IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.369 OF 2019

Pratap Lal Teli,]
R/o. Chawl No.10, Room No.203, Punjabi]
Colony, GTB Nagar, Sion Koliwada,]
Mumbai – 400 037.] … Applicant

Versus

1. The State of Maharashtra,]
through the Public Prosecutor, Home]
Department, Government of]
Maharashtra, Mantralaya, Mumbai –]
400 032.]

2. Senior Inspector of Police,]
Worli Police Station, Mumbai.]

3. Kumar Mangalam Birla,]
Chairman, Grasim Industries, 9th]
Floor, Sahkar Bhavan, 230 Nariman]
Point, Mumbai – 400 021.]
AND
Chairman,]
Hindalco Industries,]
Century Bhavan, 3rd Floor, Dr. Annie]
Besant Road, Worli, Mumbai – 400]
030.]

4. D. Bhattacharya, Managing Director,]
Hindalco Industries Ltd., Century]
Bhavan, 3rd Floor, Dr. Annie Besant]
Road, Worli, Mumbai – 400 030.]

AJN

5. K.K. Maheshwari, Grasim Industries,]
9th Floor, Sahkar Bhavan, 230,]
Nariman Point, Mumbai – 400 021.] … Respondents

Mr. Aditya Pratap for the Applicant.

Mr. Amit Desai, senior counsel with Mr. Faisal Sayyed with Mr. Hassan F. i/b Manilal Kher Ambalal & Co. for Respondent Nos.3 to 5.

Mr. H.J. Dedhia, A.P.P. for the State.

CORAM : SMT. BHARATI DANGRE, J.

RESERVED ON : 25th SEPTEMBER, 2019

PRONOUNCED ON: 22nd OCTOBER, 2019.

JUDGMENT:-

1. The present Criminal Application raises a significant issue as regards the embargo created in Section 19 of the Environment (Protection) Act, 1986 and the Applicant seeks a direction to quash and set aside the impugned order passed by the Sessions Court and seek a direction to the Worli Police Station to register the First Information Report and to investigate the case in accordance with Chapter XII of the Criminal Procedure Code.

AJN

2. The bare minimum facts essential for determination of the legal question are culled out as follows:

The Applicant asserts that he is a social conscious person and has been taking up various social issues relating to environment and in particular the harm caused to the environment on account of illegal construction. He proceeds on the premise that several accused persons have commenced construction of a Commercial and I.T. building without adhering to the norms contained in the Environment (Protection) Act, 1986 i.e. without obtaining the Environmental Clearance from the State Environment Impact Assessment Authority ("SEIAA") under the EIA Notification of 2006 and thereby they have cheated the Government. He, therefore, filed a complaint under Section 156(3) of the Criminal Procedure Code seeking police investigation for the alleged offences under Sections 420, 120-B and Section 187 of the Indian Penal Code read with Section 15 of the Environment (Protection) Act. The said complaint came to be rejected by the learned Metropolitan Magistrate in view of the barrier contained in Section 19 of the Environment (Protection)

Act. Being aggrieved, he preferred an appeal to the Sessions Judge, which also resulted in dismissal by order dated 12th December, 2018.

3. Mr. Aditya Pratap, learned counsel appearing for the Applicant rests his case on certain important questions of law and he would submit that the offence contained under Section 15 of the Environment (Protection) Act, 1986 is non-cognizable whereas it would be liable to be classified as a cognizable offence in view of the provisions of Part-II of Schedule-I of the Criminal Procedure Code. He would submit that this special enactment prescribes a penalty extending with imprisonment for a term of five years or with fine which may extend to Rs.5 lakhs, or both. According to him, this would fall within the ambit of a 'cognizable offence' to be triable by the Magistrate of First Class but the Act has classified the offence to be 'non-cognizable'. The second point urged by Mr. Pratap is to the effect that the learned Sessions Judge has erroneously treated the Application under Section 156(3) of the Code of Criminal Procedure to be

