SUPREME COURT OF INDIA

Nalin Thakor

Vs.

State of Gujarat

(V.N.Khare, S.B.Sinha and A.R.Lakshmanan JJ.)

04.11.2003

ORDER

1. The two learned Judes of this Court having found conflict between the two decisions of this Court in Municipal Corpn. Of Delhi v. Ram Kishan Rohtagi and State of Haryana v. Brij Lal Mittal taking one view and U.P. Pollution Control Board v. Modi Distillery taking another view, opined that the matter requires to be heard by a Bench of three learned Judges. By this way, the matter, therefore, has come before us.

2. The core question that arises in the context of Criminal Case No.6 of 1990, filed by he respondents against the appellants under Sections 24 and 25, punishable under Sections 43 and 44 read with Section 47 of the *Water (Prevention and Control of Pollution) Act, 1974* (hereinafter referred to as "the Act'). On the complaint, the Magistrate, taking cognizance of the offence, ordered issue of the process to the appellant herein. It is at this stage the appellants, who were the directors of the Company, filed a criminal miscellaneous application under Section 482 of the Code of Criminal Procedure, 1973 before the High court for quashing the proceedings pending before the Vth Joint Judicial Magistrate, First Class at Bhavnagar, being Criminal Case No. 6 of 1990. The Gujarat High Court rejected the said criminal miscellaneous application. It is against the said order and judgment of the High Court, the appellants are in appeal before us.

3. Learned counsel appearing for the parties, however, agreed that keeping in view the special facts and circumstances of this case, the question referred to s need not be answered.

4. We have looked into the facts of this case and find that as far back as on 27-4-1989, the Factory Manager wrote to the Gujarat Pollution control Board, Gandhi Nagar that the FRP lining provided in the oil and grease trap of the effluent-treatment plant has been damaged at some places and they are taking a short shutdown on the said tank and efforts are being made to repair/replace the FRP lining. An assurance was also given to restart the plant as soon as it is repaired. It is not disputed that the sample of the water was taken on 6-5-1989 i.e. immediately after the information was sent to the Board as mentioned in the show-cause notice dated 17-8-1989. We further find that the issue of summons to the appellants was also without an application of mind as nothing was said in the complaint or in the statement recorded by the Vth Joint Magistrate before issue of summons that the offence was

committed with the consent or connivance of or was attributable to any negligence on the part of the appellants. Sub-section (2) of Section 47 requires that 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.

There being no allegation as regards the requirement of sub-section (2) of section 47, the Vth Joint Judicial Magistrate committed an error in issuing summons to the appellants herein.

5. For the aforesaid reason, the summons issued against the appellants are liable to be set aside. We therefore, set aside the summons issued to the appellants herein as also the judgment under challenge.

6. The appeal is, accordingly, allowed. No coasts.