



2026:AHC-LKO:25697

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

APPLICATION U/S 482 No. - 22 of 2023

Rajiv Mundhra

.....Applicant(s)

Versus

State Of U.P. Thru. Prin. Secy. Govt. Deptt. Home, Lko. And Another

.....Opposite

Party(s)

Counsel for Applicant(s) : Asim Kumar Singh, Chandra Bhushan
Pandey

Counsel for Opposite Party(s) : G.A., Ashok Kumar Verma

Along with :

1. Application U/s 482 No. 9058 of 2022:

Bithal Das Mundhra and another

Versus

State of UP Thru. Prin. to the Deptt. of Home Civil Lko and another

Reserved on 03.04.2026, Delivered and Uploaded on 15.04.2026 AFR

HON'BLE BRIJ RAJ SINGH, J.

1. Since the common question of facts and law are involved in both the cases, therefore, they are being heard and decided by a common judgement.

2. Both the applications have been filed seeking quashing of the entire proceedings of Complaint Case No.101 of 2021, Uttar Pradesh Pollution Control Board Vs. M/s Simplex Infrastructures Limited, under Section 37 of the Air (Prevention and Control of Pollution) Act, 1981 (for short 'Air Act') and the summoning order dated 14.03.2022 passed by the Special Judicial Magistrate, Pollution/CBI, Lucknow.

3. The facts, in nut shell, are that applicants are completely innocent and have been falsely implicated in the instant case by opposite party no.2 without ascertaining any fact regarding the functions of the company. It is said that on the basis of a written complaint filed by opposite party no.2 on 06.01.2021, a complaint case was registered before the Magistrate. However, the applicants denied the allegations made in the complaint as

being false and misconceived.

4. The U.P. Rajya Vidyut Utpadan Nigam Limited in order to expand the Panki Thermal Power Station Plant started to establish 1 x 660 Megawatt capacity of Thermal Power Plant and the contract to construct the said power plant was given to the Bharat Heavy Electrical Limited on 31.03.2018. For the aforesaid project, the Ministry of Environment, Forest and Climates Change, Government of India has approved the clearance and provided 'No Objection Certificate' on 29.06.2017. Thereafter, U.P. Pollution Control Board has also approved the clearance to the said project vide order dated 25.06.2018. Thereafter, Bharat Heavy Electricals Limited started to construct the expansion of Thermal Power Plant in the Panki, Kanpur. Bharat Heavy Electrical Limited in order to construct and complete the said project, hire some companies to do civil work for the project, thus, sublet its contract to those companies, in which M/s Simplex Infrastructure Limited is one of the companies, working and doing civil work through the sub-contract by the Bharat Heavy Electricals Limited from 19.12.2018. it is aid that since the entire project has got environmental clearance from the Central Government and the State Board, therefore, small companies working under the Bharat Heavy Electricals Limited do not require to take further consent from the State Board under Section 21 of the Act.

5. It is further said that the complainant did not conduct any such exercise, which is indicative of the fact that applicants have ceased to be Directors of the company w.e.f. 15.03.2014 and 20.09.2016 respectively, i.e. much before the establishment of the aforesaid project at Panki, Kanpur, but they have been implicated as co-accused because only being Directors of the company. From the aforesaid fact, it is clear that opposite party no.2 without verifying the fact pertaining to the role and responsibility of the Directors of the company and without any preliminary investigation to the fact that who is In-charge and responsible on behalf of the company in the ongoing project, falsely implicated the applicants in the case. Further, opposite party no.2 in its Annexure-3 submitted along with the complaint, has admitted that he did not ascertain the fact that whether applicants were In-charge of and were responsible to the company for the conduct of the business of the company. However,

the Magistrate without taking into consideration the aforesaid facts, summoned the applicants.

