

13-B of the Act, can be entertained or granted until at least six months have elapsed from the date of the presentation of the petition for divorce on this ground. Any decree for divorce granted in disregard of this provision cannot, but be treated as void. The Additional District Judge, therefore, clearly fell in error in granting to the parties here a decree for divorce by mutual consent before the expiry of the said period of six months.

(14) With the decree for divorce by mutual consent granted to the parties being void, the present proceedings, must, in the circumstances, be treated as a continuation of the original proceedings. So considered, regard must also be had to the change, in the meanwhile, in the situation of the parties here, namely; that after the decree for divorce had been granted and before the notice was ordered by this court to issue to them, the petitioner Rakesh Garg remarried on September 12, 1991. Keeping this subsequent event of obvious material significance in view, as also the further fact that more than six months have, by now, since elapsed from the presentation of the petition for divorce, and the parties having lived apart ever-since and still seek this relief, it would now clearly be in the interests of justice that the parties be deemed to have been granted a decree for divorce by mutual consent with effect from the date when the period of six months had elapsed since the presentation of the petition for divorce by them. This date being May 7, 1991. A decree for divorce by mutual consent is accordingly hereby granted to them with effect from this date.

(15) This Revision Petition is disposed of in these terms.

J.S.T.

Before : J. S. Sekhon and Amarjeet Chaudhary, JJ.

HARYANA STATE BOARD FOR THE PREVENTION AND CONTROL OF WATER POLLUTION, CHANDIGARH,—*Appellant.*

versus

M/S BHARAT CARPETS LTD., FARIDABAD, HARYANA AND OTHERS,—*Respondents.*

Criminal Appeal No. 585-DBA of 1987.

8th April, 1992.

Water (Prevention and Control of Pollution) Act, 1974—Ss. 43, 44 and 47—Code of Criminal Procedure, 1973 (II of 1974)—S. 249—Offence committed by Company—Discharge of effluent—Complaint—

Charge framed—Complaint thereafter cannot be dismissed in default—Person not responsible for conduct of day to day business of Company cannot be proceeded against.

Held, that when charge has already been framed, the complaint could not be dismissed in the absence of the complainant.

(Para 9)

Held, that in view of the evidence on record and proviso to S. 47 of the Water (Prevention and Control of Pollution) Act, 1974 there is no manner of doubt that two of the respondents cannot be said to have committed any offence as they were not responsible for conduct of day to day business of the Company and as such cannot be proceeded against.

(Para 11)

Appeal from the order of the Court of Shri R. K. Kashyap, HCS, Judicial Magistrate 1st Class, Faridabad., dated the 3rd August, 1987, acquitting the accused.

Charge under section 43 and 44 of the Water (Prevention and Control of Pollution) Act, 1974.

Rameshwar Malik, Advocate, for the Appellant.

R. K. Chhibbar, Senior Advocate, (Anand Chhibbar Advocate with him) M. M. Chaudhary, Advocate, for Respondent No. 1.

JUDGMENT

Amarjeet Chaudhary, J.

Haryana State Board for the Prevention and Control of Water Pollution, Chandigarh, (hereinafter referred to as 'the Board') has challenged the order of Judicial Magistrate 1st Class, Faridabad, dated 3rd August, 1987,—*vide* which the complaint filed by the Board under section 43 and 44 of the water (Prevention and Control of Pollution) Act, 1974 against respondents 2 and 5 was dismissed in default.

(2) The facts which led to the filing of the appeal are that Shri Ajit Kumar, Assistant Environmental Engineer of the complainant-Board visited the premises of M/s Bharat Carpets Limited, Gurukul Industrial Area, Faridabad (hereinafter referred to as the Company) on 5th March, 1981 with R. P. Misra, the then Environmental Engineer. Sample from the outlet was collected by R. P. Misra. The said sample was alleged to have been taken in the

presence of D., P. Gupta accused and was got signed from R. P. Misra. The sample was sent for analysis. Report of Analyst was received according to which it was clear that the effluent which the accused were discharging in the land was not within the prescribed ISI standard. All the parameters were in excess and in violation of standard prescribed by the Board, i.e. ISI standard. The Board filed a complaint on 31st October, 1981 under sections 43 and 44 of the Water (Prevention and Control of Pollution) Act, 1974 (for short the Act) in the Court of Judicial Magistrate 1st Class, Faridabad. The complaint was filed against the following persons :—

1. M/s. Bharat Carpets Limited, Gurukul Industrial Area, Faridabad.
2. Mr. S. N. C. Bakshi c/o M/s Bharat Carpets, Ltd., Gurukul Industrial Area, Faridabad.
3. Mr. B. N. Gupta, Managing Director M/s Bharat Carpets Ltd., Gurukul Industrial Area, Faridabad.
4. Mr. M. L. Khaitan, Chairman, M/s Bharat Carpets Ltd., Gurukul Industrial Area, Faridabad.
5. Mr. D. P. Gupta, Production Officer, M/s Bharat Carpets Ltd., Gurukul Industrial Area, Faridabad (Haryana).

The accused were summoned by the Court.

(3) The Board examined Jasbir Singh, Clerk of complainant Board as P.W. 1, Ajit Kumar P.W. 2 and R. P. Misra, Assistant Environmental Engineer, P.W. 3 in support of its case.

