

(1985) 03 CAL CK 0001

Calcutta High Court

Case No: Criminal Rev. No. 956 of 1984

M.S. Ukhade

APPELLANT

Vs

W.B. Prevention and Control of
Water Pollution Board and
Another

RESPONDENT

Date of Decision: March 20, 1985

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 177, 178, 179, 401, 482

Citation: 89 CWN 716

Hon'ble Judges: N.G. Chaudhuri, J; G.C. Chatterjee, J

Bench: Division Bench

Advocate: Dilip Kumar Dutt and A.K. Mitra, for the Appellant; Dilip Kumar Chaudhuri and Prosanta Kumar Mukherjee for the Opposite Party No. 1 and Samir Chatterjee for State, for the Respondent

Final Decision: Allowed

Judgement

N.G. Chaudhuri, J.

Plant Manager; Antibiotick, Standard Pharmaceuticals Limited, having its factory at 1, D'cruze Garden Lane, Serampore, District Hooghly, has filed the present revisional application u/s 401 read with section 482 Cr. P. C. calling in question order dated 3.5.84 passed by Metropolitan Magistrate, 15th court, Calcutta, in case No. C/1742 of 1982. West Bengal Prevention and Control of Water Pollution Board constituted under the Water (Prevention and Control of Pollution) Act, 1974 (hereinafter to be referred to as the Act for the sake of brevity) filed a petition of complaint in the Court of Chief Metropolitan Magistrate, Calcutta on 22.5.82 describing therein two accused namely, accused No. 1 being M/s. Standard Pharmaceuticals Limited having its office at 24, Park Street and the petitioner before us as the second accused. In the petition of complaint it was alleged that the accused No. 1 being a company carried on the business of manufacturing a variety

of medicines, having its factory at 1, D'cruze Garden Lane, P. S. Serampore in the District of Hooghly and accused No. 2 was the Plant Manager of the company and was responsible for the day to day work of the factory. It was alleged that earlier the company applied for consent under sections 25 and 26 of the Act and provisional consent was granted on 11.9.79 and the said provisional consent was extended for some time imposing certain general and special conditions requiring the company to adhere to the said conditions strictly. It was alleged that one of the conditions the company was to comply with was to install effective treatment plant within March 1981 and it was alleged that the company did not comply with the said conditions and on 25.4.77 a competent officer of the complainant Board inspected the company's factory at the address mentioned earlier and it transpires that during the course of inspection the accused company had systematically neglected and refused to take any measure for treatment of affluent which contains poisonous and noxious properties and such conditionous discharge of such affluent harmed wholesomeness of the water of the Railway Jheel, wherein they were discharged. Making the allegations as aforesaid the complainant Board filed the complaint u/s 44 of the Act.

2. On behalf of the Plant Manager and company an objection was taken regarding the jurisdiction of the court of Metropolitan Magistrate, Calcutta taking cognizance or exercising jurisdiction over the matter. By the order impugned the learned Magistrate has held that the conditional consent was violated by the company at its factory at Serampore and the offence was committed at Serampore factory of the company. Still he held that consequences of contravention occurred at Calcutta and in view of the provisions of section 179 Cr. P. C. the court of Metropolitan Magistrate, Calcutta could exercise effective territorial jurisdiction. In another portion- of the impugned order the learned Magistrate has held that the court had ample jurisdiction in view of clauses (b) and (d) of section 178 of the Cr. P. C.