6. Sri Chandra Bhushan Pandey, assisted by Sri Mohit Ashok and Ms. Tripti, learned counsel for the applicants has submitted that applicants no.1 and 2 in Application U/s 482 No.9058 of 2022 had ceased to be Directors of the Company w.e.f. 15.3.2014 and 20.9.2016 respectively and in fact, much before establishment of the said project at Panki, Kanpur. Form No.32 and Form No.DIR 12 issued in pursuance of Sections 303(2), 264(2) or 266(1)(a) and 266(1)(b)(i) of the Companies Act, 1956 would clearly indicate and verify the said fact. He has also invited attention of the Court towards the rejoinder affidavit, particularly Annexure-RA-1. It has been further submitted that in the complaint, there is no allegation to the effect that applicants were having day-to-day control over the company at the relevant time or they discharged their duty in the official capacity. It has been submitted that in such scenario, the entire complaint against the applicants is vitiated.

7. Learned counsel for the applicants has invited attention of the Court towards the complaint filed by the Board, wherein it is mentioned that applicants are the Directors of opposite party no.3 and in-charge as well as responsible for the conduct of the day-to-day business of opposite party no.3, who willfully operates its plant and conduct its business. The Board has not exercised due diligence as to what is the duty of the applicants and in what manner they committed the offence. Learned counsel for the applicants by placing reliance upon paragraphs 41 and 45 of the judgment of the Supreme Court rendered in the case of *Sunita Palita and others Vs. Panchami Stone Quarry* (2022) 10 SCC 152 has submitted that merely on the basis of holding a designation or office in a company would be a travesty of justice to drag Directors.

8. In rebuttal, Sri Ahok Kumar Verma, learned counsel appearing for the U.P. Pollution Control Board (opposite party no.2) has submitted that in the complaint, the applicants have been arrayed as Directors of the company, M/s Simplex Infrastructure Limited and as the offence is being committed by the aforesaid company and no consent as provided under the Water (Prevention and Control of Pollution) Act (Hereinafter referred

as "Water Act") and The Air (Prevention and Control of Pollution) Act (Hereinafter referred as "Air Act") has been obtained, as such the environmental norms being not followed, the applicants being vicariously liable for the offence, are liable to be prosecuted. It is further submitted that in view of the provisions of Section 25 of the Water Act, M/s Simplex Infrastructure Limited is covered under the word used "Person" and further under Section 21 of the Air Act also the same word has been used and admittedly the construction work is being performed by M/s Simplex Infrastructure Limited, it hardly matters that it is operating under any agreement. In fact, it is operating the Industrial Plant as defined under Section 2(k) of the Air Act.

9. Counsel for opposite party no.2 has further submitted that the complainant has fully ascertained before filing the complaint by making inquiry online on the website of Ministry of Corporate Affairs, Government of India in respect of the industry of the applicants and further the applicants are in-charge of the company, the consent being policy of the concerned industry. He has further submitted that the offence is pertaining to the year 2020 and at the time of filing of the complaint through the website of the Ministry of Corporate Affairs, relevant papers were obtained, which indicate that applicants were Directors of the Company at the relevant time. He has submitted that the inspection report is also pertaining to the same year and if the website indicates that applicants were Directors, then the Board has rightly impleaded them. It has been further submitted that if it is a disputed question of fact, the same can be decided by the trial court and it cannot be scanned here.

10. Counsel for opposite party no.2 by relying upon the judgments of the Supreme Court rendered in the cases of *U.P. Pollution Control Board vs. Dr. Bhupendra Kumar Modi and another* (2009) 2 SCC 147 (Paras 36 and 37), Application U/s 482 No.67 of 2023, *Nagarajan Krishna Murthy Dire. Geo/Pvt. Ltd. vs. State of U.P. and another*, decided on 27.1.2023, and Criminal Misc. Case No.1295 of 2006, *S.P. Rastogi vs. State of U.P. and another*, decided on 9.7.2009, has submitted that in the case of *S.P. Rastogi* (supra), it is held that in case individual action of any person is not involved and is not in question, but in fact it is the Board of Directors,

who are responsible for running of the Mill, they must be held responsible for running the Mill without any treatment plant. It cannot be said that one or two of the Board of Directors were not having any knowledge of the aforesaid fact or that they have nothing to do with the treatment plant but in fact they were duty bound as contemplated under the Act to setup a treatment plant, which they did not do and proceeded with the manufacturing deliberately and intentionally violating the provisions of Sections 25 and 26 of the Act. On the strength of the judgment passed in the case of *S.P. Rastogi* (supra), learned counsel for opposite party no.2 has submitted that the entire Board is responsible and all these questions can be decided by the trial court as in Applications filed under Section 482 Cr.P.C., evidences cannot be weighed here, and this Court cannot do mini trial.

