

: 1 :

**IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH**

DATED THIS THE 31ST DAY OF MAY 2017

BEFORE

THE HON'BLE MR. JUSTICE BUDIHAL R.B.

CRIMINAL PETITION NO.11467/2013

C/W

CRIMINAL PETITION NO.11447/2013,

CRIMINAL PETITION NO.11452/2013,

CRIMINAL PETITION NO.11451/2013,

CRIMINAL PETITION NO.11450/2013

AND

CRIMINAL PETITION NO.11449/2013

BETWEEN:

IN CRL.P.No.11467/2013

SMT.KASTURI

W/O PARAMESHAPPA SHIVANNAVAR

AGE: 35 YEARS, OCC: BUSINESS

R/O. 10TH CROSS, A BLOCK

BASAVESHWARA NAGAR

HAVERI

... PETITIONER

(BY SRI N.S.KINI, ADVOCATE FOR
SRI SURESH N KINI, ADVOCATE)

AND

THE KARNATAKA STATE POLLUTION
CONTROL BOARD

: 2 :

R/BY THE ENVIRONMENT OFFICER
SRI E. PRAKASH S/O FAKKIRAPPA
AGE: 42 YEARS, REGIONAL OFFICE
PATAVEGAR COMPLEX
BESIDE HESCOM OFFICE
P B ROAD, HAVERI – 581 110

... RESPONDENT

(BY SRI VIJAY MALALI AND
SRI JEEVAN J NEERALAGI, ADVOCATES)

THIS CRIMINAL PETITION IS FILED U/S 482 OF
CR.P.C. SEEKING TO ALLOW THE ABOVE CRIMINAL
PETITION AND QUASH THE ENTIRE PROCEEDINGS
INITIATED AGAINST THE PETITIONER IN C.C.NO.506/2013
PENDING BEFORE THE COURT OF CIVIL JUDGE & JMFC
COURT, HAVERI.

IN CRL.P.No.11447/2013

SMT.VANISHREE
W/O NEELAPPA SHIVANNAVAR
AGE: MAJOR, OCC: BUSINESS
R/O. 10TH CROSS, 'B' BLOCK
BASAVESHWARANAGAR
HAVERI

... PETITIONER

(BY SRI N.S.KINI, ADVOCATE)

AND

THE KARNATAKA STATE POLLUTION
CONTROL BOARD
R/BY THE ENVIRONMENT OFFICER
SRI E. PRAKASH S/O FAKKIRAPPA

: 3 :

AGE: 42 YEARS, REGIONAL OFFICE
PATAVEGAR COMPLEX
BESIDE HESCOM OFFICE
P B ROAD, HAVERI – 581 110

... RESPONDENT

(BY SRI VIJAY MALALI AND
SRI JEEVAN J NEERALAGI, ADVOCATES)

THIS CRIMINAL PETITION IS FILED U/S 482 OF
CR.P.C. SEEKING TO ALLOW THE ABOVE CRIMINAL
PETITION AND QUASH THE ENTIRE PROCEEDINGS
INITIATED AGAINST THE PETITIONER IN C.C.NO.504/2013
PENDING BEFORE THE COURT OF CIVIL JUDGE & JMFC,
HAVERI.

IN CRL.P.No.11452/2013

SMT.SHAILA
W/O BASAVARAJ BELAVADI
AGE: 42 YEARS, OCC: BUSINESS
R/O. RAJENDRA NAGAR
H.J.PATEL ROAD, HAVERI

... PETITIONER

(BY SRI N.S.KINI, ADVOCATE FOR
SRI SURESH N KINI, ADVOCATE)

AND

THE KARNATAKA STATE POLLUTION
CONTROL BOARD
R/BY THE ENVIRONMENT OFFICER
SRI E. PRAKASH S/O FAKKIRAPPA
AGE: 42 YEARS, REGIONAL OFFICE
PATAVEGAR COMPLEX
BESIDE HESCOM OFFICE
P B ROAD, HAVERI – 581 110

... RESPONDENT

(BY SRI JEEVAN J NEERALAGI, ADVOCATE)

THIS CRIMINAL PETITION IS FILED U/S 482 OF CR.P.C. SEEKING TO ALLOW THE ABOVE CRIMINAL PETITION AND QUASH THE ENTIRE PROCEEDINGS INITIATED AGAINST THE PETITIONER IN C.C.NO.508/2013 PENDING BEFORE THE COURT OF CIVIL JUDGE (JR.DN) & JMFC COURT, HAVERI.

