U.P. POLLUTION CONTROL BOARD

v.

DR. BHUPENDRA KUMAR MODI & ANR.

(Criminal Appeal No. 2019 of 2008)

DECEMBER 12, 2008

[K.G. BALAKRISHNAN, CJ. AND P. SATHASIVAM, J.]

CODE OF CRIMINAL PROCEDURE, 1973:

s.482 – Petition for quashing of complaint – Assertions against company and its officers of discharging of untreated trade effluent in river – Complaint quashed by High Court as regards the Joint Managing Director of the company holding that there was no material to show that at the relevant time he was in-charge and responsible to the company for conduct of its business – HELD: High Court has quashed the complaint arising in an environmental matter in a casual manner – There are specific averments in the complaint with reference to all officers named therein including the Joint Managing Director of the Company – Order of High Court set aside – Circumstances under which power u/s 482 can be exercised – Discussed – Water (Prevention and Control of Pollution) Act, 1974 – ss. 25,26,44 and 47.

ENVIRONMENTAL LAW:

Complaint against company and its officers responsible for discharge of untreated trade effluent in river – Quashed by High Court as regards the Joint Managing Director of the Company – HELD: In the matter of this nature affecting public health, courts cannot afford to deal lightly with the cases involving pollution of air and water – Courts share the parliamentary concern and legislative intent of environmental laws 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 the public health at large should be dealt

with strictly **de hors** *the technical objections – Water (Prevention and Control of Pollution) Act, 1974 – ss. 25,26,44 and 47 – Code of Criminal Procedure, 1973 – s. 482.*

On an application by a company of which respondent no. 1 was the Joint Managing Director, a conditional consent was granted by the appellant-UP Pollution Control Board on 22.1.1983 to the company to discharge its trade effluent in river Sai. However, on inspection by the officers of the Board, it was found that the Unit of the Company did not construct any effluent treatment plant but was discharging the trade effluent in river Sai without treatment and in violation of the consent order. Letters were sent to the Company to the effect that non-compliance of the conditions of the consent order would be an offence u/s 44 of the Water (Prevention and Control of Pollution) Act, 1974, but the company continued to defy the provisions of the Act. Ultimately, complaint case No. 44 was filed against the company and its Chairman, Vice-Chairman, Managing Director, Joint Managing Director (Respondent no. 1), Directors and some of its senior officers, alleging violation of ss. 25 and 26 and for penal action u/s 44 of the Act. On a petition filed u/s 482 CrPC stating that at the relevant time respondent no. 1 was not concerned with day-to-day business of the company and, therefore, he could not be prosecuted, the High Court quashed the complaint so far as it related to him.

In the instant appeal filed by the Board, the questions for consideration before the Court were as to whether the complaint disclosed any material against respondent no. 1, Joint Managing Director, particularly, his control over the decision making process of the Company and whether the High Court was justified in quashing the complaint in so far as respondent no. 1, in a petition under Section 482 Cr.P.C.

Allowing the appeal, the Court

HELD: 1.1. It is settled legal position that at the stage

of issuing process, the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and he is only to be *prima facie* satisfied whether there are sufficient grounds for proceeding against the accused. [Para 14] [360-H; 361-A]

Smt. Nagawwa vs. Veeranna Shivalingappa Konjalgi and Others **(1976) 3 SCC 736, relied on.**

1.2. This Court has held exercise of power under Section 482 of the Code as an exception; and under the rule there are three circumstances under which the inherent jurisdiction may be exercised i.e. (a) to give effect to an order of the Court; (b) to prevent abuse of the process of the Court; (c) to otherwise secure the ends of justice. 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 be exercised to do real and substantial justice and if any attempt is made to abuse that authority so as to cause injustice, the Court has power to prevent abuse. [Para 21]

1.3. When no offence is disclosed by the complaint, 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. While exercising jurisdiction under Section 482 of the Code, 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 accusation would not be sustained. 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

