

HIGH COURT OF KERALA

Crl.Rev.Pet.No. 1817 of 2011. Reported in 2011 (4) ILR(Ker) 869, 2011 (2) KLJ 737: CDJ 2011
Ker 677

HONOURABLE MR. JUSTICE S.S. SATHEESACHANDRAN

Parties : M/S. Philips Carbon Black Ltd., Represented By Its Manager-Finance & Accounts Sajee Varghese & Others Versus Sabu Thozhupadan, Ernakulam & Another

Judgment

1. Revision is by the accused, three in number, accused 1, 5 and 6, as against whom alone, cognizance taken of the offence imputed on the complaint filed by the 1st respondent numbered as C.C.No.105 of 2002 is proceeded by the Judicial Magistrate of the First Class, Kolencherry. Challenge is against the order dated 28.5.2011 by the magistrate after recording the evidence of the complainant and his witnesses under Section 244(1) of the Code of Criminal Procedure (for short "the Code"), that a prima facie case has been made out against the aforesaid accused for their trial. Propriety, legality, and correctness of that order is assailed by the accused in this revision.

2. First respondent (hereinafter referred to as 'the complainant'), is a practising advocate, who claims to be a social activist holding the post of the Chairman of an organization named "MALAYALAM" (Anti Carbon Pollution – Environmental Protection Council) at Karimugal, which is stated to be a congregation of 18 social and religious organisations functioning in and around Karimugal engaged in activities resisting and protecting the air and water pollution alleged to be caused in the said area by the operation and functioning of the factory of the 1st accused company. He filed a complaint against the aforesaid company, its managing director and also senior officers, all the accused together 19 in number, before the Judicial Magistrate of the First Class, Kolencherry to proceed against them for violations under Sections 21 and 31A of the Air (Prevention and Control of Pollution) Act, 1981 (for short 'the Act'), alleging that they have caused pollution by the operation of the factory in violation or without taking such orders as are necessary under law for operation of the company from the Pollution Control Board (for short 'the Board'), causing serious health hazards to the inhabitants in the locality infringing their right to life enshrined under the Constitution. First accused company had only two lines of production as Line No.1 and 11, but they proceeded with unauthorized expansion of its activity without the previous sanction of the Board, as covered under Section 21 of the Act, put into operation a third line for production, and commissioned the additional reactors thereto, was the case of the complainant. The orders issued by the Pollution Control Board to close down the industry within 48 hours, for violation of the provisions of the Act, according to the complainant, were not complied with. The accused by the aforesaid acts have committed the offence under Section 37

of the Act was the case of the complainant.

3. The magistrate, after recording the sworn statement of the complainant had ordered process to the accused, all of them (19 in number). The accused challenged that order before this court filing two separate CrI.M.Cs. accused 1, 13 and 14 as one set. CrI.M.C.No.3608/04, and accused 4 to 13 and 15 to 19 as another set, CrI.M.C.No.4462/04, for quashing the proceedings against them. Those two CrI.M.Cs after being heard together were disposed by Annexure 13 order dated 1st March, 2004. Proceedings in the complaint against the accused other than the present revision petitioners (A1, A5 & A6) were quashed by this court. Insofar as the continuation of the proceedings against the petitioners (A1, A5 & A6) some directions were also issued under the aforesaid order. It may be appropriate to refer to the directions made in the aforesaid common order disposing the CrI.M.Cs, as one among the directions therein has given rise to a number of proceedings from the complainant, at different stages, including the present one as against the order passed by the magistrate under consideration. The directions under Annexure 13 are as follows:

(1) All proceedings against the accused, except accused Nos.1, 5 and 6, in C.C.No.105/2002, on the file of the Judicial Magistrate of the First Class court, Kolencherry, are quashed.

(2) The Member Secretary, Kerala State Pollution Control Board, shall produce all the relevant records in his possession, as would be demanded by the Magistrate, before the court below, for the purpose of establishing the violation of the provisions under Section 21 and 31A of the Act.

(3) On receipt of the same, the Magistrate shall hear both sides, and find out, whether there is any prima facie case made out for the violation of the provisions of the act, and therefore, these accused are to be proceeded under Section 37 of the Act. On finding the same, he shall proceed in accordance with law, against these accused, accused Nos.1, 5 and 6.

(4) If an application is moved by the accused for exempting them from personal appearance, that be granted, considering their necessity to be present in the company for work or for other avocations, as would be sought by them. The accused shall be present in court as and when their presence is legally required for the disposal of the case.”