(4) In defence Jagdish Lal Nanda DW 1 and Ram Gopal Sharma DW-2 were examined. Statements of accused D. P. Gupta and S.N.C. Bakhshi were also recorded. On 3rd August, 1987 the learned Judicial Magistrate 1st Class dismissed the complaint, as nobody on behalf of the complainant had appeared. As a result, accused Nos. 2 and 5 were acquitted. Aggrieved against the acquittal of the accused, the Board has filed the present appeal.

(5) Counsel for the appellant contended that once charge had been framed against the accused, the complaint could not be dismissed in default.

(6) It was brought to the notice of the Court that during the pendency of the criminal appeal respondent No. 3 B. N. Gupta, managing Director and respondent No. 4 M. L. Khaitan, Chairman of the Company have since expired. Shri R. K. Chhibber, Senior Advocate, contended that appeal *qua* them abates. Mr. Chhibber further contends that S. N.C. Bakshi respondent No. 2 and D. P. Gupta, respondent No. 5 were the small functionaries of the Company and they were not involved in the day-to-day business of the Company and as such appeal *qua* them also deserves to be dismissed.

(7) Faced with this situation, Mr. Rameshwar Malik, Counsel for the appellant-Board contended that as per provisions of Section 47 of the Act, 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.

(8) We have considered the submissions of the learned Counsel for the parties and have gone through the paper-book.

(9) We find force in the submissions of the learned Counsel for the appellant, but the arguments advanced by the Counsel for the respondents also require consideration. Section 249 of the Code of Criminal Procedure clearly envisages that when proceedings have been instituted upon a complaint and on day fixed for the hearing of the case complainant is absent, the Magistrate may, at any time before the charge has been framed, discharge the accused. The emphasis is on the word "before charge has been framed." In the instant case charge had already been framed and as such the complaint could not be dismissed in the absence of the complainant.

(10) It has come in the statement of S.N.C. Bakhshi respondent No. 2 recorded under Section 313 Cr.P.C. that he was Chief Security Officer of the Company at the relevant time and it was incorrect that he had any control over or connection with day-to-day business of the company. According to Ram Gopal Sharma, DW-2, S.N.C. Bakhshi was an Administrative and Security Officer in the Company. In cross-examination, he stated that it was incorrect to suggest that D. P. Gupta was not a finishing and packing in-charge in the Factory. D. P. Gupta in his statement under Section 313 Cr.P.C. also stated that at the time of the inspection of the Company by Ajit Kumar and R. P. Misra on 5th March, 1981, he was simply

asked by them to sign papers and he had told them that he was not the Manager of the Company but he was assured that only sample was being collected as a routine and was not being taken for any other purpose.

(11) Before arriving at a particular conclusion, it will be worthwhile to go through the provisions of Section 47 of the Act and the proviso thereunder which reads as :—

“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.”

Thus the evidence on record and proviso to section 47 of the Act leave no manner of doubt that none of the respondents i.e. S.N.C. Bakhshi and D. P. Gupta can be said to have committed any offence as they were not responsible for conduct of the day-to-day business of the Company and as such cannot be proceeded against.

(12) Section 47 of the Act is *pari-materia* to Section 23(c) of the Foreign Exchange and Regulation Act, 1947 and Section 34 of the Drugs and Cosmetics Act, 1940. In *State of Karnataka v. Pratap Chand and others* (1), it was held that a partnership firm charged for the offence under section 18(a) (ii) and (c) of the Drugs and Cosmetics Act, the partner of the firm who was in overall control of the day-to-day business of the firm would alone be liable to be convicted and the partner who was not in such control would not be proceeded with merely because he had the right to participate in the business of the firm under the terms of Partnership Deed. In *G. L. Gupta v. D. N. Mehta* (2), it was observed as follows :—

“What then does the expression” a person in charge and responsible for the conduct of the affairs of a company mean?

(1) A.I.R. 1981 S.C. 872.

(2) A.I.R. 1971 S.C. 28,

It will be noticed that the word 'company' includes a firm or other association and the same test must apply to a director in charge and a partner of a firm in charge of a business. It seems to us that in the context a person 'in charge' must mean that the person should be in over all control of the day today business of the company or firm. This inference follows from the wording of Section 23C(2). It mentions director, who may be a party to the policy being followed by a company and yet not be in charge of the business of the company. Further it mentions Manager, who usually is in charge of the business but not in over all charge. Similarly, the other officers may be in charge of only some part of business.

(13) Keeping in view the above observations, and from the evidence in the present case it can be concluded that the Managing Director and Chairman of the Company who were in over all control of the day-to-day business of the Company, could have been held to be liable and not S.N.C. Bakshi and D. P. Gupta as they were neither in charge of the Company nor were acquainted with the day-to-day business of the company.

(14) Considering all the pros and cons of the matter, we have come to the conclusion that this appeal fails and the same is hereby dismissed.

R.N.R.

(FULL BENCH)

Before :—A. L. Bahri, Ashok Bhan and V. K. Bali, JJ.

SANDEEP GILHOTRA,—Petitioner.

versus

STATE OF PUNJAB AND ANOTHER,—Respondents.

Civil Writ Petition No. 8675 of 1990.

25th February, 1993.

Punjab Municipal Act, 1911—Ss. 61 and 62—Municipal Account Code, 1930 as amended.—vide notification, 1985—Rls. 1, 17, 18 of Chapter VII—Inposition of show tax and entertainment tax on cinemas—Municipal Committee proposing to levy such taxes by