A **to stifle a legitimate prosecution. [Para 21] [367-F-H; 368-A]**

2. In the instant case, it is not in dispute that respondent no. 1, before letting out trade effluent into a stream or a river, has to satisfy certain conditions in terms B **of the provisions of the Act and the order of the authorities concerned. It is also not in dispute that without a consent order by the Board the Company cannot let out untreated effluent into a land or stream or river. Though a consent order was issued by the Board it has been** C **specifically stated in the complaint that those conditions have not been fulfilled by the Company. The Company has been shown as first accused in the complaint apart from including Chairman, Managing Director, Jt. Managing Director, General Manager, Directors, Commercial Manager and Company Secretary as well as** D **their specific role in the day-to-day affairs and decision making process. There are specific averments/assertions in the complaint of the Board with reference to all the officers i.e. named persons in the complaint including respondent no. 1 who is Joint Managing Director of the** E **Company. On perusal of the complaint and the relevant materials in the form of documents, the Special Judicial Magistrate (Pollution) entertained the same and issued summons to the named persons in the complaint. [Para 13 and 18] [360-B-F; 363-H]**

F *U.P. Pollution Control Board vs Messrs Modi Distillery and Others,* **(1987) 3 SCC 684 and** *U.P. Pollution Control Board vs. Mohan Meakins Ltd. and Others* **(2000) 3 SCC 745, relied on.**

State of Karnataka vs. Pratap Chand and Others, **(1981) 2 SCC 335;** *Municipal Corporation of Delhi vs. Ram Kishan* G *Rohtagi and Others,* **(1983) 1 SCC 1;** *State of Haryana vs. Brij Lal Mittal and Others,* **(1998) 5 SCC 343 and** *Nalin Thakor and Others vs. State of Gujarat and Others,* **(2003) 12 SCC 461, held inapplicable.**

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3.1. The High Court has quashed the complaint arising in an environmental matter in a casual manner by exercising power under Section 482 of the Cr.P.C. 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 whether small or big that the courts 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 on the public health at large, should be dealt with strictly *de hors* 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 causal or routine manner. [Para 20 and 21] [366-G-H; 367-A-C]

3.2. In the light of the principles enunciated by this Court and in view of the specific averments made in the complaint coupled with the statutory provisions, namely, Sections 25, 26, 44 and 47 of the Act, the High Court erred in quashing the complaint insofar as respondent no. 1. Accordingly, the order of the High Court is set aside. The Special Judicial Magistrate (Pollution) is directed to proceed with the complaint and dispose of the same in accordance with law as expeditiously as possible. If respondent no. 1 applies for dispensing with his personal presence in the Court, after making the first appearance, the trial court can exempt him from continuing to appear in the court, by imposing any condition which it deems fit. [Para 22] [368-C-E]

Case Law Reference:

(1976) 3 SCC 736	relied on	para 14
(1981) 2 SCC 335	held inapplicable	para 14
(1983) 1 SCC 1	held inapplicable	para 15

A **(1998) 5 SCC 343 held inapplicable para 16**
(2003) 12 SCC 461 held inapplicable para 17
(1987) 3 SCC 684 relied on para 18

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 2019 of 2008.

B From the final Judgment and Order dated 29.11.2004 of the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in Crl. Misc. Case No. 1347 of 2001.

Rakesh K. Khanna, Pradeep Misra and Suraj Singh for the Appellant.

C L.N. Rao Shweta Bharti, Shreya Sharma Kaustobh Sinha and B.B. Singh for the Respondents.

The Judgment of the Court was delivered by

P. SATHASIVAM, J. (1) Leave granted.

D (2) This appeal is directed against the order dated 29.11.2004 passed in Crl. Misc. Case No. 1347 of 2001 of the High Court of Judicature at Allahabad, Lucknow Bench quashing the Complaint Case No. 44 of 1988 filed by the U.P. Pollution Control Board, Lucknow through its officers against E M/s Modi Carpets Ltd. Raebareli and 12 others under Section 44 of the Water (Prevention & Control of Pollution) Act, 1974 (hereinafter referred to as "the Act") pending in the Court of Special Judicial Magistrate (Pollution), Lucknow.