4. Sequence of events that followed in the complaint, which was directed to be proceeded subject to the directions given as aforesaid, that too only against accused 1, 5 and 6, has dragged on the proceedings, and, even after a lapse of several years, nearing a decade, further proceedings in the complaint are bogged down with disputes raised, at different stages, as to whether the complainant has tendered materials to show that a prima facie case has been made

out for prosecution of the accused.

5. Pursuant to Annexure 13 order, the magistrate, after examining the materials produced, passed Annexure 14 order, that a prima facie case has been made out against the accused, and the case was posted for framing charge. That order was passed by the magistrate against all the accused named in the complainant though Annexure 13 order had quashed the proceedings against the accused other than the present revision petitioners (A1, A5 & A6). Annexure 14 order was challenged by accused 5 and 6, filing Crl.R.P.No.305/08. That revision was disposed of by order dated 14.2.2008 quashing Annexure 14 order directing the magistrate to pass revised orders in compliance with the directions in Annexure 13 order. Revision filed by the 1st accused as Crl.R.P.No.446/07, separately, was disposed by Annexure 16 order in similar lines indicated under Annexure 15 order. The magistrate thereafter passed a detailed order (Annexure 18) after examining the materials tendered by the complainant holding that the complainant has succeeded in making out a prima facie case against accused 1, 5 and 6 to proceed against them. Annexure 18 order passed by the magistrate was challenged by the present revision petitioners, accused 1, 5 and 6, as Crl.R.P.No.339/09 contending that the finding entered that a prima facie case has been made out of proceed against them for the offence imputed is unsustainable in law and facts. The revision was disposed setting aside the order of the magistrate and remitting the case with the following observations:

“In the result, this Criminal Revision petition is disposed of setting aside the order dated 19.9.2009 in C.C.No.105 of 2002 of the court of the Judicial First Class Magistrate, Kolencherry and remitting the matter back to the trial court for fresh consideration of the entire matter and to pass fresh orders after referring to all the documents now available with the learned Magistrate as evidenced by Annexure R1(a) memo particularly document Nos.IX to XII mentioned therein, after hearing the revision petitioners as well as the complainant. It is made clear that the impugned order is set aside only for the limited purpose of enabling the learned Magistrate to pass fresh orders as directed above and it is further made clear that if the learned Magistrate, after considering the documents which are directed to be considered, is of the opinion that a prima facie case is made out against the accused and there are grounds to proceed against the accused on the basis of Annexure I complaint and the documents which are already produced and particularly referred above, the learned Magistrate is free to come to the same finding as that of the impugned order notwithstanding the fact that the said order is set aside by this Court and the learned Magistrate is directed to pass appropriate orders untrammelled by any of the observations or findings that contained in this order. Since the above Calender Case is pending before the trial court for the last nine years, the learned Magistrate is directed to expedite the proceedings and to pass orders as expeditiously as possible, at any rate, within three months from 2.4.2011 on which date, the petitioners are directed to appear before the learned

Magistrate for framing of charge. The learned Magistrate is also directed to postpone the framing of charge till the passing of fresh orders as directed above.”

6. The case being remitted for consideration to pass orders afresh, the learned magistrate, after examining the materials afresh, and following the directions issued by this court, passed Annexure 19 order holding that a prima facie case has been made out from the materials tendered to proceed against accused 1, 5 and 6. The operative portion of the order of the magistrate in Annexure 19, its last paragraph, reads thus:

“The contention of the accused is that, as per an undertaking given by the accused, as per order dated 25.07.2011 the Pollution Control Board ordered to keep in abeyance of the order dated 21.07.2001 for four months. Document No.11 would show the same and so it can be seen that the argument advanced by the Counsel for the accused is true. Document No.11 would show that the accused issued a letter dated 23.07.2001 to the Pollution Control Board and on the basis of that letter, and undertaking given by the accused, order dated 25-07-2011 was passed. The document No.9 is the letter dated 23.07.01 issued by the first accused to the Pollution Control board. Document No.10 is the undertaking given by the accused. Thereafter as per order dated 27.07.2001 of the Pollution Control Board, which is document No.12 produced in this case would show that the Pollution Control Board withdrew the order dated 25.07.2001 on keeping the direction of 21.07.2001 in abeyance for four months. So, it can be seen from the letter dated 23.07.2001 of the first accused that when the accused approached the Pollution Control Board before the expiry of 48 hours and obtained an order in favour of the accused and there is no prima facie evidence to show that the accused had violated order dated 21.07.2001. But from the entire documents there is prima facie evidence to show that even the Pollution Control Board as per order dated 30.06.2001 refused to issue consent for the expansion of the industry, the accused have commissioned one of the additional reactors in violation of the specific instruction and direction and consent refusal order dated 30.06.2001. So I am of the view that prima facie, there is sufficient materials to proceed against accused Nos.1, 5 and 6. The point is found in favour of the prosecution.”