IN CRL.P.No.11451/2013

SRI GANGADHAR S.UJJAPPAVAR
AGE: 55 YEARS, OCC: BUSINESS
R/O 1ST CROSS, NETAJI NAGAR
IJARILAKAMAPUR, HAVERI

... PETITIONER

(BY SRI N.S.KINI, ADVOCATE FOR
SRI SURESH N KINI, ADVOCATE)

AND

THE KARNATAKA STATE POLLUTION
CONTROL BOARD
R/BY THE ENVIRONMENT OFFICER
SRI E. PRAKASH S/O FAKKIRAPPA
AGE: 42 YEARS, REGIONAL OFFICE
PATAVEGAR COMPLEX
BESIDE HESCOM OFFICE
P B ROAD, HAVERI – 581 110

... RESPONDENT

(BY SRI JEEVAN J NEERALAGI, ADVOCATE)

THIS CRIMINAL PETITION IS FILED U/S 482 OF CR.P.C. SEEKING TO ALLOW THE ABOVE CRIMINAL PETITION AND QUASH THE ENTIRE PROCEEDINGS INITIATED AGAINST THE PETITIONER IN C.C.NO.505/2013 PENDING BEFORE THE COURT OF CIVIL JUDGE & JMFC, HAVERI.

IN CRL.P.No.11450/2013

SMT.SHARMILA
W/O ASHOK DUMMAL
AGE: 40 YEARS, OCC: BUSINESS
R/O. VAIBHAVLAKSHMI PARK
HANGAL ROAD, HAVERI

... PETITIONER

(BY SRI N.S.KINI, ADVOCATE)

AND

THE KARNATAKA STATE POLLUTION
CONTROL BOARD
R/BY THE ENVIRONMENT OFFICER
SRI E. PRAKASH S/O FAKKIRAPPA
AGE: 42 YEARS, REGIONAL OFFICE
PATAVEGAR COMPLEX
BESIDE HESCOM OFFICE
P B ROAD, HAVERI – 581 110

... RESPONDENT

(BY SRI JEEVAN J NEERALAGI, ADVOCATE)

THIS CRIMINAL PETITION IS FILED U/S 482 OF
CR.P.C. SEEKING TO ALLOW THE ABOVE CRIMINAL
PETITION AND QUASH THE ENTIRE PROCEEDINGS
INITIATED AGAINST THE PETITIONER IN C.C.NO.510/2013
PENDING BEFORE THE COURT OF CIVIL JUDGE & JMFC,
HAVERI.

IN CRL.P.No.11449/2013

SRI ASHOK S BANAKAR
AGE: 42 YEARS, OCC: BUSINESS
R/O KANAKAPUR, HAVERI

... PETITIONER

(BY SRI N.S.KINI, ADVOCATE)

AND

THE KARNATAKA STATE POLLUTION
CONTROL BOARD
R/BY THE ENVIRONMENT OFFICER
SRI E. PRAKASH S/O FAKKIRAPPA
AGE: 42 YEARS, REGIONAL OFFICE
PATAVEGAR COMPLEX
BESIDE HESCOM OFFICE
P B ROAD, HAVERI - 581 110

... RESPONDENT

(BY SRI JEEVAN J NEERALAGI, ADVOCATE)

THIS CRIMINAL PETITION IS FILED U/S 482 OF
CR.P.C. SEEKING TO ALLOW THE ABOVE CRIMINAL
PETITION AND QUASH THE ENTIRE PROCEEDINGS
INITIATED AGAINST THE PETITIONER IN C.C.NO.507/2013
PENDING BEFORE THE COURT OF CIVIL JUDGE & JMFC,
HAVERI.

THESE PETITIONS COMING ON FOR FURTHER
HEARING THIS DAY, THE COURT, MADE THE FOLLOWING:

ORDER

Since common questions of law and facts involved in
all the above petitions, all these petitions were taken
together to dispose of them by this common order in order
to avoid repetition of discussion.

