



## ENVIRONMENT

# Jurisdictional Prerequisites Under Section 49 of the Water Act: The Rajasthan High Court on Valid Authorization for Criminal Complaints

The interface between administrative authorization and criminal jurisdiction under special environmental statutes presents recurring challenges for trial courts and appellate forums alike. In a significant pronouncement, the High Court of Judicature for Rajasthan at Jodhpur, speaking through Hon'ble Mr. Justice Farjand Ali, in *Pramod Jain @ Pramod Kumar v. The Regional Officer, Rajasthan State Pollution [...]*

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**PUBLISHED** 3 June 2026

The interface between administrative authorization and criminal jurisdiction under special environmental statutes presents recurring challenges for trial courts and appellate forums alike. In a significant pronouncement, the High Court of Judicature for Rajasthan at Jodhpur, speaking through Hon'ble Mr. Justice Farjand Ali, in *Pramod Jain @ Pramod Kumar v. The Regional Officer, Rajasthan State Pollution Control Board, Pali and Anr.*, S.B. Criminal Miscellaneous (Petition) No. 2299 of 2021, decided on 20 May 2026 [2026:RJ-JD:24730], addressed the mandatory prerequisites for taking cognizance of offences under the Water (Prevention and Control of Pollution) Act, 1974. The judgment reaffirms the jurisdictional bar contained in Section 49 of the Act and emphasises that in the absence of a valid and specific authorization in favour of the complainant, a criminal court is rendered defunct to entertain the prosecution.

The petitioner, Pramod Jain @ Pramod Kumar, son of Ratanchand, aged about forty-six years and resident of 31 Veer Durgadas Nagar, Pali, appeared through the Pali Water Pollution Control Refinement And Research Foundation, Cetp, Madiya Road, Industrial Area, Plot No. 2, Pali. The respondents were the Regional Officer of the Rajasthan State Pollution Control Board at Pali and the State of Rajasthan through its Public Prosecutor. The factual matrix leading to the petition traces back to the order taking cognizance of an offence passed by the District and Sessions Judge, Pali, under the penal provisions of the Water Act, 1974, dated 10 January 2020. The petitioner, aggrieved by the order of cognizance, had initially approached the Sessions Court by filing Criminal Revision Petition No. 85 of 2018. The learned court, vide its order dated 10 January 2020, considered the submissions advanced on behalf of the petitioner and proceeded to set aside the order of cognizance passed by the Magistrate. However, instead of quashing the entire proceeding, the Sessions Court remanded the matter back to the Magistrate for fresh consideration. This remand, rather than an outright quashing, aggrieved the petitioner, who consequently approached the High Court by way of the present criminal miscellaneous petition.

Before the High Court, the rival contentions were sharply delineated. The petitioner, contended that the Sessions Court erred in law by merely remanding the matter instead of quashing the proceedings in their entirety. It was submitted that the very foundation of the criminal complaint was structurally defective, as there existed no valid authorization from the Rajasthan State Pollution Control Board or any officer empowered by the Board authorising the complainant to institute the criminal complaint. The petitioner placed prima facie material before the High Court to demonstrate the complete absence of any such authorization, and argued that in the absence of a valid authorization, the criminal court was defunct to take cognizance of the offence, rendering the entire proceeding non-maintainable. The petitioner further assailed the remand as an exercise that would perpetuate a fundamentally flawed prosecution. On the other hand, the respondent State, opposed the petitioner's submissions and supported the order of the Sessions Court. It was contended that the remand to the Magistrate for fresh consideration was justified and that the Magistrate would be competent to examine all aspects, including authorization, in the light of the Sessions Court's directions. The respondent sought to rely upon certain authorization allegedly issued under Sections 41 and 42 of the Water Act to justify the institution of the complaint.

The High Court framed the central issues around the legality of the remand, the competence and lawful authorization of the complainant, and the jurisdictional consequences of the absence of such authorization. The Court observed that once the learned Sessions Court had set aside the order taking cognizance, it would indeed be apt for the Magistrate to reconsider its own order in the light of the directions passed by the Sessions Court. However, the Court was of the considered view that a further specific direction was warranted to ensure that the Magistrate did not proceed mechanically without examining the foundational validity of the complaint itself. The Court placed strong emphasis on the mandatory character of Section 49 of the Water Act, 1974, which provides that no court shall take cognizance of any offence except on a complaint made by the Board or any officer authorised by the Board in this behalf, or by a person who has given notice of not less than sixty days to the Board. The Court held that the competence and authorization of the complainant to file the criminal complaint must be examined first, before proceeding further in the matter. It categorically stated that in the absence of a valid authorization in favour of the complainant, a criminal court is defunct to take cognizance of the offence under the provisions of the Act.

The Court further directed that the learned Magistrate must examine whether any authorization letter was issued by the Pollution Control Board or any other competent person prior to the filing of the criminal complaint. Additionally, the Magistrate was directed to specifically consider whether the authorization relied upon by the respondent, allegedly issued under Sections 41 and 42 of the Act, satisfied the statutory requirement for institution of prosecution under Sections 43 and 44 read with Section 47 of the Act. The Court drew a clear distinction between general powers of inspection and sample-taking under Sections 41 and 42, and the specific empowerment required to institute a criminal prosecution under the penal provisions of the Act. It was made abundantly clear that in the absence of a valid and legally sustainable authorization in favour of the complainant at the time of institution of

the complaint, the bar contained under Section 49 of the Act would operate, rendering the complaint itself non-maintainable and denuding the criminal court of jurisdiction to take cognizance of the alleged offence.

In its final order, the High Court disposed of the criminal miscellaneous petition as well as the stay petition with specific directions. The learned Magistrate was directed to first record a specific finding regarding the competence and lawful authorization of the complainant to institute the complaint before proceeding further in the matter. The Magistrate was required to examine whether any valid authorization, issued by the Pollution Control Board or by a competent officer duly empowered by the Board under Sections 24, 25, 26, 43, 44 and 47 of the Act of 1974, existed in favour of the complainant prior to the filing of the criminal complaint. The Court also clarified that no coercive measure shall be taken against the petitioners without passing a final order on the question of authorization.

The judgment stands as a salutary reminder that Section 49 of the Water Act is not a mere procedural formality but a mandatory jurisdictional precondition. By directing the Magistrate to first determine the threshold issue of authorization before proceeding with the substantive trial, and by prohibiting coercive measures until such determination is made, the High Court has ensured that the statutory safeguards intended by the legislature are not circumvented through mechanical remands or superficial compliance. The decision reinforces the principle that environmental prosecutions must be founded upon a demonstrable chain of lawful authorization, and that courts cannot assume jurisdiction in the absence of such foundational competence.

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