7. Annexure 19 order passed by the magistrate is challenged by the revision petitioners, accused 1, 5 and 6 questioning its propriety, legality and correctness.

8. I Heard the counsel on both sides.

9. Learned counsel for the revision petitioners, adverted to some of the Annexures produced with the revision petition. Annexures 5 to 12, copies of the judgments rendered by this Court in relation to the disputes over the expansion of the operation of the 1st accused company in

putting up a new line as Line No.III and what transpired during those proceedings in appointing of advocate commissioner, issue of series of instructions, orders, directions to the Board and other authorities to have a performance audit over the steps taken for pollution control, installation of machineries for controlling the pollution etc, contended that the operation of Line No.III proceeded with and continued only on sanction finally accorded by this Court. When that be so, prosecution launched against the accused at the instance of the complainant who was also a party to such proceedings would amount to vexing and harassing the accused is the submission of the counsel. It was in the back drop of the aforesaid circumstances and taking note of the provisions covered by the Act, this court had directed under Annexure 13 order, and lastly under Annexure 18 order, to examine the relevant materials produced by the Board to determine whether a prima facie case has been made out to proceed against the accused for the offence imputed against them, submits the counsel. So far as the imputations made that they have violated the orders of the Board in putting into operation Line No.3 and, thus, culpable for the offence under Section 21 of the Act, even the magistrate, on scrutiny of the materials produced, under the impugned orders, has found that the accused had approached the Board before 48 hours stipulated and obtained an order in favour of them and, as such, there is no prima facie case that they have violated the orders of the Board, submits the counsel. The magistrate, according to the counsel, has, however, wrongly concluded that the commissioning of Line No.3 was without sanction and after refusal of the consent for expansion of the industry, from the Board, and, so much so, a prima facie case has been made in relation to such offence to proceed against the accused. Where it cannot be disputed that this court was seized of the disputes over the commissioning of Line No.3, and, on satisfaction of the directions/orders issued by this court and its operation continued after installing machineries to check the pollution hazards by expansion of the business of the company installing Line No.3 the conclusion formed by the magistrate that a prima facie case has been made in relation to such offence to proceed against the accused. Where it cannot be disputed that this court was seized of the disputes over the commissioning of Line No.3, and, on satisfaction of the directions/orders issued by this court and its operation continued after installing machineries to check the pollution hazards by expansion of the business of the company installing Line No.3, the conclusion formed by the magistrate that a prima facie case has been made out to proceed against them for the offence imputed from the materials, cannot at all be sustained, according to the counsel. When this court under Annexure 13 ordered the magistrate to examine whether a prima facie case has been made out to proceed further in the complaint against three of the accused alone, the company and two of its senior executives, [A1, A5 & A6], in fact, it was a direction to have a re-look into the entire allegations made in the complaint as to whether it was a fit case where cognizance of the offence/offences imputed against the accused required to be taken in the facts of the case, according to the counsel. In Annexure 13 order when such enquiry was ordered, remitting the case, after setting aside the previous order of the magistrate, for passing orders afresh

determining whether a prima facie case is made after scrutiny of the materials tendered by the Board, this court, in fact, was directing the magistrate to look into the totality of the facts and circumstances of the case with scrutiny of the materials produced by the Board submits the counsel. Where on the admitted facts and circumstances presented in the case, and also the documents relied upon by the prosecution, no case it made out against the accused [A1, A5 & A6], the criminal proceedings initiated against them required to be dropped or quashed, is the submission of the counsel relying on K.Ramakrishna and others v. State of Bihar {2000(8) SCC 547}.

