

NOORULLA KHAN

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v.

KARNATAKA STATE POLLUTION CONTROL BOARD & ANR.

(Criminal Appeal No.599 Of 2021)

JULY 13, 2021

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[UDAY UMESH LALIT AND AJAY RASTOGI, JJ.]

Water (Prevention and Control of Pollution) Act, 1974 – ss. 43, 44, 47 and 48 – Code of Criminal Procedure, 1973 – s. 197 – Gram Panchayat and the appellant, who at the relevant time was chief officer of said Gram Panchayat, were accused of having committed offences punishable u/s. 43 and 44 of the 1974 Act – Civil Judge (Junior Division) and Judicial Magistrate First Class found appellant guilty of the offences – However, the Additional Session Judge held that the appellant was entitled to protection u/s.197 of Cr.P.C. and in the absence of requisite sanction, his prosecution was invalid – The High Court set aside the view taken by the lower Appellate Court and since the matter was not considered by the lower Appellate Court on merits, the High Court remitted the matter back to the lower Appellate Court for fresh consideration on merits – On appeal, held: If the concerned public servant happens to be a chief officer or commissioner of a Municipal Council or Town Panchayat, he cannot strictly be called “the Head of the Department of the Government” – Therefore, in terms of decision of this Court in Karnataka State Pollution Control Board v. B. Heera Naik, the matter would not come u/s. 48 of the Water Act – But the matter would come directly u/s. 47 of the Water Act – According to said decision, even in such cases, the deeming fiction available u/s. 47 of the Water Act would dis-entitle the public servant from the protection u/s. 197 of the Code – Therefore, the High Court was right and justified in setting-aside the decision of the lower Appellate Court, which was purely based on the issue of the applicability of s.197 of the Cr.P.C. – In the circumstances, the High Court rightly remitted the matter to the lower Appellate Court to be considered afresh on merits.

Dismissing the appeal, the Court

HELD: 1. What emerges from the various decisions of the Supreme Court is:

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- A **a. If the violation of the provisions of the Water Act was at the hands of a Department, subject to the satisfaction of the requirements under Section 48 of the Water Act, “the Head of the Department” would be deemed to be guilty. This would of course be subject to the defences which are available to him to establish whether the offence in question was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.**
- B **b. By virtue of the decision of this Court in *V.C. Chinnappa Goudar*, because of deeming fiction under Section 48 of the Water Act, the protection under Section 197 of the Code would not be available and the matter ought to be considered de hors such protection.**
- C **c. If the concerned public servant happens to be a Chief Officer or Commissioner of a Municipal Council or Town Panchayat, he cannot strictly be called “the Head of the Department of the Government”. Therefore, in terms of decision of this Court in *B. Heera Naik*, the matter would not come under Section 48 of the Water Act. But the matter would come directly under Section 47 of the Water Act. According to said decision, even in such cases, the deeming fiction available under Section 47 of the Water Act would dis-entitle the public servant from the protection under Section 197 of the Code.**
- D **d. If the offenders are other than public servants or where the principal offenders are corporate entities in private sectors, the question of protection under Section 197 would not arise. [Para 11][248-E-H; 249-A-C]**
- F **2. If this Court considers the present matter in the light of these postulates, the case stands completely covered by the decision of this Court in *B. Heera Naik*. [Para 12][249-C-D]**
- G **3. The High Court was, therefore, right and justified in setting-aside the decision of the lower Appellate Court, which was purely based on the issue of the applicability of Section 197 of the Code. In the circumstances, the High Court rightly remitted the matter to the lower Appellate Court to be considered afresh on merits. [Para 13][249-D-E]**
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V.C. Chinnappa Goudar v. Karnataka State Pollution Control Board, (2015) 14 SCC 535; Karnataka State Pollution Control Board v. B. Heera Naik, (2020) 16 SCC 298; [2019] 17 SCR 305 – relied on.

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<u>Case Law Reference</u>		
(2015) 14 SCC 535	relied on	Para 9
[2019] 17 SCR 305	relied on	Para 10

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CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No.599 of 2021

C

From the Judgment and Order dated 13.03.2020 of the High Court of Karnataka, Dharwad Bench in Criminal Appeal No.2637 of 2011.

