ petition is allowed.



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- ii. The proceedings in C.C. No.667/2015 pending on the file of the Prl. Civil Judge and JMFC, Bangalore Rural at Hosakote is quashed. Needless to say that order of cognizance dated 25.07.2015 is also quashed.
- iii. Liberty is reserved to the Board to initiate fresh proceedings by following applicable law and as observed hereinabove.
- iv. Though the above petition is disposed for reporting compliance by the Chairman with the directions issued, relist on 5.12.2022.

Sd/-

JUDGE

In