

made a party, see *Ramsebuk v. Ramlal Koondoo*, (1881) I.L.R. 6 Cal. 815. The rigour of this law has been mitigated by the provision to section 21 (1) of the Indian Limitation Act, 1963, which enables the Court on being satisfied that the omission to include a new plaintiff or a new defendant was due to a mistake made in good faith, to direct that the suit as regards such plaintiff or defendant shall be deemed to have been instituted on any earlier date."

(7) Before parting with this order, we would, however, observe that carelessness that has been indulged while drafting the petition should not be totally excused particularly when Kanshi Ram died way back in the year 1983 and this fact was in the notice of the applicant at least in 1984 as he himself made an application for impleading one of the legal representatives of Kanshi Ram as party (respondent) before the Commissioner. The carelessness has resulted into unnecessarily prolonging the case which is an obvious harassment to an adversary. The applications are, thus, allowed subject to payment of Rs. 300 as costs in each case. The case would now come up for motion hearing on 20th July, 1992.

J.S.T.

Before Hon'ble A. P. Chowdhri & J. B. Garg, JJ.

HARYANA STATE BOARD FOR PREVENTION AND CONTROL
OF WATER POLLUTION,—Petitioner.

versus

M/S JAI BHARAT WOOLEN FINISHING WORKS, PANIPAT AND
OTHERS,—Respondents.

Crl. Appeal No. 123-DBA of 1986.

September 24, 1991.

Prevention and Control of Pollution Act, 1974—Ss. 25, 26, 43, 44, 49, 50—Code of Criminal Procedure, (II of 1974)—Prosecution—Discharge of trade effluent on vacant land—Sample not found in conformity with I.S. 2490—S. 378 (5) of Cr.P.C. prescribing limitation for filing appeal in the High Court—Six months limitation provided where complainant is government servant and 60 days in other cases—Complaint instituted by the Board—Board is not a 'public servant'—Appeal filed beyond 60 days barred by limitation—However, S. 5 of Limitation Act applies to appeals under 378(4) of

Haryana State Board for Prevention and Control of Water 97
Pollution v. M/s Jai Bharat Woollen Finishing Works, Panipat
and others (A. P. Chowdhri, J.)

Cr. P.C.—Delay in filing appeal resulting from advice of Senior Advocate that period of limitation was 6 months—Sufficient cause shown delay liable to be condoned—Under S. 49 of the Act court cannot take cognizance of an offence without prior sanction of the Board—Where Board is itself a complainant, sanction of the Board is not necessary—No evidence or material on record to show that accused was sleeping partner/Incharge or was responsible for the conduct of the business of the company, court refraining from convicting such sleeping partner—Sample taken more than 10 years back—Court not awarding substantive sentence to the accused manager instead fine imposed.

Held, that the mere fact that members, officers and servants of the Board have been declared to be public servants within the meaning of Section 21 of the Indian Penal Code under Section 50 of the Act does not warrant the conclusion that the appeal filed by the Board should be deemed to be one filed by a public servant. In the eyes of law, the Board is a distinct juristic person different from the members, officers and servants thereof. The Board is not and can never be public servant unless there is any such deemed provision made in the Act. The normal period of limitation in this appeal for purposes of Section 378 (5) of the Code, therefore, is sixty days. In this view of the matter, the appeal having been filed beyond the period of limitation would be barred of limitation.
(Para 8)

Held, that section 5 applies to an application under Section 378 (5) of the Cr.P.C. It has also been seen that the Board received an advice from a senior Advocate that period of limitation in this case was six months and there was no good reason for the Board to doubt the correctness of that advice. Even otherwise, the delay has been satisfactorily explained by the facts mentioned in the application under section 5 which have not been controverted. It bears repetition that the courts have to take a liberal view of the provisions of section 5 to advance the cause of justice. For all these reasons, we condone the delay in filing the appeal.
(Para 9)

Held, that we find no force in the contention that the Court could not take cognizance of the offence without the previous sanction of the Board in view of Section 49 of the Act. A plain reading of Section 49 of the Act shows that cognizance can be taken either on a complaint made by the Board or where it is not made by the Board then in that case, with the previous sanction in writing of the State Board. As the complaint in the present case was made by the Board, there was no question of previous sanction of the Board.

(Para 11)

Held, that Section 25 and 26 of the Act which are the relevant sections for the case in hand were amended by the Water (Prevention and Control of Pollution) Amendment Act 1978 (44 of 1978).