(3) Background facts, in a nutshell, are as follows:

F The State Board for Prevention and Control of Water Pollution was constituted on 03.02.1975 by the Government of U.P. and it has been named as – U.P. Pollution Control Board (hereinafter referred to as "the Board") which is the appellant herein vide notification No. 2179/9-2-100-74 dated 13.07.1982. G On the application submitted by M/s Modi Carpets Ltd., Raebareli, seeking consent to discharge effluent, the appellant-Board granted conditional consent to discharge their trade effluent in the river Sai. Since the conditions of consent were not being complied with by M/s Modi Carpets Ltd., a letter dated

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30.4.1983 was sent by the appellant-Board to M/s Modi Carpets Ltd., Raebareli informing that non-compliance of the consent conditions is an offence under Section 44 of the Act. On 07.06.1983, the inspection of unit of M/s Modi Carpets Ltd. was done by the officers of the Board wherein it was found that polluted trade effluent was being discharged into the river Sai through drain without any treatment and construction of effluent treatment plant was yet to be started. On 19.01.1984, the Board again sent a letter to M/s Modi Carpets Ltd. that conditions of the consent order dated 22.1.1983 were not complied with. Again it was reiterated that non-compliance of the conditions of consent would be an offence under Section 44 of the Act. On 13.09.1984, the unit was again inspected by the officers of the Board and it was found that effluent was being discharged without any treatment. For this, Modi Carpets Ltd. sent a reply dated 18.10.1984 to the appellant-Board giving clarifications for not complying with the consent conditions and the same was considered and rejected by the Board on 31.10.1984 on the ground that the unit was not complying with the prescribed standards, consent conditions and also the application was incomplete in various aspects.

(4) Since M/s Modi Carpets Ltd. was not complying with the provisions of the Act and there was violation of Sections 25 & 26 of the Act, a complaint under Section 44 was filed by the Board through its Assistant Environmental Engineer against respondent No.1 as well as other persons namely, Chairman, Vice-Chairman, Managing Director, Joint Managing Director, Directors, General Manager, Commercial Manager and Company Secretary of M/s Modi Carpets Ltd. before the C.J.M., Raebareli. It was specifically mentioned in the complaint that the aforesaid persons are responsible for the conduct of the business of the company and for their monetary benefits continued to discharge noxious and polluting trade effluent of the company without complying with the conditions of consent and mandatory provisions of law. A petition under Section 482 of the Criminal Procedure Code was filed before the High Court of Judicature at Allahabad being Criminal Misc. Petition No. 14119 of 1985 by M/s Modi Carpets Ltd. & Ors. for

A quashing the aforesaid complaint and also for other reliefs. Vide order dated 5.11.1985, the High Court stayed further proceedings in the complaint case. On the objection of the Board that the Principal Bench at Allahabad had no territorial jurisdiction to decide the petition, the first respondent herein
B filed a petition under Section 482 of the Crl.P.C. before Lucknow Bench of the High Court being Crl. Misc. Case No. 1347 of 2001. In the said petition, it was alleged that the first respondent, Dr. Bhupendra Kumar Modi, Joint Managing Director was not concerned with day-to-day business of the company and cannot be prosecuted for the offence committed
C by the Company, hence, it was prayed that Complaint Case No. 44 of 1988 filed by the appellant-Board be quashed.

(5) The appellant-Board filed a counter affidavit before the High Court wherein it was stated that the complaint could not be quashed at the initial stage and whether a person is
D responsible for conduct of day-to-day business of the Company or not, is a question which has to be decided by evidence. In any event it was stated that the complaint discloses materials to proceed further.

(6) By impugned order dated 29.11.2004, the High Court
E quashed the complaint so far as it related to respondent No.1 on the main ground that there was no material on record to show that respondent No.1 was, at the relevant time, incharge and responsible to the company for conduct of its business. Aggrieved by the said judgment of the Lucknow Bench, the
F appellant-Board has filed the above appeal by way of special leave.

(7) Heard Mr. Rakesh K. Khanna, learned Senior Counsel, appearing for the appellant-Board and Mr. L.N. Rao, learned senior counsel, appearing for the 1st respondent.

G (8) The only point for consideration in this appeal is whether the complaint of U.P. Pollution Control Board discloses any material against the first respondent i.e., Dr. Bhupendra Kumar Modi, Joint Managing Director, particularly, his control over the decision making process of the Company and whether
H the High Court was justified in quashing the same in so far as

Dr. Bhupendra Kumar Modi in a petition under Section 482 Cr.P.C.