amounting to taking cognizance of the offence and the interpretation arrived at by him for rejecting the relief on the basis that such an application is not sustainable in absence of sixty days' statutory notice being given under the Act, is erroneous. According to him, any order under Section 156(3) of the Criminal Procedure Code is at pre-cognizance stage and this is not the initiation of trial and at this stage no cognizance is taken within the meaning of the provisions of Section 190 of the Criminal Procedure Code. Further, he would also canvas a submission that the Sessions Judge has erred in prescribing the criteria of *locus standi* in filing criminal case under the Environment (Protection) Act and he would rely on the judgment of the Apex Court in the case of ***A.R. Antulay v. Ramdas Sriniwas Nayak & Anr. reported in AIR 1984 SC 718*** to advance a submission that the legal principle emerging from the said judgment is to the effect that anyone can put the criminal law into motion unless contradicted by a statutory provision. According to him, the impugned order by implication, rules that an order under Section 156(3) of the Code of Criminal Procedure

would be 'post-cognizance stage' against settled position in law that the order under this section is 'pre-cognizance stage'. He would further place reliance on the 15 members Expert Body Report of the State Level Expert Appraisal Committee, which in its Meeting held on 29th & 30th November, 2012 and 01st December, 2012 has noted that the project proponent has initiated the construction work without obtaining the Environmental Clearance and, hence, the SEIAA after due verification may initiate action for violation under the Environment (Protection) Act, 1986.

4. Per contra, learned senior counsel Mr. Amit Desai, appearing for Respondent Nos.3, 4 and 5 would question the locus of the Applicant and alleges that the Applicant is an uninterested party in property in question, who has filed a complaint with a sole motive to harass the Respondents. He would charge the Applicant with making false and misleading statements and he would support the impugned orders passed by the Metropolitan Magistrate as well as the order passed in the

Revision Application. Coming to the facts, Mr. Desai would submit that the MCGM was the owner of Plot bearing No.216 and 216A situated at Dr. Annie Basant Road, Lower Parel Division, Worli, Mumbai and the Company has acquired the property No.216 vide Deed of Assignment from one Rhone Poluc (India) Limited which subsequently merged into Nicholas Piramal India Limited. He further submits that the original lessees of Plot No.216-A assigned the leasehold rights in favour of one M/s. Manish Estates Private Limited ("**MEPL**"), which constructed a building consisting of basement, ground and six upper floors known as Manish Commercial Centre which included three theaters. It is this MEPL which sold the commercial offices in the Manish Commercial Centre to various purchasers and the office purchasers formed a Co-operative Society and registered the same under the relevant statutes. It is asserted by Mr. Desai that MEPL mortgaged Plot No.216-A in favour of Canara Bank and this premises including the three theaters were put up for sale by an auction by the Debt Recovery Tribunal and this was purchased jointly by the Companies.

Subsequent thereto, the lease of Plot No.216-A was also transferred in the name of the Companies. It is then stated that the existing theaters came to be demolished and construction commenced in Plot No.216-A on sanction of Intimation of Disapproval granted by MCGM, which was followed by a Commencement Certificate. It is stated that since the total built up area to be constructed is less than 20000 sq. mtrs. as per the approved plan, no environmental clearance was required as per the Environment Impact Assessment Notification 2006. The submission of Mr. Desai is to the effect that the relevant authorities like the SEIAA, SEAC, Environment Department and the Police Authority were well updated about the construction taking place on the site and it is thus emphasized that the Respondents are not guilty of any violation of law and the Applicant with an object of harassing the Respondents approached the police authorities and on refusal to register an FIR, which alleges commission of offences under the IPC, filed a complaint to the Magistrate under Section 156(3), which came to be rejected. Mr. Desai submits that the Environment (Protection)