2. These are the petitions filed by the petitioners
respective accused under Section 482 of the Cr.P.C. with

the prayer to allow the criminal petition and quash the entire proceedings initiated against the respective petitioners in C.C.No.504/2013, C.C.No.506/2013, C.C.No.508/2013, C.C.No.505/2013, C.C.No.510/2013 and C.C.No.507/2013 pending before the Court of Civil Judge and J.M.F.C., Haveri.

3. Brief facts as averred by the petitioners in the petitions that petitioners established their industrial plant and producing graded stone aggregate. In the said process of production, the petitioners use jaw crushers, conveyer belts and vibrators, and in that process cause air pollutants to be emitted causing air pollution. It is alleged that petitioners are causing air pollution, which comes within the purview of the Air Act. Hence, petitioners obtained the consent operation as required under provisions of Section 2 of the Air Act. The said consent for operation expired on 30.06.2012. Hence, the petitioners are operating the industrial plant in violation of provisions of the Air Act. The further averment that the petitioners filed W.P.Nos.49340-

49352/2012 (GM-MMS) before the High Court of Karnataka Bengaluru against the closure order wherein the complainant/board was also arrayed as respondent. The Hon'ble Court was pleased to pass final order dated 10th day of December, 2012 wherein the respondent was directed to permit the petitioners to continue the operation up to 23.12.2012 or till such time the application is considered and dispose of by the licensing authority. The further averments that complainant/respondent visited the industrial plant of the petitioners on 13.12.2012 and submitted the report that the said industrial plants are operating and he seeks authorization to prosecute the petitioners for operating the industrial plant after the closure order. Accordingly, filed the private complaint in P.C.No.181/2013, P.C.No.122/2013, P.C.No.179/2013, P.C.No.182/2013, P.C.No.178/2013 and P.C.No.180/2013 under Section 200 of the Cr.P.C. and alleged offences under Section 21 and 31A punishable under Section 37 of the Air (Prevention of Control) Act before the Civil Judge and J.M.F.C. at Haveri. The trial court by its order dated

06.07.2013 has taken cognizance in the said private complaint by registering the C.C.No.504/2013, C.C.No.506/2013, C.C.No.508/2013, C.C.No.505/2013, C.C.No.510/2013 and C.C.No.507/2013 for the offences alleged to have been committed under Section 21 and 31A punishable under Section 37 of the Air Act. Being aggrieved by the order passed by the JMFC Court registering the case and initiating the criminal proceedings against the above petitioners, the petitioners approached this Court by filing the above petitions and they have challenged the legality and correctness of the order of the said JMFC Court on the grounds as mentioned in the respective petitions.

4. Heard the arguments of the learned counsel appearing for the petitioners/accused in respect of all the petitioners so also the arguments of the learned counsel appearing for the respondent/complainant in respect of all petitions.

5. Learned counsel appearing for the petitioners during the course of argument made the submission that the Pollution Control Board passed the order dated 05.09.2012 directing the petitioners for the closure of the units. The above petitioners challenged the said order by preferring writ petition before the Hon'ble High Court at Bengaluru in W.P.Nos.49340-49352/2012 (GM-MMS). Learned counsel made the submission that writ petitions were disposed of on 10.12.2012. The writ petitions were allowed and the petitioners were permitted to operate the units up to 23.12.2012 or till such time the application is considered and dispose of by the licensing authority. Learned counsel made the submission when on 10.12.2012 itself the closure order dated 05.09.2012 issued by the respondent/Pollution Control Board was set aside by allowing the writ petitions, the Pollution Control Board said to have conducted mahazar proceedings on 13.12.2012, hence the counsel submitted that when the closure order itself has been set aside, there is no reason for the respondent authorities again to conduct the

mahazar proceedings. Hence, he submitted that it is patently illegal. He also made the submission that subsequently the private complaints came to be filed against the petitioners, wherein without considering all these aspects of the matter the learned JMFC Court passed the order registering the case and issue of process to the petitioners herein. Learned counsel draw the attention of this Court to the order passed by the court in the writ proceedings so also he draw the attention of the Court about the documents produced by the petitioners regarding filing of their application before the licensing authority and renewal of the license up to 31.03.2015. Hence, the learned counsel made the submission that in view of the documents produced by the petitioners and in view of the order of the Hon'ble High Court in the writ proceedings filing of the private complaint and initiation of the criminal proceedings are totally baseless and it is sheer abuse of the process of the Court. Hence, he submitted to allow the petitions and to set aside initiation of criminal

proceedings against all the petitioners in the respective petitions.