The amendment was brought into effect in the State of Haryana from December 13, 1978. The State Government issued notification No. 29/3/PH(3) dated 14th July, 1980, specifying 21st October, 1980 as the date on or before which an application for consent under sub-section (2) of Section 25 read with Section 26 was to be made. Admittedly, no such application was made by the accused upto the taking of sample that is July 31, 1981. According to the amendment, discharge of a trade effluent into a sewerage or on land constituted an offence without consent of the Board from 21st October, 1980 onwards. It will make no difference whether the trade effluent was discharged in the municipal drain or such effluent was drained out of the municipal drain and allowed to flow on land.

(Para 12)

Held, that in order to fasten liability on Smt. Phoola Devi, all that the prosecution has been able to bring on record is an admission made by Subhash Chander, Manager and that of Smt. Phoola Devi herself in her statement under Section 313 that she is a partner of the firm. There is no other material on record to show that she was incharge of or was responsible to the Company for the conduct of the business of the Company. The burden of proving these fact is obviously on the prosecution. For this reason, it is not possible to convict Smt. Phoola Devi.

(Para 13)

Held, that as the sample was taken more than 10 years back we do not want to award any substantive sentence of imprisonment to Subhash Chander, accused. Neither counsel was in position to confirm that Subhash Chander continued to be in service of the firm or had left the same. He is thus a mere whipping boy. For these reasons, we impose a fine of Rs. 3,000 on the firm, accused No. 1 and a fine of Rs. 2,500 on Subhash Chander, accused No. 2 in default of payment of fine by Subhash Chander, he shall undergo six months **R.I.**

(Para 14)

M. S. Jain, Sr. Advocate with Adarsh Jain, Advocate, for the *Appellant*.

G. S. Bawa, Advocate and K. L. Arora, Advocate, for the *Respondents*.

JUDGMENT

A. P. Chowdhri, J.

(1) The Haryana State Board for Prevention and Control of Water Pollution (for short, the Board), through its Assistant Environmental Engineer, filed a complaint under Sections 43 and 44 of the Water (Prevention and Control of Pollution) Act, 1974 (hereinafter called the Act) against the partnership concern known as

Haryana State Board for Prevention and Control of Water . 99
Pollution v. M/s Jai Bharat Woollen Finishing Works, Panipat
and others (A. F. Chowdhri, J.)

M/s Jai Bharat Woollen Finishing Works, its Manager Subhash Chander and partner Smt. Phoola Devi. The accused were tried by the Sub-Divisional Judicial Magistrate, Panipat, and were acquitted by judgment dated June 1, 1985. Aggrieved by the acquittal, the Board has preferred this appeal.

(2) According to the prosecution, the accused were carrying on the job of blanket finishing in Industrial Area, Panipat. The job involves use of chemicals such as soda ash acids etc. As a result of the operation carried on by the accused, some trade effluent is generated containing various chemicals. The said effluent is in the form of polluted water chemically, physically and biologically. The accused had been discharging the said trade effluent without any treatment at all in the open drain of the Municipal Committee. The accused failed to obtain the consent of the Board in accordance with the provisions of sections 25 and 26 of the Act. The Board served a number of notices on the accused to apply for obtaining the requisite consent of the Board, but they paid no heed. On July 31, 1981, the Assistant Environmental Engineer took the sample of the trade effluent from the outlet of the firm after giving the accused a notice of his intention to have the sample analysed. The notice was served on Subhash Chander accused. It was taken according to the provisions of the Act and the rules framed thereunder. The sample was analysed by the Board analyst and as a result thereof, it was found that the sample was not in conformity with I.S. 2490 applicable in this behalf. The Board took a decision dated April 18, 1980, to prosecute the accused. In accordance with the said decision, the aforesaid accused were prosecuted by presenting a complaint.

(3) At the trial, the complainant examined R. P. Misra, Assistant Environmental Engineer, P.W. 1; S. C. Mann, Assistant Environmental Chemist, P.W. 2, and produced copy of the resolution of the Board for the prosecution of the accused.

(4) Smt. Phoola Devi, accused, admitted that she was a partner in the firm, accused No. 1, but stated that she did not take part in running the business of the factory. She admitted that the firm was carrying on the work of finishing job on blankets. The other evidence appearing against the accused was, however, denied. Subhash Chander, accused, in his statement, admitted that he was the Manager of the accused firm. He added that Smt. Phoola Devi was not taking active part in the business of the firm. He denied

the other material appearing against the accused in evidence. The accused examined 'Chamba Ram, D.W. 1, who is working in another factory situated opposite Jai Bharat Woollen Mills. According to him, only one bottle of the trade effluent was taken as a sample and even though a request was made by the Manager, Subhash Chander, a second bottle of sample was not taken.