Act, 1986 is a special enactment and the provisions contained in the same would override the provisions of the Code of Criminal Procedure and in case of any inconsistency between the two, the provisions of the special law would prevail in accordance with Section 4(2) of the Code of Criminal Procedure. His submission is that there is an embargo created in taking cognizance of the offence under the Environment (Protection) Act, 1986, besides the eligibility of the complaint and the complainant, on the basis of which the Court is competent to take cognizance of the offence under the Act. He would place reliance on the judgment of the Apex Court in the case of ***A.R. Antulay (supra)***. Mr. Desai has also placed reliance on the judgment of this court in case of ***Dilip Mishrilal Bang & Anr. v. State of Maharashtra reported in 2015 SCC OnLine Bom 4083*** where the learned Public Prosecutor has fairly conceded that in the light of the provisions of Section 19 of the Environment (Protection) Act, cognizance of the offence under Section 15 cannot be taken on the basis of the police report. He would also rely on the judgment in the case of ***Mahesh Shivram Puthran v. Commissioner of Police reported in***

2011 SCC Online Bom. 389 in relation to an offence punishable under Sections 43 and 52 of the Maharashtra Regional and Town Planning Act, 1966 in the form of a special statute. Reliance is also placed on the judgment of the Patna High Court in ***Imamullah v. State of Bihar & Ors. reported in 2016 (6) FLT 876*** dealing with Section 19 of the Environment (Protection) Act and according to the learned senior counsel, the single judge of the Patna High Court has quashed and set aside an order taking cognizance of offence under Section 15 of the Environment (Protection) Act without following mandate of Section 19.

5. With the assistance of the learned counsel for the parties, I have perused the Petition and the compilation of documents placed on record by the Respondents which contain relevant documents as regards the construction activities undertaken by the Respondents and these documents are in sync with the Affidavit in Reply filed to the Revision Application and also to the stand adopted by the learned senior counsel who submits that there was no infraction of any statutory enactment. Without

going into the merits of the actual contention, I deem it appropriate to consider the specific issue raised by learned counsel Mr. Pratap on entertainment of his complaint under Section 156(3) which, according to him, is a per-cognizance stage and issuing direction to the police to register an FIR for the offence under Section 15 of the enactment, being a cognizable offence.

6. The Environment (Protection) Act, 1986 is an Act for the protection and improvement of the environment and the same has been enacted to give effect to the decision taken at the United Nations Conference on the Human Environment held at Stockholm in which India had participated. Concerns over the state of environment which were expressed worldwide resulted into the said enactment being brought on the statute book and it is a special enactment for environmental protection since the existing laws dealing with environmental matters were found to be inadequate. The special enactment ensures coordination of activities of various regulatory agencies and creates the authority who is conferred with special powers for environmental

protection, regulation and discharge of environmental pollutants, handling of hazardous substance and also prescribes deterrent punishment for those who endanger human environment, safety and health. The said enactment empowers the Central Government to take such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of environment and preventing and abetting environmental pollution. Chapter III of the said enactment is in the nature of prevention, control and abetment of environmental pollution. Power of entry, inspection, search and seizure to be exercised by the officers empowered by the Central Government is governed by the Code of Criminal Procedure. Section 15 of the enactment prescribes the penalty for failure to comply with or contravention of the provisions of the Act, rules or orders or directions issued thereunder. Section 15 of the said enactment reads thus:

> *"15. Penalty for contravention of the provisions of the act and the rules, orders and directions - (1) Whoever fails to comply with or contravenes any of the provisions of this Act, or the rules made or orders or directions issued thereunder, shall, in respect of each such failure*

or contravention, be punishable with imprisonment for a term which may extend to five years with fine which may extend to one lakh rupees, or with both, and in case the failure or contravention continues, with additional fine which may extend to five thousand rupees for every day during which such failure or contravention continues after the conviction for the first such failure or contravention.

(2) If the failure or contravention referred to in sub-section (1) continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which may extend to seven years."

Another relevant Section which is the nerve of the present challenge needs a reproduction is Section 19 which provides for cognizance of offences.