11. Counsel for opposite party no.2 has further submitted that the case of *Sunita Palita* (supra) is pertaining to the Negotiable Instrument Act, therefore, the said judgement is not applicable to the present case and reliance placed by the counsel for the applicants is misconceived. He has further submitted that present case is pertaining to pollution and air and there is specific violation of the Act, therefore, the offence is made out against the applicants and there is no illegality or infirmity in the summons issued by the trial court.

12. Heard learned counsel for the parties and perused the record.

13. Hon'ble Supreme Court in the case of *Sunita Palita* (supra) has observed that Director of a company, who was in-charge or responsible for conduct of the business of the company at the relevant time, will be liable. The subject matter of the said judgement is pertaining to Sections 141 and 138 of Negotiable Instrument Act, whereas in the present case, there is violation of the Air Act and each and every Director is responsible in case of violation of the Act. Therefore, the case of *Suita Palita* (supra) is not applicable to the present case.

14. The matter pertaining to water pollution has been discussed by the Hon'ble Supreme Court in the case of *Dr. Bhupendra Kumar Modi* (supra), in which it has been held that in the case of Moham Meakins's case there is observation that where an offence under the Act has been

committed by a company every person who was in charge of and was responsible to the company for the conduct of the business of the company is also made guilty of the offence by the statutory creation. Any director, manager or other officer of the company, who has consented to or connived in the commission of the said offence, is made liable for the punishment of the offence. Paragraphs 36 and 37 of the aforesaid judgement are quoted below:-

“36. It is useful to refer the facts and other details stated in the complaint as noted by this Court. Thomas, J. (as he then was) speaking for the Bench in paras 10 and 11 observed thus:-

“10. In the complaint filed by the appellant before the Chief Judicial Magistrate, the Company (M/s Mohan Meakins Ltd.) has been arrayed as the first accused and the other persons who were arrayed as Accused 2 to 10 were described as the Directors of the said Company. The 11th person arrayed in the complaint as accused is described as the Manager of the Company. The averments in the complaint show that the Distillery Unit of the Company at Daliganj, Lucknow, has been discharging noxious trade effluents into River Gomti and causing continuous pollution of the river. It was further averred in the complaint that on 19-9-1982, samples of trade effluents were collected by the officers empowered in this behalf, from the drain "just outside the plant inside the factory", and from the irrigation plant out of which the effluents were pumped into the river.

When the samples were analysed in the Industrial Toxicology Research Centre, Lucknow, it was revealed that the quality of effluents was beyond the standard laid down for the purpose. Therefore, it is alleged that the Company has violated Section 24 of the Act and thereby the Company is guilty of the offence under Section 43 of the Act.*

11. Where an offence under the Act has been committed by a company every person who was in charge of and was responsible to the company for the conduct of the business of the company is also made guilty of the offence by the statutory creation. Any director, manager or other officer of the company, who has consented to or connived in the commission of the said offence, is made liable for the punishment of the offence."

This Court has also noted further allegations in the complaint against Managers or Directors of the Company which are as under:-

“12. In the above context what is to be looked at during the stage of issuing process is whether there are allegations in the complaint by which the Managers or Directors of the Company can also be proceeded against, when the Company is alleged to be guilty of the offence. Para 12 of the complaint reads thus:

“That the accused persons from 2 to 11 are Directors/ Managers/ Partners of M/s Mohan Meakins Distillery, Daliganj, Lucknow, as mentioned in this complaint are responsible for constructing the proper works and plant for the treatment of their

highly polluting trade effluent so as to conform to the standard laid down by the Board. Aforesaid accused persons are deliberately avoiding to abide by the provisions of Sections 24 and 26 of the aforesaid Act which are punishable respectively under Sections 43 and 44 of the aforesaid Act, for which not only the Company but its Directors, Managers, Secretary and all other responsible officers of the accused Company, responsible for the conduct of its business are also liable in accordance with the provision of Section 47 of the Act."