(5) The learned trial Court noticed a number of contentions raised on behalf of the complainant as well as the accused, but we regret to say that the Court failed to record any firm finding, for instance, it was not held that there was no valid sanction. It was not found that Smt. Phoola Devi was a sleeping partner and as such not liable to be prosecuted. It was not found that the accused had been draining out the polluted water after first discharging the same into the municipal drain. In fact, the discussion in paragraph 14 which is the only paragraph devoted for the purpose, hardly makes any sense and the learned counsel appearing for the accused to support the judgment, was equally at a loss to put sense in what has been said therein. The result reached by the trial Court was that discharge of polluted water into vacant land did not constitute an offence and, therefore, acquitted the accused.

(6) Shri G. S. Bawa, the learned counsel appearing for the accused raised a preliminary objection. He contended that the appeal is barred by limitation. He referred to section 378(5) of the Code of Criminal Procedure (for short the Code), which reads as under :—

“No application under sub-section (4) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of six months, where the complainant is a public servant, and sixty days in every other case, computed from the date of that order of acquittal.”

He further pointed out that the judgment of acquittal is dated June 1, 1985. Application for certified copy was made on the same day. The copy was ready on June 5, 1985. The appeal was filed on November 28, 1985. He further submitted that the Board could not possibly be held to be a public servant and, therefore, in terms of section 378 (5) of the Code, the period of limitation was sixty days which expired on August 5, 1985, after taking into consideration the period taken in preparation of the certified copy of the judgment. According to him, thus, the appeal was barred by

Haryana State Board for Prevention and Control of Water 101
Pollution v. M/s Jai Bharat Woollen Finishing Works, Panipat
and others (A. P. Chowdhri, J.)

limitation by 115 days. In support of the contention, Shri Bawa placed reliance on *Municipal Corporation of Delhi v. Jagdish Lal* (1), *Municipal Corporation of Delhi v. Amrit Lal* (2), *Municipal Corporation of Delhi v. S. K. Jain* (3), *Municipal Corporation of Delhi v. Dhani Ram* (4), all Division Bench decisions of the Delhi High Court. In all these decisions, it was held that the Municipal Corporation of Delhi is not a public servant and, thus, the period of limitation within which appeal could be filed under section 378 (5) of the Code, was sixty days from the date of the order of acquittal. Shri M. S. Jain, learned counsel for the appellant on the other hand contended that the Board was a juristic person and could only function through the Chairman or Members or officers of the Board, and Members, Officers and Servants of the Board had been expressly declared to be public servants under section 50 of the Act, and, thus, the period of limitation should be reckoned to be six months. If this were accepted then the appeal would be within the period prescribed under the Code. In the alternative, Shri Jain made an application under Section 5 of the Limitation Act, being Criminal Miscellaneous Application No. 10664 of 1991. It was stated in the application that the Environmental Engineer, Sonapat, apprised the Board about the acquittal of the accused by his letter dated June 21, 1985, forwarded a certified copy of the judgment of acquittal dated June 1, 1985. The District Attorney of the Board examined the case and recommended on July 3, 1985, that appeal should be filed against the judgment. The Member-Secretary of the Board agreed with the views of the District Attorney and submitted the file to the Chairman who also agreed with the report of the District Attorney,—vide his note dated July 23, 1985. He directed the office to take steps to engage a senior Advocate. The relevant papers were selected and the matter was discussed with a senior Advocate. The Advocate further expressed the view that the period of limitation for filing the appeal was six months, that is, upto December 1, 1985. On the basis of the said advice, the Board, in its meeting dated November 10, 1985, decided to prefer an appeal and accordingly, the papers were submitted to the Advocate on November 29, 1985, and the application for special leave was filed in the High Court on November 29, 1985. Along with the application, affidavit

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- (1) A.I.R. 1970 S.C. 7.
 - (2) 1981 C.C. Cases 33 (Delhi).
 - (3) 1985 (1) Recent C.R. 403.
 - (4) 1988 (1) Recent C.C. 308.

of Shri R. N. Malik, Member-Secretary of the Board, with regard to the material facts alleged in the application was also filed. The application has, however, been vehemently opposed mainly on the ground that a careful perusal of various dates mentioned in the application would reveal that the matter was being dealt with leisurely and there was no sense of urgency attached to it at any stage. It was also argued that the affidavit of the Advocate who statedly gave the advice with regard to the period of limitation being six months, had not been placed on record.

(7) It may be stated at the outset that the apex Court has settled the law in *Mangu Ram v. Municipal Corporation of Delhi* (5), that section 5 of the Limitation Act, 1963, applies to the applications for special leave under section 417 (3) of the Code of Criminal Procedure, 1898, which is analogous to section 378(5) of the Code. The further settled law is that the Courts should adopt a liberal approach while considering sufficient cause under Section 5 of the Limitation Act. The exposition of law on the subject in *Collector, Land Acquisition, Anantnag v. Mst. Katiji* (6), is very instructive and may be referred to with advantage. *Inter alia*, their Lordships of the Supreme Court observed therein that Judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so. The Board received the advice of the Advocate that the period of limitation in filing the special leave application was six months.