"19. Cognizance of offences - No court shall take cognizance of any offence under this Act except on a complaint made by-

(a) the Central Government or any authority or officer authorised in this behalf by that Government, or

(b) any person who has given notice of not less than sixty days, in the manner prescribed, of the alleged offence and of his intention to make a complaint, to the Central Government or the authority or officer authorised as

aforesaid."

Section 24 of the Act provides an overriding effect and reads thus:

> *"24. Effect of other laws - (1) Subject to the provisions of sub-section (2), the provisions of this Act and the rules or orders made therein shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act.*
>
> *(2) Where any act or omission constitutes an offence punishable under this Act and also under any other Act then the offender found guilty of such offence shall be liable to be punished under the other Act and not under this Act."*

7. In the backdrop of the aforesaid scheme of the statute, the contention of the learned counsel for the Applicant needs to be examined. The Applicant approached the Worli Police Station with a complaint disclosing according to him, "a cognizable offence" committed by the Accused persons on 29th October, 2013. It is alleged that the said complaint, though discloses a cognizable offence, no FIR was registered by the Worli Police

Station, which constrained the Applicant to send notice under Section 154(3) of the Code of Criminal Procedure to the Commissioner of Police on 18th November, 2013. Inspite of such notice, the Commissioner of Police did not issue a direction to the concerned police station to register an FIR. Consequentially, the Applicant filed an Application under Section 156(3) of the Code of Criminal Procedure in the Court of Metropolitan Magistrate, Boiwada. This complaint came to be rejected by the Magistrate on the ground that the provisions of Section 156(3) can be availed only in cases where the offence is cognizable. However, Section 19 puts a restriction on the Court to take cognizance of the offence except in the manner prescribed in Section 19(a) and (b) of the Act. Since the complainant was not an officer covered under clause (a) of Section 19 nor did he complied with the stipulation contained in clause (b) of Section 19 of the Act, it came to be rejected. As far as his allegation under Sections 420, 120B and 187 of the IPC is concerned, the Magistrate recorded that the concerned complaint do not disclose commission of any such offence as alleged.

AJN

8. Learned counsel for the Applicant has posed a question whether the offence under Section 15 of the Environment (Protection) Act is a cognizable offence. The said proposition is not in dispute as one looks at Section 15, it would disclose that failure to comply or acting in contravention to the provisions of the rules, orders and direction is punishable with imprisonment for a term which may extend to five years and if the failure or contravention continues beyond a period of one year from the date of conviction, the punishment to be imposed may extend to imprisonment for a term upto seven years. Offence in terms of Part-II of Schedule-I appended to the Code of Criminal Procedure makes it cognizable and non-bailable. The manner in which the cognizance of the offence under the Act can be taken is set out in Section 19 and the cognizance can only be taken on a complaint by the Central Government or any authority or officer authorized in this behalf by the Government. Other mode of taking cognizance is on a complaint made by a person who has given notice of not less than sixty days, in the manner prescribed,

of the alleged offence and of his intention to make a complaint, to the Central Government or the authority or officer authorized as aforesaid. It is this provision contained in the special enactment which is besieged by learned counsel Mr. Pratap.

It is not deviant for a special enactment to prescribe a special procedure to the exclusion of the procedure prescribed by the Code of Criminal Procedure. Section 4 of the Code of Criminal Procedure 1973 provides for trial of offences under the IPC and other laws. Sub-section (1) of Section 4 provides that all the offences under the IPC will be dealt with by adopting the procedure prescribed in the Criminal Procedure Code. Sub-section (2) of Section 4 prescribes that all the offences under any other laws other than offences under the IPC shall be investigated, inquired into and tried and otherwise dealt with according to the same provisions but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