10. On the other hand, the learned counsel for the complainant would submit that no interference with the order passed by the magistrate holding that a prima facie case has been made out against the revision petitioners, accused 1, 5 and 6, is warranted in exercise of the revisional jurisdiction. The documents produced by the Board in compliance of the orders of the magistrate and so directed under Annexure 13 order by this court, to determine whether a prima facie case has been made out with respect to the violation of the provisions of Sections 21 and 31 A of the Act support the allegations imputed in the complaint, and, the magistrate after scrutinising such materials has formed a conclusion that a prima facie case has been made out that the accused have commissioned one of the additional reactors in violation of the specific instruction/direction and order refusing consent by the Board. A prima facie case has been made out to proceed against the accused at least in respect of such offence by the materials produced, as concluded by the magistrate in the order, does not suffer from any infirmity, leave alone any illegality, warranting interference by this court in its supervisory jurisdiction, is the submission of the counsel.

11. In pith and substance, shorn off the plethora of allegations raised in the complaint over the pollution caused by the operation of the 1st accused company and the health hazards faced by the inhabitants of the locality, the fulcrum of the case presented rested on the violations made by the company in disobeying the orders of the Board and commissioning of the reactors of Line No.3 extending the operation of the company, despite an order refusing consent by the Board, constituting the offence under Section 37 of the Act, so far as the violations under Section 21 of the Act. So far as the violations under Section 21 of the Act imputed, going through the order of the magistrate, it is seen that after scrutiny of the materials, she has come to the conclusion that no prima facie case has been made out. But, with respect to the violations under Section 31A of the Act, evidence of the complainant and his witnesses and the documents produced by him and also those summoned from the Board, made out a prima facie case to proceed further against the accused, is the view taken by the magistrate under the impugned order. The question emerging for consideration is, has the magistrate gone wrong in holding that a prima facie case has been made out against the accused, on the materials placed, to proceed against them in the

complaint, What is the impact of the direction no.3 in Annexure 13 orders given by this court and also those given in Annexure 19 order wherein the magistrate was directed to determine whether a prima facie case has been made out with special reference to the materials summoned from the Board is the pivotal question that has got decisive bearing in examining the legality and correctness of the order of the magistrate challenged in the revision.

12. Before advertng to the question posed as aforesaid, it is to be noted that the Act containing penal provisions has been enacted to tackle the environmental problems relating to pollution caused by various pollutants discharged from industrial emissions, human activities connected with traffic, heating etc., which has affected the health of the people as also animal life, “vegetation and property. Penal provisions are incorporated under the Act for operating industrial plants in violation of the statutory restrictions imposed to check pollution and discharge of various pollutants to the air causing health hazards to living beings and also of serious environmental problems.

13. Cognizance of offences under the Act is governed by Section 43 of the Act. That section reads thus:

“43. Cognizance of offences:- (1) No court shall take cognizance of any offence under this Act except on a complaint made by.-

(a) a Board or any officer authorized in this behalf by it; 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 Board or officer authorized as aforesaid.

and no Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

(2) Where a complaint has been made under clause (b) of sub-section (1), the Board shall, on demand by such person, make available the relevant reports in its possession to that person.

Provided that the Board may refuse to make any such report available to such person if the same is, in its opinion, against the public interest.”

Cognizance of the offence under the Act could be taken on a complaint made by the Board or an authorized officer in that behalf or by any private person. A complaint from a private person can

be entertained only after giving notice of not less than 60 days, in the manner prescribed, as regards the offence and his intention to make the complaint, to the Board or the authorized officer. Sub-section (2) of Section 43 stipulates that where complaint imputing offences under the Act has been made by a private person, other than the Board or an officer authorized on its behalf, on his demand, the Board shall make available the relevant reports in its possession to such person. Proviso added to the sub-section contains a restrictive clause that the Board can refuse to make any such report available for disposal, if in its opinion its disclosure is against public interest.

14. It has to be pointed out that the challenge raised by the revision petitioners impeaching the cognizance taken over the complaint and ordering summons against them on the complaint of the 1st respondent, so far as the revision petitioners are concerned, have been turned down under Annexure 13 order. Though the complaint was quashed against the other accused named in the complaint as against the revision petitioners, the company, its Chief Executive and Manager (Pollution Control), accused 1,5 and 6 respectively, further proceedings in the complaint, subject to the directions issued under Annexure 13 order were allowed to be proceeded under the aforesaid order. So much so, the decision relied on by the learned counsel for the petitioners rendered in K.Ramakrishna and others' case {2000(8) SCC 547} has no application to the present case.