(8) The mere fact that members, officers and servants of the Board have been declared to be public servants within the meaning of Section 21 of the Indian Penal Code under Section 50 of the Act does not warrant the conclusion that the appeal filed by the Board should be deemed to be one filed by a public servant. In the eyes of law, the Board is a distinct juristic person different from the members, officers and servants thereof. The Board is not and can never be public servant unless there is any such deeming provision made in the Act. The normal period of limitation in this appeal for purposes of Section 378 (5) of the Code, therefore, is sixty days. In this view of the matter, the appeal having been filed beyond the period of limitation would be barred by limitation.

(9) This brings us to a consideration of the application under Section 5 of the Limitation Act. It has been seen that Section

(5) A.I.R. 1976 S.C. 105.

(6) A.I.R. 1987 S.C. 1353.

Haryana State Board for Prevention and Control of Water 103
Pollution v. M/s Jai Bharat Woollen Finishing Works, Panipat
and others (A. P. Chowdhri, J.)

applies to an application under Section 378(5) of the Code of Criminal procedure. It has also been seen that the Board received an advice from a Senior Advocate that period of limitation in this case was six months and there was no good reason for the Board to doubt the correctness of that advice. Even otherwise, the delay has been satisfactorily explained by the facts mentioned in the application under Section 5 which have not been controverted. It bears repetition that the Courts have to take a liberal view of the provisions of Section 5 to advance the cause of justice. For all these reasons, we condone the delay in filing the appeal.

(10) This brings us to the merits of the appeal.

(11) Shri Bawa contended that the Courts could not take cognizance of the offence without the previous sanction of the Board in view of Section 49 of the Act. We find no force in this contention. A plain reading of Section 49 of the Act shows that cognizance can be taken either on a complaint made by the Board or where it is not made by the Board then in that case, with the previous sanction in writing of the State Board. As the complaint in the present case was made by the Board, there was no question of previous sanction of the Board. The same view was taken in *Z. Kotasek v. State of Bihar* (7).

(12) Section 25 and 26 of the Act which are the relevant sections for the case in hand were amended by the Water (Prevention and Control of Pollution) Amendment Act 1978 (44 of 1978). The amendment was brought into effect in the State of Haryana and December 13, 1978. The State Government issued Notification No. 29/3/PH(3), dated 14th July, 1980, specifying 21st October, 1980 as the date on or before which an application for consent under Sub-Section (2) of Section 25 read with Section 26 was to be made. Admittedly, no such application was made by the accused upto the taking of sample that is July 31, 1981. According to the amendment, discharge of a trade effluent into a sewerage or on land constituted an offence without consent of the Board from 21st October, 1980 onwards. It will make no difference whether the trade effluent was discharged in the municipal drain or such effluent was drained out of the municipal drain and allowed to flow on land.

(13) Section 47 of the Act relating to offences by Companies which expression according to the explanation added to that Section includes a partnership firm lays down that where an offence under the Act is committed by any Company, every person who at the time the offence was committed was incharge 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. In order to fasten liability on Smt. Phoola Devi, all that the prosecution has been able to bring on record is an admission made by Subhash Chander, Manager and that of Smt. Phoola Devi herself in her statement under Section 313 that she is a partner of the firm. There is no other material on record to show that she was incharge of or was responsible to the Company for the conduct of the business of the Company. The burden of proving these facts is obviously on the prosecution. For this reason, it is not possible to convict Smt. Phoola Devi.

(14) For the foregoing reasons, we partly allow the appeal, set aside the acquittal in so far as the firm and the Manager are concerned, we do not interfere in the acquittal of Smt. Phoola Devi. As the sample was taken more than 10 years back we do not want to award any substantive sentence of imprisonment to Subhash Chander, accused. Neither counsel was in a position to confirm that Subhash Chander continued to be in service of the firm or had left the same. He is thus a mere whipping boy. For these reasons, we impose a fine of Rs. 3,000 on the firm, accused No. 1 and a fine of Rs. 2,500 on Subhash Chander, accused No. 2. In default of payment of fine by Subhash Chander, he shall undergo six months R.I.

R.N.R.

Before Hon'ble N. C. Jain, J.

THE PUNJAB STATE ELECTRICITY BOARD, PATIALA,
—Petitioner.

versus

SHRI HARI KISHAN,—Respondent.

Regular Second Appeal No. 1100 of 1979

February 14, 1992.

Code of Civil Procedure (V of 1908)—Suit for declaration—Suit filed on ground that order of removal is by way of punishment—Whether employee is entitled to be heard—Held that opportunity