(9) The High Court while accepting the case of Dr. Bhupendra Kumar Modi perused the complaint of the Board. According to it, nowhere it is specifically stated in the complaint and there is also no material on record to show that Dr. Bhupendra Kumar Modi was, at the relevant time, in-charge and responsible to the Company for the conduct of the business. The High Court also concluded that there was no specific allegation that at the relevant time, respondent No.1 was in-charge of the Company or was looking after the day-to-day affairs of the company or that the offence has been committed with his consent or connivance. By arriving such conclusion the High Court quashed the prosecution in so far as the first respondent herein is concerned. In the same order, the High Court made it clear that the prosecution is free to proceed against other persons mentioned in the complaint.

(10) In order to answer the questions raised, we verified the complaint (Annexure – 8) of the Board laid under Section 44 of the Act. Section 25 (1) of the Act makes it mandatory for every new industry to obtain consent of the "Board" for bringing into use any new or altered outlet for the discharge of its trade effluent into the stream or well or on land as defined in Section 2 of the Act read with its amending Act [Act No. 44 of 1978]. The Company and all the persons in-charge of the day-to-day affairs are required to abide by the mandatory provisions for operating their industrial establishment. The complaint further shows that the Company had applied for the grant of consent of the Board for the discharge of its trade effluent on 29.09.1982 which was received by the Board on 04.10.1982 and after considering all aspects the conditional consent order No. 83/170 dated 22.01.1983 was issued in favour of the Company. According to the Complainant, the Company had not sent the report for proper compliance of the condition which was imposed. Accordingly, the site of the Company at Raebareli had been inspected by the officers of the Board on 07.06.1983 and on 13.09.1984 in the presence of representatives of the

A Company. According to the Board, the accused persons intentionally failed to comply with the conditions of consent order dated 22.01.1983 and to construct proper effluent treatment plant and discharging without consent of the Board. This has been asserted in para 15 of the complaint. In para 16, it is B stated that the accused persons, namely, 2-13 are Chairman, Managing Director/Joint Managing Director, Directors, Secretaries and Managers of M/s Modi Carpets Ltd., Raebareli, who are responsible for the conduct of the business of the Company and also for not complying the conditions and for not constructing proper plant for the treatment of their highly polluting C trade effluent so as to conform to the standard laid down by the Board. In the same paragraph, it is further asserted that the accused persons are deliberately avoiding the provisions of Section 25 of the Act for which they are punishable under Section 44 read with Section 47 of the Act. In para 17 of the D complaint, it is specifically stated that at the time of commission of offence all the persons were in-charge of the business of the Company and responsible for the day-to-day working of the Company and also for conducting of the business of the Company and continuous commissioning of offence under E Section 44 of the Act and the construction of effluent treatment plant can be taken up only when these senior authorities resolved to do so. It is further stated that the offence mentioned in the complaint is being continuously committed against the society at large, animals and aquatic life in particular because of their personal monetary gains. In para 21, it is specifically F stated that the Chairman, Directors and Secretaries are the brain and nerve centre of Modi Carpets and conducting the business of the Company which has been discharging its trade effluents into stream for which they are to be punished under Section 44 read with Section 47 of the Act. In para 22, it is G asserted that under the provisions of Section 47 of the Act where an offence has been committed by a Company every person, who at the time of commission of the offence was in-charge of and responsible to the Company for the conduct of the business shall be deemed to be guilty of the offence and liable to be H proceeded and punished accordingly.

(11) Apart from the above specific averments, the Board has also placed a letter dated 22.01.1983 granting conditional consent to respondent No.1, copy of the inspection reports, various letters/communications and their reply as Annexures P-1 to P-7.

(12) Among the various provisions of the Act, we are more concerned about Section 47 which speaks about offences by companies which reads thus:

> *"47. Offences by companies.*- (1) Where an offence under this Act has been committed by a company, every person who at the time the offence 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 deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:
>
> Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.
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> (2) Notwithstanding anything contained in sub-section (1), where an offence under this 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 of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
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> Explanation.- For the purposes of this section,-
>
> (a) "company" means any body corporate, and includes a firm or other association of individuals; and
>
> (b) "director" in relation to a firm means a partner in the firm."

