

Madras High Court

M.V. Arunachalam vs Tamil Nadu Pollution Control ... on 25 January, 1991

Equivalent citations: 1992 CriLJ 188

Bench: P Jesudurai

ORDER

1. The second accused in C.C. No. 88 of 1990 pending before the Judicial Magistrate, Tiruvottiyur against whom and two others a complaint was filed by the respondent for offences under S. 49 read with Ss. 47 and 44 of the Water (Prevention and Control of Pollution), Act, 1974, invokes the inherent powers of this Court under S. 482 of the Code of Criminal Procedure to have the above complaint quashed.

2. The gravamen of the charge against the petitioner and his co-accused is briefly as follows : The first accused in M/s. T.I. Cycles of India, Ambattur, Madras-53. The petitioner who is the second accused is the Managing Director of M/s. Tube Investment of India Limited, Madras-1. The third accused is Thiru P. Shanmugham the General Manager (Operations) of M/s. T.I. Cycles of India. On 17-8-1989, it was brought to the notice of the respondent, that cyanide wastes had been dumped in Ezhil Nagar Canal in Kodungaiyur, Madras-51 polluting the water therein, resulting in instantaneous death of buffaloes. Police investigation revealed that the sludge should have come from the first accused. This was in violation of the condition in the Consent order given by the respondent while requiring permission of the respondent for the agency for the disposal of chrome sludge and cyanide sludge generated during treatment of trade effluent along with solid waste. This was also in violation of Condition No. 8 of the Consent order, that any toxic material should be detoxified, if possible or otherwise should be sealed in steel drums and buried in protected areas, after obtaining approval of the respondent in writing. The detoxification, sealing and burying had to be carried out in the presence of the respondents authorised persons only. A show cause notice was issued to the petitioner and the reply being not satisfactory, the complaint was laid for the offences shown above.

2A. The complaint as originally filed was against T.I. Cycles of India, Ambattur, Madras-53 shown as the first accused and the present petitioner, shown as Managing Director of T.I. Cycles of India, Madras-53 arrayed as the second accused. On process being issued to the petitioner, he had received the summons endorsing thereon that he was not the Managing Director of T.I. Cycles of India. Thereupon, the respondent had written to the petitioner for details as to who the Managing Director of the first accused was and the petitioner had replied that since the matter was already pending in Court, he could not reply without the permission of the Court. The petitioner, then filed CrI.M.P. No. 794 of 1990 before the trial Court under S. 204, Cr.P.C. for deleting him from the case and the above petition is still pending. Meantime, on 5-4-1990, the respondent had filed M.O. No. 1035 of 1990 under S. 319, Cr.P.C. for amendment of the complaint and for inclusion of the present third accused as an accused and on 31-8-1990, the petition had been ordered and the complaint as amended, is pending trial. Thereafter, the petitioner, on 21-11-1990 has approached this Court with this petition to quash the complaint.

3. Thiru N. Natarajan, learned senior counsel for the petitioner would contend that the first accused is an unit of M/s. Tubes Investment of India Limited, of which the petitioner is the Managing Director and the first accused is an independent unit to which Consent under the Water (Prevention and Control of Pollution) Act 1979 (hereinafter referred to as the Act) had been given and the present prosecution is for violation of some of the conditions subject to which the Consent had been given and as such, the petitioner cannot be held liable for an offence committed by an Unit of the Company, when the petitioner is the Managing Director of the main company and has nothing to do with the unit as such elaborating the contention, learned counsel drew the attention of the Court to the definition of "Occupier" as found in the Factories Act, in S. 2(n) of that Act, which definition was enlarged by an amendment in 1986, while the present Act was untouched and, that therefore, the petitioner, who is said to be only in ultimate control of the affairs of the first accused unit, cannot be prosecuted under S. 47 of the Act unless negligence, connivance or consent is alleged against him. It was also urged that the business of the first accused was manufacture of cycle parts in that geographical area, viz., Ambattur and the respondent had taken a contradictory stand in adding the third accused also as an

accused, obviously on the allegation that the third accused was in actual management of the first accused unit.