3. Mr. Dilip Kumar Dutt the learned Advocate appearing on behalf of the Plant Manager contends with vigour and force that the learned Magistrate was totally wrong in applying section 178 and section 179 of the Cr. P. C. 1973 to the facts and circumstances of the present case. Mr. Dutt points out that in the petition of complaint it has been clearly and expressly stated that the offending company had its factory in the Sub Division of Serampore in the District of Hooghly. In paragraph 6 of the petition of complaint it was clearly stated that the company was discharging the affluent into a stream which is known as Railway Jheel. In paragraph 11 of the petition of complaint there is an express admission that on 25.4.77 a competent officer of the complainant Board found contravention of the provisions of the Act by the company at Serampore. Mr. Dutt emphasises that the complainant Board took caution in impleading the Plant Manager having control of the Plant of the company at Serampore as accused No. 2. Emphasising the above features of the complainant's case Mr. Butt submits, the ordinary rule regarding place of inquiry and trial of a criminal case is embodied in section 177 of the Cr. P. C., viz., "Every

offence shall ordinarily be enquired into and tried by a court within whose local jurisdiction it was committed". Mr. Dutt argues that from the averments made in the petition of complaint, particularly the averment made in paragraph 11 of the petition of complaint it is abundantly clear that offence, if any, under the Act was committed in the Sub-Division of Serampore in the District of Hooghly on the other side of river Ganges and not within the jurisdiction of the Court of Metropolitan Magistrate, Calcutta, although the company has its office at 24, Park Street. Mr. Dutt accordingly argues that the offence u/s 44 of the Act having been committed at Serampore complaint, if any, should have been filed before the S. D. J. M., Serampore and only the said court could exercise jurisdiction for the purposes of inquiry and trial u/s 177 of the Code. Mr. Dutt contends that provisions of sections 178 and 179 to which the learned Magistrate has made reference in his order, although wrongly, have no manner of application to the instant case. The learned Magistrate has not explained how clauses (b) and (d) of section 178 were attracted to the case. The learned Magistrate has not explained how section 179 of the Code was attracted to the facts and circumstances of the present case to justify a departure from the general rule of jurisdiction embodied in section 177 of the Code.

4. The learned Advocate for the complainant Board contends that the company has its registered office at Park Street and consent to discharge affluent was applied for by the office of the company located at Park Street and such consent was given for some time. Subsequently, however, the period of validity of the consent was not extended and the company continued to discharge its affluent at the old place without any consent from the complainant Board, to commit the offence alleged. He contends that part of the offence was committed at the office premises of the company at Park Street or that consequences of contravention of the provisions of the Act were caused at Park Street. He argues that the learned Metropolitan Magistrate was, therefore, right in arriving at the conclusion he did. We have carefully gone through the order of the learned Magistrate taking into consideration the provisions of sections 177, 178 and 179 of the Cr. P. C. and also sections 25, 26 and 44 of the Act. We are satisfied that alleged contravention of the provisions of the Act leading to commission of an offence u/s 44 of the Act took place at Serampore as alleged in paragraph 11 of the petition of complaint and was noticed by the competent officer of the Board. For the alleged offence responsibility lays squarely on accused No. 2 the Plant Manager. In the aforesaid circumstances bearing in mind the ordinary provision of section 177 of the Code the complainant should have filed the petition of complaint in the court of S. D. J. M., Serampore and the learned Metropolitan Magistrate should have held that in view of section 177 of the Code he had no jurisdiction to entertain the complaint. We are of the view that the learned Magistrate was wrong in concluding that consequences of an act or omission constituting an offence were caused within the jurisdiction of the court of Metropolitan Magistrate, Calcutta to justify exercise of jurisdiction u/s 178 or 179 of the Code. In short, the order impugned is totally wrong and the proceedings in the

court of the Metropolitan Magistrate, Calcutta are to be quashed. Accordingly, we order that the revisional application under consideration be allowed on contest. The Rule earlier issued be made absolute. The order impugned, viz., order dated 3.5.84 passed in case No. C/1742 of 82 by the Metropolitan Magistrate, 15th Court, Calcutta, be set aside and the proceedings in connexion with the said case pending in the court of the said Magistrate be quashed. This order, however will not preclude the complainant Board from starting proceedings afresh against the present accused in a court of competent jurisdiction.

Gobinda Chandra Chatterjee, J.

I agree.