Section 25 speaks about restrictions on new outlets and new

A discharges and Section 26 relates to provision regarding existing discharge of sewage or trade effluent. Section 44 speaks about penalty for contravention of Section 25 or Section 26.

(13) It is not in dispute that the first respondent before
B letting out trade effluent into a stream or a river has to satisfy certain conditions in terms of the provisions of the Act and the order of the authorities concerned. It is also not in dispute that without a consent order by the Board the Company cannot let out untreated effluent into a land or stream or river. Though a
C consent order was issued by the Board it has been specifically stated in the complaint that those conditions have not been fulfilled by the Company. In those circumstances, in the interest of the public health, the appellant-Board through its officers laid a complaint against the persons, who are in charge of the day-to-day affairs and in the decision making process. There is no
D need to place all the materials at the threshold. However, on perusal of the complaint and the relevant materials in the form of documents, the learned Special Judicial Magistrate (Pollution) entertained the same and issued summons to the named persons in the complaint. Inasmuch as the High Court
E quashed the complaint against the first respondent herein who is a Joint Managing Director of the Company, we are concerned about the averments/allegations against him in respect of his concern in the day-to-day affairs and in the decision making process. We have already referred to the
F relevant averments/materials adverted to in the complaint. Before going into the reasoning and conclusion of the High Court for quashing the complaint against the first respondent herein, let us consider various decisions of this Court with reference to the very same provisions, namely, Sections 44 and 47 of the Act as well as the jurisdiction of the High Court under
G Section 482 of Cr.PC.

(14) It is settled legal position that at the stage of issuing process, the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and he is only to be prima facie satisfied whether there
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are sufficient grounds for proceeding against the accused. In *Smt. Nagawwa vs. Veeranna Shivalingappa Konjalgi and Others*, (1976) 3 SCC 736, this Court has held that it is not the province of the Magistrate to enter into a detailed discussion on the merits or demerits of the case. It was further held that whether a process should be issued, the Magistrate can take into consideration improbabilities appearing on the face of the complaint or in the evidence led by the complainant in support of the allegations. The Magistrate has been given an undoubted discretion in the matter and the discretion has to be judicially exercised by him. It was further held that once the Magistrate has exercised his discretion, it is not for the High Court or even this Court to substitute its own discretion for that of the Magistrate or to examine their case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in conviction of the accused. This Court has held that in the following cases, an order of the Magistrate issuing process against the accused can be quashed:

> "(1) where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;
>
> (2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;
>
> (3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and
>
> (4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and *the like*."

No doubt the grounds mentioned above are purely illustrative

A and it provides only guidelines to indicate contingencies where the High Court can quash the proceedings. Though argument was advanced based on the decision in *State of Karnataka vs. Pratap Chand and Others,* (1981) 2 SCC 335, it was decided in a case relating to conviction under Drugs and B Cosmetics Act, 1940 and not quashing of a complaint based merely on a petition or an affidavit. Hence, the said decision is not applicable to the case on hand.

(15) Though reliance was placed on a decision of this Court in *Municipal Corporation of Delhi vs. Ram Kishan* C *Rohtagi and Others,* (1983) 1 SCC 1, a perusal of the said decision makes it clear that the complaint in that case was vague as regards the Directors and the Court has concluded that no offence revealed against them, hence the High Court was justified in quashing the proceedings against the Directors.

D (16) The next decision pressed into service by the first respondent is *State of Haryana vs. Brij Lal Mittal and Others,* (1998) 5 SCC 343. In the said decision, after finding that except a bald statement in the complaint that the respondents therein were Directors of the manufacturers, there is no other allegation to indicate, even prima facie, that they were in charge of the E Company and also responsible to the Company for the conduct of its business. This Court agreed with the High Court in quashing the prosecution against the three Directors.

(17) Reliance was also placed on the decision in *Nalin Thakor and Others vs. State of Gujarat and Others,* (2003) 12 F SCC 461. This Court, after finding that there is no allegation as regards the requirement of sub-section (2) of Section 47 and the learned Judicial Magistrate issued summons without application of mind, allowed the appeal and set aside the summons issued against the appellants therein.