The appellant has further stated in para 23 of the complaint that "the Chairman, Managing Directors and Directors of the Company are the persons responsible for the act and therefore, they are liable to be proceeded against according to the law".

Taking note of the averments in the complaint against the Directors, Managers and the ingredients of Section 47 of the Act, this Court declined to accept the reasoning of the High Court and Sessions Court for quashing the complaint thereby set aside both the orders and directed the trial Court to proceed with the case in accordance with law."

15. In the case of *R.P. Rastogi* (supra), this Court has observed that it cannot be said that one or two of the Board of Directors were not having any knowledge of the aforesaid fact or that they have nothing to do with the treatment plant but in fact they were duty bound as contemplated under the Act to set up a treatment plant, which they did not do. Relevant portion of the judgement is extracted herein below:-

"The question which falls for consideration is as to whether the petitioner and others who constitute the Board of Directors of the company, which is apparent from the minutes of the meeting of the Board of Directors appended along with the petition as contained in annexure no.9, in which Shri Sudhir Seth, Shri R.S. Sharma, Shri S.P. Rastogi and Smt. Krishna Seth have been shown as Directors of the company. The Mill was set up through the company. The company operates and functions through the Board of Directors and which function is to be discharged by an Individual Director and which function is to be discharged by all the Directors collectively is to be taken into consideration. The obtaining of consent is not individual action and the Board of Directors were duty bound to take action in this regard. The Mill was set up and was run without any consent order and the Board of Directors persistently knew that they are running the Mill without any consent order and without setting up any treatment plant. It was also in their knowledge that they have applied for grant of consent and that their application has also been rejected. Whether the running of the Mill without any consent order can-be termed to be liability of any one individual or the liability of the entire Board of Directors is a question to be considered in this case. The Mill being run without treatment plant cannot be allowed to run is in the knowledge of the Board of Directors. The Board of Directors is supposed to close the industry at once as and when the consent has been refused or they should apply afresh in the changed circumstances for grant of consent. The Inspection report dated 01.01.1986 goes to indicate that they were running the Mill without; any consent order and without any treatment plant being set up.

For convenience provisions of Section 47 of the Act are quoted below:

"Section 47-Offence by Companies.

(1) Where the 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 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.

(2) Notwithstanding anything contained in Sub Section 1 where an offence under this Act has been committed by a Company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any Director, Manager, Secretary or other officer of the company, such Director, Manager, Secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly."

In Sub-Section (1) of Section 47 of the Act the words 'every person who at the time the offence was committed, was In-charge' relates to the functions of the Board of Directors collectively. The Parliament has used the words with certain caution and the harmonious construction has to be adopted for interpreting the aforesaid Section. This Section deals with two situations, one is where any person was in-charge of a particular act and was also responsible to the company for the conduct of the business he would be responsible but in case the function has to be performed by the entire Board of Directors, then the Board of Directors are to be presumed to be the persons who were in-charge and were responsible to the company at the time when the offence was committed.

In this case the individual action of any person is not involved and is not in question but in fact it is the Board of Directors, who are responsible for the running of the Mill. They must be held responsible for running the Mill without any treatment plant. It cannot be said that one or two of the board of Directors were not having any knowledge of the aforesaid fact or that they have nothing to do with the treatment plant but in fact they were duty bound as contemplated under the Act to set up a treatment plant, which they did not do and proceeded with the manufacturing deliberately and Intentionally violating the provisions of Sections 25 and 26 of the Act."