Ms. Aishwarya Bhati, ASG, Shailesh Madiyal, Sudhanshu Prakash, Ms. Rakhi M., Vaibhav Sabharwal, Ms. Sruthi Iyer, Ms. Archana Pathak Dave, Rajat Nair, Arvind Kumar Sharma, Purushottam Sharma Tripathi, S. J. Amith, Vikram Hegde, Ms. Brunda K. L., Shantanu Lakhotia, Advs. for the appearing parties.

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The Judgment of the Court was delivered by

UDAY UMESH LALIT, J.

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1. Leave granted.

2. This appeal challenges the order dated 13.03.2020 passed by the High Court of Karnataka, Dharwad Bench, in Criminal Appeal No.2637 of 2011.

3. Sandur Gram Panchayat, Sandur, District Bellary, Karnataka and the appellant, who at the relevant time was Chief Officer of said Gram Panchayat, were accused of having committed offences punishable under Sections 43 and 44 of The Water (Prevention and Control of Pollution) Act, 1974 (“the Water Act” for short).

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4. By judgment and order dated 28.04.2006 passed by the Civil Judge (Junior Division) and Judicial Magistrate First Class, Sandur, in CC No.375 of 2002, the appellant was found guilty of the offences with which he was charged and was sentenced to undergo simple imprisonment for one year and six months and to pay fine of Rs.1000/- on both the counts. The sentences were to run concurrently.

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- A 5. The appeal preferred by the appellant was allowed by the II-Additional Sessions Judge, Bellary by his order dated 19.06.2010 only on the ground that being a public servant, the appellant was entitled to the protection under Section 197 of the Code of Criminal Procedure, 1973 (“the Code” for short) and in the absence of requisite sanction, his prosecution was invalid.
- B 6. The original complainant (Karnataka State Pollution Control Board) being aggrieved, filed Criminal Appeal No.2637 of 2011 before the High Court of Karnataka, Dharwad Bench. By its judgment and order dated 13.03.2020, the High Court set-aside the view taken by the lower Appellate Court. Since the matter was not considered by the lower Appellate Court on merits, the High Court remitted the matter back to the lower Appellate Court for fresh consideration on merits.
- C 7. During the course of its judgment, the High Court relied upon the decision rendered by the Division Bench of the High Court in Writ Petition No.30610 of 2008 (**V.C. Chinappa Goudar v. Karnataka State Pollution Control Board & Another**) and came to the conclusion that the protection under Section 197 of the Code would not be available.
- D 8. We heard Mr. Shailesh Madiyal, learned Advocate for the appellant, Mr. Purushottam Sharma Tripathi, learned Advocate for the original Complainant and Ms. Aishwarya Bhati, learned Additional Solicitor General who ably assisted us at our request.
- E 9. The decision relied upon by the High Court in Writ Petition No.30610 of 2008 was directly under challenge before this Court in ***V.C. Chinappa Goudar v. Karnataka State Pollution Control Board***¹. In that decision, this Court considered the scope and applicability of Section 48 of the Water Act and found that “the Head of the Department” by virtue of deeming provision would be deemed to be guilty and, as such, the protection under Section 197 of the Code would stand excluded. The relevant discussion on the point was:
- F “6. As against the above submission, Mr A. Mariarputham, learned Senior Counsel for the respondent by drawing our attention to Section 5 CrPC and Section 48 of the 1974 Act, contended that under Section 48 there is a rebuttable presumption insofar as the guilt of the offence is concerned as against the Head of the Department in respect of any offence said to have been committed
- G H ¹(2015) 14 SCC 535

by any department of the Government and that, if Section 197 sanction is held to be mandatory even for proceeding against Head of the Department of Government Department, the same would directly conflict with Section 5 CrPC and consequently Section 60 of the 1974 Act gets attracted. According to the learned Senior Counsel, if the application of Section 197 is held to be attracted and in the event of the sanction being refused by prosecution that by itself would be an impediment for the operation of the deemed fiction contained in Section 48 of the 1974 Act. The learned Senior Counsel, therefore, contended that in such an event there would be a direct conflict of Section 48 of the 1974 Act with Section 197 CrPC and consequently Section 60 of the 1974 Act would come into play which has an overriding effect on any other enactment other than the 1974 Act.