G (18) In the earlier part of our order, we have extensively adverted to the specific averments/assertions in the complaint of the Board with reference to all the officers i.e. named persons in the complaint including the first respondent who is Joint Managing Director of the Company. In those H circumstances, we are of the view that the above-mentioned

decisions relied on by the first respondent are not helpful to the stand taken by him. It is useful to refer the decision in the case of *U.P. Pollution Control Board vs Messrs Modi Distillery and Others,* (1987) 3 SCC 684. The said case, by special leave, was directed against the judgment and order of the High Court of Allahabad dated 16.05.1984 setting aside, in its revisional jurisdiction, order of the CJM, Ghaziabad dated 03.11.1983 directing issue of process against the respondents therein on a complaint filed by the appellant Pollution Control Board under Section 44 of Water (Prevention and Control of Pollution) Act, 1974. The issue involved therein was whether the Chairman, Vice-Chairman, Managing Director and Members of the Board of Directors of M/s Modi Industries Limited, the company owning the industrial unit called M/s Modi Distillery could be proceeded against on a complaint against the said industrial unit. Learned Single Judge of the High Court found that there was no sufficient ground against the respondent inasmuch as the allegations made in the complaint do not constitute an offence punishable under Section 44 for the admitted contravention of Sections 25(1) and 26 read with Section 47 of the Act. The facts narrated above clearly show that the same is identical to the case on hand. This Court taking note of the provisions particularly, Sections 25 (1) (2) and 26 as well as Sections 44 and 47 and the averments in the complaint after finding that prima facie materials are available and all the issues to be dealt with by the Judicial Magistrate at the time of trial, set aside the order of the High Court interfering with the order of CJM directing issue of process to the respondents and directed the learned Magistrate to proceed with the trial in accordance with law. No doubt, it is true that the learned Single Judge of the High Court quashed the proceedings on the ground that there could be no vicarious liability saddled on the Chairman, Vice-chairman, Managing Director and other members of the Board of Directors of the Company under Section 47 of the Act unless there was a prosecution of the Company i.e. M/s Modi Industries Ltd. In the case on hand, it is not in dispute that the Company has been shown as first accused in the complaint apart from including Chairman,

A Managing Director, Jt. Managing Director, General Manager, Directors, Commercial Manager and Company Secretary as well as their specific role in the day-to-day affairs and decision making process.

(19) *U.P. Pollution Control Board vs. Mohan Meakins Ltd.* B *and Others,* (2000) 3 SCC 745 is a case filed by the very same appellant- U.P. Pollution Control Board and in similar circumstances this Court interfered with the order of the High Court as well as the order of the Sessions Court quashing the similar complaint. In the said case, the Board initiated C proceedings for prosecuting Mohan Meakins Ltd. and its Directors for discharging trade effluents in the river Gomti which is a tributary of the Ganga. The learned trial Judge on satisfying the averments in the complaint of the Board issued process against the accused at the first instance. The respondents/ Company and its Directors desired the trial Court to discharge D them without even making their first appearance in the Court. When the attempt made for that failed, they moved for exemption from appearance in the Court. In the meanwhile, the Sessions Judge, Lucknow entertained a revision moved by the accused against the order issuing process to them and quashed it on E the erroneous ground that the Magistrate did not pass a speaking order for issuing such summons. The CJM before whom the complaint was filed thereafter passed a detailed order on 25.04.1984 and again issued process to the accused. The order was again challenged by the accused in revision F before the Sessions Court and the same Sessions Judge again quashed it by order dated 25.08.1984. The Board moved before the High Court in a revision against the said order. Though the revision was moved in 1984 itself it took 15 years for the High Court to dismiss the revision petition as per the order passed by a learned Single Judge on 27.07.1999. G Questioning the same, the Board filed special leave petition before this Court and ultimately leave was granted by this Court. It is useful to refer the facts and other details stated in the complaint as noted by this Court. Thomas, J. (as he then was) speaking for the Bench in paras 10 and 11 observed thus:-

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10. ... ... In the complaint filed by the appellant before the Chief Judicial Magistrate, the Company (M/s Mohan Meakins Ltd.) has been arrayed as the first accused and the other persons who were arrayed as Accused 2 to 10 were described as the Directors of the said Company. The 11th person arrayed in the complaint as accused is described as the Manager of the Company. The averments in the complaint show that the Distillery Unit of the Company at Daliganj, Lucknow, has been discharging noxious trade effluents into River Gomti and causing continuous pollution of the river. It was further averred in the complaint that on 19-9-1982, samples of trade effluents were collected by the officers empowered in this behalf, from the drain "just outside the plant inside the factory", and from the irrigation plant out of which the effluents were pumped into the river. When the samples were analysed in the Industrial Toxicology Research Centre, Lucknow, it was revealed that the quality of effluents was beyond the standard laid down for the purpose. Therefore, it is alleged that the Company has violated Section 24 of the Act* and thereby the Company is guilty of the offence under Section 43 of the Act.