9. Chapter XII of the Code of Criminal Procedure sets out the manner in which the information in relation to cognizable cases / non cognizable cases is received and its investigation should be carried out. Chapter XIV of the Code of Criminal Procedure sets out the condition requisite for initiation of proceedings. Section 190 of the Code stipulates the cognizance of offences by the Magistrate and it states that any Magistrate may take cognizance of any offence (a) upon receiving a complaint of facts which constitute such an offence; (b) upon a police report of such facts and (c) upon information received from any person other than a police officer or upon his knowledge that such offence has been committed. Section 190 is the repository of the power of the Magistrate to take cognizance of offences. Cognizance of offence has now been well settled and understood to mean a stage where the Magistrate applies his mind to the facts of the case and on application of mind, takes judicial notice of an offence. It is entirely different thing from initiation of proceeding; it is rather a condition precedent to the initiation of proceeding by the Magistrate. Cognizance is taken of cases and not persons. This

power of a Magistrate as contained in Section 190 do not impose any particular qualification of the complainant.

10. On a comparison of Section 190 with Section 19 of the Environment (Protection) Act, 1986, it becomes obvious that under the special statute the restriction imposed is on the Court taking cognizance of any offence under the Act of 1986 except in the manner prescribed in the said Section and on ensuring compliance therein. The said special provision contained in the Environment (Protection) Act continues to govern the field in the wake of sub-Section (2) of Section 4 of the Criminal Procedure Code which specifically indicates that all offences other than the one under the IPC shall be investigated, inquired into, tried and otherwise dealt with according to the provisions of the Criminal Procedure Code, subject to any enactment for the time being in force regulating the manner or place of investigation, inquiry into or otherwise dealing with such offences.

11. In ***A.R. Antulay (supra)***, the principle contained in Section

4(2) of the Code of Criminal Procedure came up for consideration before the Constitution Bench in the wake of Criminal Law (Amendment) Act, 1952. Section 6(1)(a) of the Act imposed a restriction on taking cognizance of any of the offence upon a private complaint. In the backdrop of the factual scenario, the Apex Court observed thus:

> *"6. It is a well recognised principle of criminal jurisprudence that anyone can set or put the criminal law into motion except where the statute enacting or creating an offence indicates to the contrary. The scheme of the Code of Criminal Procedure envisages two parallel and independent agencies for taking criminal offences to court. Even for the most serious offence of murder, it was not disputed that a private complaint can, not only be filed but can be entertained and proceeded with according to law. Locus standi of the complainant is a concept foreign to criminal jurisprudence save and except that where the statue creating an offence provides for the eligibility of the complainant, by necessary implication the general principle gets excluded by such statutory provision Numerous statutory provisions, can be referred to in support of this legal position such as*
>
> *(i) Sec. 187 A of Sea Customs Act, 1878 (ii) Sec. 97 of Gold Control Act, 1968 (iii) Sec. 6 of*

Import and Export Control Act, 1947 (iv) Sec. 271 and Sec. 279 of the Income Tax Act, 1961 (v) Sec. 61 of the Foreign Exchange Regulation Act, 1973,(vi) Sec. 621 of the Companies Act, 1956 and (vii) Sec. 77 of the Electricity Supply Act. This list is only illustrative and not exhaustive. While Sec. 190 of the Code of Criminal Procedure permits anyone to approach the Magistrate with a complaint, it does not prescribe any qualification the complainant is required to fulfil to be eligible to file a complaint. But where an eligibility criterion for a complainant is contemplated specific provisions have been made such as to be found in Secs. 195 to 199 of the Cr. P. C. These specific provisions clearly indicate that in the absence of any such statutory provision, a locus standi of a complainant is a concept foreign to criminal jurisprudence. In other words, the principle that anyone can set or put the criminal law in motion remains intact unless contra-indicated by a statutory provision."