15. One of the directions given under Annexure 13 order that in considering the allegations raised in the complaint, the magistrate has to examine whether a prima facie case has been made by the complainant not only with "reference to the complaint, but after calling for the relevant records in the custody of the Kerala State Pollution Control Board, in relation to the company-1st accused, to find out whether in its operation it has violated the provisions of Sections 21 and 31A of the Act, has given rise to the present revision contending that the conclusion formed by the magistrate that a prima facie case has been made out to proceed against the accused, at least in respect of one of the violations imputed under the Act constituting the offence under Section 37 of the said Act is unsustainable. Previously also challenge had been raised questioning the correctness of the conclusion formed earlier by the magistrate that a prima facie case has been made out to proceed against accused 1, 5 and 6 for the offence imputed in the complaint. This court vide Annexure 18 order setting aside that order has directed the magistrate to consider the materials produced afresh and pass fresh orders examining the question whether a prima facie case has been made out to proceed against them on the basis of the complaint.

16. The direction in Annexure 18 order clearly spells out that whatever be the observations made under such order to differ with the conclusion formed previously by the magistrate and

Annexure 17 order, the magistrate was directed to pass appropriate orders afresh untrammelled by any of the observations and findings in Annexure 18 order after referring to all the documents now available, particularly, the documents produced by the Board, to find out whether a prima facie case has been made out against the accused and, there are sufficient grounds, to proceed against the accused on the complaint. There is absolutely no merit in the submission made by the learned counsel for the revision petitioners that Annexure 18 order directed the magistrate to examine afresh the question of cognizance taken on the complaint itself to proceed against accused 1, 5 and 6. So far as the question of cognizance taken and summons ordered against them, whatever be the challenges thereto canvassed by them had been turned down under Annexure 13 order. The proceedings of the complaint have been quashed only against the other accused, but not against the aforesaid accused, the revision petitioners (accused 1, 5 and 6). When that be so, by no stretch of imagination it can be contended that the direction issued under Annexure 13 order or any of the observations made in Annexure 18 order would indicate or enable the accused to raise any challenge over the orders passed by the magistrate summoning them to proceed further to examine whether a trial against them for the offences is warranted in the case.

17. The violation of the Act imputed in the complaint against the accused, who are now proceeded against (accused 1, 5 and 6), are under Sections 21 and 31A of the Act. Section 37 of the Act provides the penalties to be imposed for such offences indicating that punishment for such offences, each of them, if the offender is found guilty shall not be less than one year and six months and it may extend to six years and with fine, and in the event of failure to comply with the provisions continues with an additional fine which may extend to Rs.5,000/- per day so long as such failure continued after the conviction for the first such failure. Punishment so provided for the aforesaid offences mandates that the procedure for a warrant trial has to be followed in the case.

18. Complaint in the present case has been filed by a private party, and that being so, once cognizance over his complaint is taken and accused enter appearance in response to the summons ordered by the court, the procedure covered by Chapter XIX part B of the Code has to be complied with by the magistrate. Evidence of the complainant and his two witnesses has been recorded in the case. Apart from the documentary materials tendered by him, such other materials produced by the Board in relation to complaints of pollution, expansion of operation of the company etc., with reference to the evidence let in by the complainant was looked into by the magistrate to form a conclusion that at least in respect of one of the violations imputed, as under Section 31A of the Act, a prima facie case has been made out to frame charge against the accused. So far as the allegations imputed over the violation under Section 21 of the Act in the complaint, the magistrate has formed the opinion that a prima facie case has not been made

out.

19. At this stage, for the reason that this court has directed under Annexure 13 order and also Annexure 18 order that a prima facie case over the allegations raised in the complaint has to be examined with reference to the documents to be produced by the Board, how far it would entitle the revision petitioners to impeach the finding made by the magistrate to proceed against them at least in respect of the violations of the Act raised in the complaint, constituting an offence under the Act, is the question that has to be looked into. How far the accused could canvass for or place reliance, at this stage, on the directions/orders in the writ petitions over the expansion of its operation installing Line No.3 for increasing the production of the company, necessarily has to be looked into with reference to the procedure governing a warrant trial based on a case instituted otherwise than on a police report, as covered by Chapter XIX B of the Code.