6. Per contra, learned counsel appearing for the respondent/ Pollution Control Board during the course of argument made the submission that even looking to the order passed by the Hon'ble High Court in the writ proceedings the petitioners were permitted to continue to operate their unit up to 23.12.2012 and they were supposed to make the application requesting for shifting of their unit to the safer zone. He also made the submission that the petitioners were permitted to shift their units to the safer zone on 09.01.2013, which they have not complied with. He also made the submission that in view of the circular issued by the Pollution Control Board and as the petitioners herein were supposed to run their units only in the safer zone, the criminal proceedings were initiated against the petitioners for non-compliance of the orders of the Pollution Control Board and running the units in the non-safer zone. Hence, he submitted that filing of

the private complaint and initiation of criminal proceedings by the order of JMFC Court are in accordance with law and as per the provisions of the Air Act and hence learned counsel lastly made the submission that there is no merit in all the above petitions and submitted to reject the petitions.

7. I have perused the averments made in the respective petitions and also documents produced by both the sides and also considered the oral submissions made by the learned counsel on both the sides at the Bar.

8. It is no doubt true the Pollution Control Board issued the order dated 05.09.2012 for the closure of the units as there will be a pollution of the air and the said order of the Pollution Control Board has been challenged by the petitioners herein by filing writ proceedings before the Hon'ble High Court and the said writ proceedings were disposed of by the Hon'ble Court by its order dated 10.12.2012. Perusing the order of the Hon'ble High Court, the petitioners were permitted to operate their units at the

present site up to 23.12.2012 or till such time the operation is considered and disposed of by the licensing authority. Looking to Para No.5 of the order in the said writ proceedings the Court observed "with these observations petition is allowed and Annexure-H dated 05.09.2012 is quashed." So this order itself clearly goes to show that the order dated 05.09.2012 issued by the Pollution Control Board directing the above petitioners for closure of their industrial units itself has been set aside by the Hon'ble High Court. But looking to the documents produced, the document dated 13.12.2012 goes to show that strangely that the authorities of the Pollution Control Board said to have visited the place of the industrial units and drawn the mahazar and produced the said mahazar proceedings. When the order for closure of the industrial units itself has been set aside by the Hon'ble High Court, there is no basis for the said authorities again to go to the industrial units to conduct the mahazar proceedings. Therefore, no importance can be attached to the mahazar proceedings. Looking to the documents produced by the petitioners,

they also clearly goes to show that they were permitted to carry their industrial units. Even documents produced clearly goes to show that they have made the application seeking renewal of the license, there is an acknowledgement to that effect by the Chairman, District Stone Crushers Regulation Committee, Haveri and even the Form No.C produced by the petitioners also goes to show that this license was also renewed for a period of 3 years from the date of issue. It is mentioned that license is valid up to 31.03.2015. Looking to all these materials placed on record, I am of the opinion that there is no basis for the respondent/ Pollution Control Board to approach the JMFC Court by way of filing private complaints as against the petitioners herein. The learned Magistrate ought to have taken all these aspects into consideration before ordering to register the criminal cases against the above petitioners. In view of the orders of the courts and also the materials placed by the petitioners by way of relevant documents, I am of the opinion that the initiation of criminal proceedings against the petitioners in the

respective petitions is nothing but an abuse of process of the Court. Hence, the petitions are allowed. Impugned orders for initiation of criminal proceedings against the petitioners are set aside.

9. However inspite of if it is the contention of the Pollution Control Board regarding safer zone and non-safer zone is concerned and if it is their contention in that regard that the petitioners violated any of the provisions of the Air Act, they are at liberty to take appropriate action in accordance with law. With these observations, the petitions are disposed of.

**Sd/-
JUDGE**

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