The Constitution Bench also considered the import of Section 4(2) against a special statute in the following words:

"Sec. 4 (1) provides for investigation, inquiry or trial for every offence under the Indian Penal Code according to the provisions of the Code. Sec. 4 (2) provides for offences under other law which may be investigated, inquired into, tried and otherwise dealt with according to the provisions of the Code of Criminal

> *Procedure but subject to any enactment for the time being in force regulating the manner or place of investigation, inquiring into, trying or otherwise dealing with such offences. In the absence of a specific provision made in the statute indicating that offences will have to be investigated, inquired into, tried and otherwise dealt with according to that statute, the same will have to be investigated, inquired into, tried and otherwise dealt with according to the Code of Criminal Procedure. In other words, Code of Criminal Procedure is the parent statute which provides for investigation, inquiring into and trial of cases by criminal courts of various designations."*

12. The general principle of universal application that an act or omission is not merely an offence in relation to a person who suffers a harm but is an offence against society, came to be recognized by the Constitution Bench but at the same time a way was carved out for a special statute specifying the eligibility of a complainant and it was held that the punishment of the offender in the interest of the society being the object behind penal statutes, their right to initiate proceedings cannot be whittled down, circumscribed or fettered by putting it into a straight jacket formula of locus standi unknown to criminal

jurisprudence, save and except a specific statutory exception. The said statutory exception is what is precisely contained in Section 19 of the Environment (Protection) Act, 1986. Such an eligibility criteria being prescribed by a statute would therefore constrict the operation of Section 190 of the Code of Criminal Procedure which empowers the Magistrate to take cognizance of any offence upon receiving a complaint of facts which constitutes such an offence. Section 190 of the Code of Criminal Procedure which otherwise do not perceive any qualification or eligibility of the complainant to file a complaint is circumscribed by a provision contained in the special statute to the contrary which may indicate the qualification or eligibility of the complainant to file complaint, the Magistrate before taking cognizance is then entitled to enquire as to whether the complainant satisfies the eligibility criteria.

13. It is worth to be noted that Section 195(1) of the Code of Criminal Procedure itself provides that no Court shall take cognizance of an offence set out therein except on a complaint in

writing of the public servant concerned or some other public servant to whom he is administratively subordinate. Section 195 further prescribes that no Court shall take cognizance of an offence specified therein except on a complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf or of some other Court to which that Court is subordinate. Section 198 and Section 199 of the Code of Criminal Procedure also impose restriction on the Magistrate taking cognizance and which requires compliance of stipulation contained therein before taking cognizance. Several statutes contain such restrictions and in the light of such restrictions contemplated under the statutes, Section 190 of the Code of Criminal Procedure will have to make way for the special provision containing special stipulation in the statute. The legal scenario which thus emerges is to the effect that anyone can set the criminal law in motion by filing a complaint of facts of offence constituting an offence before a Magistrate entitled to take cognizance under Section 190 and unless any statutory provision prescribes any special qualification or criteria for

putting the criminal law in motion, no court can decline to take cognizance on the ground that the complainant is not competent to file the complaint.

The said position of law is by this point of time very well accepted and recognized. In ***Vishwa Mitter of M/s. Vijay Bharat Cigarette Stores, Delhousie Road, Pathankot v. O.P. Poddar & Ors. reported in (1983) 4 SCC 701***, the Hon'ble Apex Court while dealing with Sections 89, 78, 79 of the Trade and Merchandise Marks Act, 1958 observed thus:

> *"Section 89 of the Act provides that no Court shall take cognizance of an offence under Section 81, Section 82 or Section 83 except on a complaint in writing made by the Registrar or any officer authorised by him in writing. This provision manifests the legislative intention that in respect of the three specified offences punishable under Sections 81, 82 and 83, the Registrar alone is competent to file the complaint. This would simultaneously show that in respect of other offences under the Act, the provision contained in Sec. 190 of the Code of Criminal Procedure read with sub-sec. (2) of Sec. 4 would permit anyone to file the complaint. The indication to the contrary as envisaged by sub-sec. 2 of Sec. 4 of the Code of Criminal Procedure is to be found in Sec. 89 and that section does not prescribe any*

particular eligibility criterion or qualification for filing a complaint for contravention of Sections 78 and 79 of the Act. Therefore, the learned Magistrate was in error in rejecting the complaint on the sole ground that the complainant was not entitled to file the complaint."