16. Similar question has been cropped up in the case of *Nagarajan Krishna Murthy* (supra) and this Court considering the entire facts and circumstances held as under:-

"15. Since public notice was issued to all the industries emanating air pollution situated in 16 cities of U.P. and the applicant's company is also bound to follow the directions issued by the Board. But the Company failed to perform the directions issued by the Board. Thus in my considered opinion, since a public notice was issued by the Board so it is the bounden duty of the applicant's Company and its director to comply such directions which was issued by the Board.

16. Keeping in view of the judgement of the Apex Court in *U.P. Pollution Control Board vs. Dr. Bhupendra Kumar Modi (supra)* and considering the provision of Section 40 of the Act, 1981 director of the company could not be absolved from the liability. Although in this complaint, project manager in-charge of the construction work, who was present at the site at the time of inspection was also responsible but no prosecution was launched by Board against him.

17. So far as quashing of entire proceedings is concerned, from the perusal of the material on record and looking into the facts of the case at this stage, it cannot be said that no offence is made out against the applicant. All the submission made relates to the disputed question of fact, which cannot be adjudicated upon by this Court. At this stage, only prima facie case is to be seen in the light of the law laid down by Supreme Court in cases of *R.P. Kapur Vs. State of Punjab*, A.I.R. 1960 S.C. 866, *State of Haryana Vs. Bhajan Lal*, 1992 SCC (Cr.) 426, *State of Bihar Vs. P.P.Sharma*, 1992 SCC (Cr.) 192 and lastly *Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another (Para-10) 2005 SCC (Cr.) 283*. The disputed defence of the accused cannot be considered at this stage. Moreover, the applicants have got a right of discharge according to the provisions prescribed in Cr.P.C., as the case may be, through a proper application for the said purpose and he is free to take all the submissions in the said discharge application before the trial court.

18. So far as the cognizance and summoning order passed by the learned trial court is concerned, at the stage of taking cognizance, trial court can simply form an opinion as to whether the case is fit for taking and committing the matter for trial or not. In the present case, learned trial court clearly expressed his opinion that he perused all the record and clearly indicated that the material placed before him is sufficient to proceed the case. Every aspect is touched by learned trial court. So, the cognizance and summoning order is perfectly legal and there is no occasion to quash the same.”

17. An assertion has been made in the complaint against the applicants that they are Directors of the company and in-charge as well as responsible for the conduct of the day-to-day business of the company, who willfully operate its plant and conduct its business is required to comply with the mandatory provisions of the Act, so its liabilities under the Act in accordance with provisions of Section 40 of the Act with respect to that they have exercised all due diligence to prevent the contravention of the provision of the Act and are required to abide the mandatory provisions under the Act.

18. Sub-sections (1) and (2) of Section 40 of the Act provide that notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable

to be proceeded against and punished accordingly.

19. The complaint postulates allegation of negligence against the applicants, who were directors of the company, and they are responsible for the day-to-day affairs of the company, but they had denied their day-to-day affairs of the company as well as their discharge of function on the date of incident. These are the question of facts, which cannot be scanned here. The applicants may take their defence before the trial court, but certainly this Court cannot go into the merit of the case.

20. After discussing the aforesaid factual and legal aspect, it is not out of place to mention here that the offence is pertaining to the year 2020 and at the time of filling the complaint on the website of Ministry of Corporate Affairs, Government of India, the applicants were Directors of the company. The inspection report is also pertaining to the same year. Therefore, the applicants have been impleaded in the complaint. In view of the law declared by the Hon'ble Supreme Court in the case of *Dr. Bhupendra Kumar Modi* (supra) and this Court in the case of *R.P. Rastogi* (supra), it is held that it is the Board of Directors, who are responsible for act or commission of the offence. It cannot be said that one or two of the Board of Directors were not having any knowledge of the aforesaid fact or they have nothing to do with the unit. This Court cannot weigh the evidence and do mini trial here. The defence advanced by the applicants cannot be scanned here, rather trial is required for this. Therefore, no illegality or infirmity in the impugned summoning order.

21. Both the applications being devoid of merit, ***are rejected***. Interim order, if any, stands vacated.

(Brij Raj Singh,J.)

April 15, 2026

Rao/-