7. Having considered the respective submissions, we find force in the submission of Mr A. Mariarputham, learned Senior Counsel for the respondents. As rightly pointed out by the learned Senior Counsel under Section 48, the guilt is deemed to be committed the moment the offence under the 1974 Act is alleged against the Head of the Department of a government department. It is a rebuttable presumption and under the proviso to Section 48, the Head of the Department will get an opportunity to demonstrate that the offence was committed without his knowledge or that in spite of due diligence to prevent the commission of such an offence, the same came to be committed. It is far different from saying that the safeguard provided under the proviso to Section 48 of the 1974 Act would in any manner enable the Head of the Department of the government department to seek umbrage under Section 197 CrPC and such a course if permitted to be made that would certainly conflict with the deemed fiction power created under Section 48 of the 1974 Act.

8. In this context, when we refer to Section 5 CrPC, the said section makes it clear that in the absence of specific provisions to the contrary, nothing contained in the Criminal Procedure Code would affect any special or local laws providing for any special form or procedure prescribed to be made applicable. There is no specific provision providing for any sanction to be secured for proceeding against a public servant under the 1974 Act. If one

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- A can visualise a situation where Section 197 CrPC is made applicable in respect of any prosecution under the 1974 Act and in that process the sanction is refused by the State by invoking Section 197 CrPC that would virtually negate the deeming fiction provided under Section 48 by which the Head of the Department of a government department would otherwise be deemed guilty of the offence under the 1974 Act. In such a situation the outcome of application of Section 197 CrPC by resorting to reliance placed by Section 4(2) CrPC would directly conflict with Section 48 of the 1974 Act and consequently Section 60 of the 1974 Act would automatically come into play which has an overriding effect over any other enactment other than the 1974 Act.”
- B 10. In a subsequent decision of this Court, *Karnataka State Pollution Control Board v. B. Heera Naik*², it was observed that the Commissioner of City Municipal Council and Chief Officers of the City Municipal Council would not strictly be called “Heads of the Departments”
- C D for the purposes of Section 48 of the Water Act. It was however held that such officials would still come under the provisions of Section 47 of the Water Act. The decision of the High Court quashing the complaint was thus set-aside and the concerned Magistrate was directed to proceed with the complaint.
- E 11. What emerges from these decisions of this Court is:
- F a. If the violation of the provisions of the Water Act was at the hands of a Department, subject to the satisfaction of the requirements under Section 48 of the Water Act, “the Head of the Department” would be deemed to be guilty. This would of course be subject to the defences which are available to him to establish whether the offence in question was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.
- G b. By virtue of the decision of this Court in **V.C. Chinnappa Goudar (Supra)**, because of deeming fiction under Section 48 of the Water Act, the protection under Section 197 of the Code would not be available and the matter ought to be considered de hors such protection.

H ²(2020) 16 SCC 298

c. If the concerned public servant happens to be a Chief Officer or Commissioner of a Municipal Council or Town Panchayat, he cannot strictly be called “the Head of the Department of the Government”. Therefore, in terms of decision of this Court in **B. Heera Naik (Supra)**, the matter would not come under Section 48 of the Water Act. But the matter would come directly under Section 47 of the Water Act. According to said decision, even in such cases, the deeming fiction available under Section 47 of the Water Act would dis-entitle the public servant from the protection under Section 197 of the Code. A

d. If the offenders are other than public servants or where the principal offenders are corporate entities in private sectors, the question of protection under Section 197 would not arise. C

12. If we consider the present matter in the light of these postulates, the case stands completely covered by the decision of this Court in **B. Heera Naik (Supra)**. D

13. The High Court was, therefore, right and justified in setting-aside the decision of the lower Appellate Court, which was purely based on the issue of the applicability of Section 197 of the Code. In the circumstances, the High Court rightly remitted the matter to the lower Appellate Court to be considered afresh on merits. E

14. We, therefore, affirm the view taken by the High Court and dismiss this appeal. F

15. Needless to say that the instant matter was dealt with by the High Court and this Court from the standpoint of the applicability of Section 197 of the Code and the matter, after remission, shall be considered purely on its own merits.