14. The Division Bench of this Court in the case of ***Mahesh Shivram Puthran (supra)***, while dealing with a provision contained in the Maharashtra Regional and Town Planning Act, 1966 where an embargo is created in the form of Section 142 of the Act, observed thus:

"9. From the scheme of the provisions of the Act, it is obvious that the prosecution for offences punishable under the Act of 1966 is instituted and pursued by the Planning Authority. This position is reinforced by Section 142 of the Act, which reads thus:-

"Sanction of prosecution.- No prosecution for any offence punishable under this Act or rules made thereunder shall be instituted or no prosecution instituted shall be withdrawn, except with the previous sanction of the Regional Board, Planning Authority, or as the case may be, a Development Authority or any officer authorised by such Board or Authority in this behalf." (emphasis supplied)

The language of this provision leaves no manner of doubt that the pre-condition for even "institution of prosecution", is with the previous sanction of the specified Authority. As aforesaid, on noticing unauthorised development or use, it is the Planning Authority who has to first issue notice under Section 53(1) of the Act to enable the noticee (owner) to remedy the objectionable unauthorised development or use; and it is only upon failure to do so within the specified time, and, in absence of permission granted under Section 44 for retention on the land of any building or works or for the continuance of any use of the land, to which the notice relates, the Planning Authority may proceed to prosecute the noticee/owner by virtue of Section 53 (6) of the Act. The prosecution, however, can be instituted only after previous sanction of the Regional Board or Planning Authority or, as the case may be, a Development Authority or any officer authorised by such Board or authority in that behalf.

10. A priori, the Act, being a special enactment, provides mechanism for institution of prosecution against the noticee/owner. In the scheme of things, registration of F.I.R. by the police officer under Section 154 of the Code in relation to offence punishable under the provisions of the said Act cannot be countenanced. More so, the police officer, on his own, even if he notices any unauthorised

> *development or use, cannot proceed to register the F.I.R. under Section 154 of the Code. He has no authority to do so, especially in the face of mandate of Section 142 of the Code that no prosecution for any offence punishable under the said Act or Rules made thereunder shall be instituted, except with the previous sanction of the specified authority."*

15. In view of Section 19 of the Environment (Protection) Act which imposes a restriction on the court taking cognizance of offence except on a complaint prescribed in sub-sections (a) and (b) of Section 19, I do not think the order passed by the learned Magistrate suffers from any legal infirmity. Mr. Desai has rightly placed reliance on the judgment of Patna High Court in ***Imamullah (supra),*** where the Court observed as under:

> *"There was, admittedly, no such complaint made by the public servant concerned, as is warranted by Section 19 of the Environment (Protection) Act, 1986, and, hence, in the case at hand, learned Magistrate could not have taken cognizance of the offence under Section 15 of the Environment (Protection) Act, 1986, read with Noise Pollution (Regulation and Control) Rules, 2000. The impugned order taking cognizance of offence under Section 15 of the Environment (Protection) Act, 1986, is, therefore, set aside.*

> *What emerges from the above discussion is that it would be an exercise in futility if the case is remitted to the learned Magistrate to take cognizance of the offence under Section 188 of the Indian Penal Code, when the learned Magistrate, for the reasons indicated above, lacks jurisdiction to take cognizance of the offence under Section 188 of the Indian Penal Code."*

16. Another judgment on which reliance is placed is the judgment of the Jharkhand High Court in the case of ***Vivek Kumar v. State of Jharkhand reported in 2015 SCC OnLine Jhar 5011***, where the aforesaid position is reiterated in the following words:

> *"7. In view of the ratio decided in the above case, no court shall take cognizance of any offence under this Act except on a complaint made by a competent authority or an officer authorized in this behalf by that Government. In the instant case, the FIR has been lodged by the informant, the Sanitary Inspector of Lohardaga Municipality and the learned counsel for the State has not produced any notification to show that the said informant was authorized to lodge the complaint. Apparently, FIR has been lodged in place of filing the complaint in writing. Thus, the very initiation of the criminal proceeding in the light of the above judgment is not sustainable."*

17. In an another decision the Jharkhand High Court in case of ***Man Mohan Singh & Ors. v. State of Jharkhand reported in 2008 (2) East Cr. C 532 (Jhr)***, in reference to Section 19 also took a view to the effect that the FIR lodged by the Regional Officer, Jamshedpur do not stand the eligibility criteria prescribed in Section 19 (a)/(b) and, therefore, by recording that the initiation of proceeding cannot be sustained, the writ petition came to be allowed.