4. Meeting the above contentions, the learned Advocate General would contend that originally M/s. T.I. Cycles of India, was incorporated under the then Companies Act in 1949 and later, its name was changed, with the approval of the Government of India as Tube Investments of India Limited and that T.I. Cycles remained as a Unit of Tubes Investment of India Limited and that the consent under the Act, had been applied for only in the name of Tubes Investments of India Limited and the definition of the term 'occupier' has no relevance for the present controversy, dealing with the interpretation of S. 47 of the Act and that the respondent, despite his request to the petitioner in the various letters, was not furnished with the necessary details of the Constitution of the Company and the Units, and as such, the complaint as originally filed came to be defective, which has since been rectified by the amendment and the petitioner, therefore, is liable as the Managing Director of the parent company. Strong reliance was placed by the learned Advocate General upon the decision of the Supreme Court in U.P. Pollution Control Board v. M/s. Modi Distilleries, .

5. From the contentions and facts placed by the respective parties, the following facts emerge. Originally, M/s. T.I. Cycles of India, Limited had been incorporated under the Indian Companies Act, 1913 (now repealed) and in 1956, the company had decided to change its name as Tube Investments of India Limited. The necessary approval by the Government of India had been accorded and the name had been changed with effect from 24-9-1959. Tube Investments of India Limited has several manufacturing units under it, under different names such as, T.I. Cycles of India, Tube Products of India, T.I. Miller T.I. Metal Sections, T.I. Cold Forge and so on. The first accused is manufacturing cycles and cycle components. The different units function under the Company Tube Investments of India Limited. The application for Consent under the Act, made on 24-5-1984 would show the name of the applicant as the General Manager Thiru H. N. Chandrasekaran of T.I. Cycles of India, Abbattur, Madras-53 and the address of the applicant is shown a Tube Investments of India Limited, Ambattur, Madras-53. The petitioner is the Managing Director of Tube Investments of India Limited. The company has seven other Directors. The prosecution is for violation of the conditions subject to which Consent under Section 26 of the Act had been given. The Tube Investments of India Limited is not an accused in the case. Its unit M/s. T.I. Cycles of India is the first accused. Thiru P. Shanmughan, the General Manager (Operations) of M/s. T.I. Cycles of India is the third accused. It is on these facts that the learned counsel for the petitioner would contend that the petitioner, who is the Managing Director of Tube Investment of India Limited, cannot be held liable for an offence committed by one of the Units of the Company.

6. Before we appreciate the above legal contention, reference has to be made to the decision of the Supreme Court in U.P. Pollution Control Board v. M/s. Modi Distilleries, . The facts therein are identical with the facts of the present case. M/s. Modi Industries Limited, a Company under the Companies Act, 1956 had several industrial units, one being M/s. Modi Distilleries, engaged in the business of manufacture and sale of industrial alcohol. This unit had discharged its highly noxious and polluted trade effluents into the Kali river through the drain, causing continuous pollution of the stream. Consent under S. 26 of the Act had not been obtained. The Pollution Control Board filed a complaint under S. 44 of the Act against the industrial unit, viz., M/s. Modi Distilleries arrayed as A-1 and the Chairman, Vice-Chairman, Managing Director and members of the Board of Directors of M/s. Modi Industries Limited as accused 2 to 11. The company, M/s. Modi Industries was not made an accused. The accused approached the High Court of Allahabad under S. 482 of the Code of Criminal Procedure to quash the proceedings contesting, that in the absence of M/s. Modi Industries Limited being prosecuted, they, its offence bearers could not be vicariously held liable. The learned Judge of the Allahabad High Court accepted the contention and quashed the proceedings. In the appeal by the Pollution Control Board, the Supreme Court held that though as an abstract position of law, the view of the learned Judge of the Allahabad High Court would be termed as correct, the matter should not have been viewed in isolation, and in vacuum, without reference to the facts and events, and the legal infirmity, in not making the Company M/s. Modi Industries Limited as an accused, was of such a nature which could be easily cured and the infirmity itself had been brought about by the failure of the industrial unit M/s. Modi Distilleries to furnish the requisite information called for by the Pollution Control Board, and in view of the seriousness of the offence, the offence should not go unpunished on a slight technicality and the Supreme Court suggested that a

formal application for amendment be made before the trial Court to substitute the name of M/s. Modi Industries Limited, the company owing the industrial unit in place of M/s. Modi Distillery. The appeal filed by the Pollution Control Board was accordingly allowed.