20. First accused is a company the 5th accused its Chief Executive and 6th accused, one of its senior officers, by itself, would not entitle them to have a different procedure than what is provided by the Code when a complaint is filed against them before a court of law imputing offence demanding a warrant trial. This court has directed under Annexure 13 order to determine whether a prima facie case has been made out against the accused on the allegations raised in the complaint with reference to the documents to be produced by the Board in relation to the operation of the company, necessarily has to be looked into with reference to the statutory inbuilt safeguards covered by the Act in the prosecution for any offences under the Act as spelt out under Section 43 of the Act. In respect of any violation under the Act, for which penalties are provided, cognizance of an offence thereto can be taken by the court on complaint by the Board or any officer authorized by the Board. A complaint from any other person, a private party, can be entertained only if a statutory notice is given to the Board or officer authorized thereto. Sub-section (2) of Section 43 of the Act, as indicated earlier, confers a right of a person who gives notice to the Board or the authorized officer, to demand for the relevant reports in its possession, but, with a rider that the Board can decline such request if the disclosure of such report is against public interest. A statutory authority, Board, has been empowered to file a complaint in respect of the violation of the Act warranting imposition of penalty; and the right of any private person to do so is subject to the issue of prior notice to the statutory authority, and in examining any such complaint imputing violations of the Act the records available with the Board may be of significance, no doubt, is the basis behind the direction issued by this court under Annexure 13 order that in determining whether a prima facie case has been made out in the complaint filed by the 1st respondent against the present revision petitioners, as against whom the proceedings were allowed to be continued while quashing the proceedings against the other accused named, the magistrate has to examine the relevant records in the possession of the Board, with further direction to the Board to produce such

records in its possession. Where the magistrate has expressed an opinion over the violations imputed under Sections 21 and 31A of the Act, after looking into the materials tendered by the Board also, apart from the materials tendered by the complainant, at this stage, the revision petitioners/accused cannot contend relying on extraneous materials that a different view should have been formed by the magistrate. The direction issued under Annexure 13 order by this court to determine whether a prima facie case has been made out necessarily has to be understood and more so, examined, within the ambit and scope of Section 246 of the Code, which is strictly applicable when the trial of a case instituted otherwise than on a police report is proceeded with. In the context, it is appropriate to take note of the observations in Pulukuri Kottaya and others v. Emperor {AIR (34) 1947 PC 67} over the validity of a trial if there was any irregularity in such trial. When a trial is conducted in a manner different from the one prescribed by the Code, the trial is bad, and no question of curing the irregularity arises, but if the trial is conducted substantially in the manner prescribed by the Code, but some irregularity occurs in course of such conduct, the irregularity can be cured. If the direction given in Annexure 13 order by this court is understood as commanding the magistrate to examine minutely each and every document produced by the Board, in relation to the operation of the 1st accused company and more so, connected with the allegations as to violation of the provisions of the Act raised in the complaint, for the purpose of determining the prima facie case, whether to proceed further or not, it would amount to negating the procedure covered under Section 246 of the Code, which is applicable to the present case, as at that stage, after evidence has been taken on the complaint, the question to be considered by the magistrate is whether there is ground for presuming that the accused has committed to try the offence which he is competent to try and could be adequately punished by him. What he has to form at that stage is only an opinion as to whether there is ground to presume the guilt of the accused. When that be so, the magistrate cannot be executed to analyse each and every document produced by the Board and its implications with respect to the allegations raised in the complaint imputing the violations of the Act. He need only go into the question whether the complaint has made out a prima facie case on the materials placed, referring to the documents produced by the Board as well, to form an opinion that there is ground for presuming that the accused has violated one or other provisions of the Act imputed in the complaint. In considering the question of prima facie case, to form an opinion for considering the prima facie case by Annexure 13 order this court has directed the magistrate to examine the materials produced by the Board as well. Such direction issued under Annexure 13 order or the observations in Annexure 18 order, wherein it is clarified that the magistrate has to pass orders afresh untrammelled by any such observations, cannot be pressed into service by the revision petitioners/accused that a different procedure otherwise than under Section 246 of the Code is applicable to them in the trial of the case, and that they could be proceeded with only if a definite finding is arrived at that the documents produced by the Board make out a case for violation of the provisions of the Act, in the operation of the company.

21. The magistrate, it is seen, has complied with the directions in Annexure 13 order and also taken note of the observations made in Annexure 18 order in the examining of the documents produced by the Board in forming the opinion that there is sufficient materials to proceed against accused 1, 5 and 6. What, if any, is the offence for which the accused are to be charged with, and tried, based on the conclusion formed in Annexure 19 order, is a matter for consideration by the magistrate. I do not find any impropriety in Annexure 19 order passed by the magistrate for interference in exercise of the revisional jurisdiction of this court.

22. Revision lacks merits, and it is dismissed.

Petitioners/accused and the first respondent/complainant are directed to mark their appearance through their respective counsel before the court below on 28.11.2011. On such appearance, the learned magistrate shall proceed with the further steps on the complaint in accordance with law.