18. Mr. Pratap, learned counsel for the Applicant has relied on the judgment of the Jharkhand High Court dated 02nd September, 2009 in ***Writ Petition (Cri.) No.277 of 2006 (Girdhari Agarwal v. State of Jharkhand & Ors.)***, which revolved around institution of proceedings under Section 37 of the Air (Prevention & Control of Pollution) Act, 1981. The Regional Officer of Jharkhand State Pollution Control Board lodged a FIR, on his visit to the Industrial Unit belonging to the Petitioner and found iron ore being stored, without consent of the Board. The

Petitioner is alleged to have contravened the provisions of Section 21 of the Act which was punishable under Section 37 and the institution of the case by the police was challenged on the ground that in terms of Section 43 of the Act one can be prosecuted only on a complaint made by the Board or an officer authorized on its behalf. In the backdrop, a similar worded Section 43 imposing restriction on the court to take cognizance of an offence except on a complaint made by either of the Board or any authorized person or by a person who has given notice not less than 60 days of the alleged offence and of his intention to make a complaint to the Board or the authorized officer, the learned Single Judge took a view that the word "complaint" has not been defined in the Act nor did the Act stipulated the manner in which the case could be instituted or investigated and, in that event, sub-section (2) of Section 4 of the Code of Criminal Procedure would come into play. The learned Judge noted that the offence alleged under the Act is punishable for six years and as per Part-II of Schedule I of the Code of Criminal Procedure, it becomes cognizable and held that once the offence is cognizable, then the FIR is permissible

and the procedure contemplated in Section 154 of the Code of Criminal Procedure must follow. With this reasoning, the learned Single Judge concluded that in absence of any provision in the Act relating to institution, investigation, inquiry or trial, the Code of Criminal Procedure would apply and, therefore, the FIR was a permissible mode and as far as taking cognizance is concerned, the Magistrate can take cognizance on the basis of a complaint of an authorized officer which may be filed along with the police report. On this reasoning, the applications filed by the Petitioner were dismissed. I am unable to accede to the reasoning adopted by the learned Judge in ***Girdhari Agarwal (supra)*** since once the learned Single Judge has accepted that Section 4(2) of the Code of Criminal Procedure comes into picture in absence of any provision in the special enactment, then the provisions contained in the Code of Criminal Procedure gets displaced by the provisions of the special enactment, which includes the manner in which the cognizance of offences to be taken is contemplated. With due respect to the learned Judge, in my opinion, the said judgment do not lay down the correct position of law.

AJN

19. In the light of the settled position of law and the provisions contained in the Environment (Protection) Act, 1986 which is a special enactment, I do not wish to delve into the contention of the learned counsel for the Applicant that Section 154 comprised a pre-cognizance stage and when the police proceed to investigate under Section 154 of the Code of Criminal Procedure, the cognizance stage would come at the stage of Section 173 since there is a fetter created in taking cognizance of an offence without the modality set out in Section 19 of the Environment (Protection) Act. The contention of the Applicant that he is a private person and is at liberty to file FIR with the police disclosing cognizable offence by the accused under Section 15 of the Environment (Protection) Act is without any merit and substance. The present Criminal Application is without any merit and the inherent deficiency noted by the Metropolitan Magistrate in the first instance and the Sessions Court in revision, in not entertaining the complaint by the Applicant cannot be faulted with and both the impugned orders do not call for any

interference. The Criminal Application is dismissed with no order as to costs.

[SMT. BHARATI DANGRE, J.]

AJN