11. Where an offence under the Act has been committed by a company every person who was in charge of and was responsible to the company for the conduct of the business of the company is also made guilty of the offence by the statutory creation. Any director, manager or other officer of the company, who has consented to or connived in the commission of the said offence, is made liable for the punishment of the offence."

This Court has also noted further allegations in the complaint against Managers or Directors of the Company which are as under:-

"12. In the above context what is to be looked at during the stage of issuing process is whether there are allegations in the complaint by which the Managers or Directors of the Company can also be proceeded against,

A when the Company is alleged to be guilty of the offence. Para 12 of the complaint reads thus:

> "That the accused persons from 2 to 11 are Directors/ Managers/ Partners of M/s Mohan Meakins Distillery, Daliganj, Lucknow, as mentioned
B in this complaint are responsible for constructing the proper works and plant for the treatment of their highly polluting trade effluent so as to conform to the standard laid down by the Board. Aforesaid accused persons are deliberately avoiding to abide
C by the provisions of Sections 24 and 26 of the aforesaid Act which are punishable respectively under Sections 43 and 44 of the aforesaid Act, for which not only the Company but its Directors, Managers, Secretary and all other responsible officers of the accused Company, responsible for
D the conduct of its business are also liable in accordance with the provision of Section 47 of the Act."

The appellant has further stated in para 23 of the complaint
E that "the Chairman, Managing Directors and Directors of the Company are the persons responsible for the act and therefore, they are liable to be proceeded against according to the law".

Taking note of the averments in the complaint against the
F Directors, Managers and the ingredients of Section 47 of the Act, this Court declined to accept the reasoning of the High Court and Sessions Court for quashing the complaint thereby set aside both the orders and directed the trial Court to proceed with the case in accordance with law.

G (20) In the case on hand which is also similar to Mohan Meakins Ltd. had commenced its journey in the year 1985, nonetheless lapse of such 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
H of air and water. The message must go to all concerned

persons 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 on the public health at large, should be dealt with strictly de hors to the technical objections. Since escalating pollution level of our environment affects on 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 causal or routine manner.

(21) It is our endeavour to point out that the High Court has quashed the complaint arising in an environmental matter in a casual manner by exercising power under Section 482 of the Cr.P.C. This Court has held exercise of power under Section 482 of the Code is the exception and under the rule there are three circumstances under which the inherent jurisdiction may be exercised i.e. (a) to give effect to an order of the Court; (b) to prevent abuse of the process of the Court; (c) to otherwise secure the ends of justice. 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 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 complaint, 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. When exercising jurisdiction under Section 482 of the Code, 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 accusation

A 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
B 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 Crl. 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.
C

(22) In the light of the above discussion and in view of the specific averments in the complaint as referred to by us in the earlier paragraphs coupled with the statutory provisions, namely, Sections 25, 26, 44 and 47 of the Act, we are unable to share the view expressed by the High Court in quashing the
D complaint insofar as the first respondent herein. Accordingly, we set aside the same. The Special Judicial Magistrate (Pollution) is directed to proceed with the complaint and dispose of the same in accordance with law. If the first respondent herein applies for dispensing with his personal
E presence in the Court, after making the first appearance, the Special Court can exempt him from continuing to appear in the Court by imposing any condition which the Court deems fit. Subject to the above observation, we set aside the impugned judgment of the High Court and direct the Special Judicial
F Magistrate (Pollution) to proceed with the case in accordance with law and dispose of the same as expeditiously as possible. We make it clear that we have not expressed anything on the merits of the contents of the complaint and it is for the Special Court to decide the same in accordance with law. The Criminal appeal is allowed.
G

R.P. Appeal allowed.