7. In the instant case, it is not clear in whose name the consent has been ultimately granted. It appears that the application is made by the present first accused, but, the name of the applicant is shown as the General Manager of the Tube Investments of India Limited. Whatever that be, even if the consent had been taken in the name of the unit, it would have no significance on the legal issue involved since. Even in the Modi Distillery case (1988 Cri LJ 1112) (SC), Consent was applied for by the industrial unit M/s. Modi Distillery, instead of by the Company and had been returned for rectification of discrepancies, which were never rectified, resulting in the Board refusing to grant consent to the industrial unit.

8. M/s. T.I. Cycles of India is only an industrial unit of the Company M/s. Tube Investments of India Limited. It is stated on behalf of the petitioner, that the company has several manufacturing units functioning in several names. Prosecution, therefore, as in the Modi Distillery case, has to be launched only against the company. Though, the learned counsel for the petitioner tried to distinguish the Modi Distillery case, that the conduct of the present petitioner could not be equated with the conduct of those in Modi Distilleries in not furnishing the requisite information when called upon by the Board under Section 20 of the Act, a perusal of the correspondence between the respondent and the petitioner and the co-accused would show, that the respondent has been making frantic efforts to get the particulars about the Constitution of the Company of M/s. T.I. Cycles and the name of the Managing Director of M/s. T.I. Cycles if any, and the replies sent by the petitioner and the co-accused have been evasive, resulting in a defective complaint being filed. As in the Modi Distillery case, the legal infirmity is not an incurable one and no curable technical flaw could be allowed to defeat the prosecution to avoid a trial. M/s. T.I. Investment Company has to be made an accused, since M/s. T.I. Cycles is only an unit, with no legal existence. A formal application for amendment to substitute the name of M/s. Tube Investment Limited in the place of M/s. T.I. Cycles will have to be made by the respondent before the trial Court in line with the decision of the Supreme Court in Modi Distillery case (1988 Cri LJ 1112).

9. The Supreme Court in the above case, while referring to accused 2 to 11, therein who were the Chairman, Vice-Chairman, Managing Director and members of the Board of Directors of M/s. Modi Industries Limited observed as follows (Para 7 at p. 1116 of Cri LJ) :

"It cannot be doubted that in such capacity they were in charge of and responsible for the conduct of the business of the company and were therefore, deemed to be guilty of the said offence and liable to be proceeded against and punished under S. 47 of the Act."

In the instant case among the 8 Directors, the petitioner is the Managing Director. A Managing Director is in charge of and is responsible to the company for the conduct of the business of the Company. It was urged by the learned senior counsel for the petitioner that the correspondence shows that the petitioner was not aware of the alleged dumping of untreated cyanide waste in the canal, resulting in instantaneous death of seven buffaloes and posing a serious environmental hazard to human beings as well. These would be matters which the petitioner will have to establish before the trial Court and avail of the proviso to Section 47(1) of the Act by establishing that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of the offence. In the light of the decision of the Supreme Court referred to above, the question of considering, the definition of the term "occupier" and other submissions made by the learned senior counsel for the petitioner, do not arise.

10. In the result, it will be open to the respondents to suitably amend the complaint by substituting M/s. Tube Investments of India Limited, the company in the place of its industrial unit, which is the present first accused, in the light of the decision of the Supreme Court in Modi Distillery case (1988 Cri LJ 1112). With these observations, that petition is dismissed.

When the judgment was pronounced learned counsel for the petitioner orally sought leave to appeal to the Supreme Court. In view of the fact that no substantial question of law of public importance which is still unsettled arises and in view of the further fact that the law on the subject is well settled by the Supreme Court in Modi Distillery case (1988 Cri LJ 1112) referred to and relied on by this Court in this order, leave is refused.

11. Petition dismissed.