

The State Vs. Mansi Karamsi

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Court : Mumbai

Decided On : Mar-10-1953

Reported in : AIR1954Bom55; (1953)55BOMLR717; ILR1953Bom1278

Judge : Bavdekar and ;Chainani, JJ.

Acts : Bombay Municipal Boroughs Act, 1925 - Sections 61 and 61(1); [Code of Civil Procedure \(CPC\), 1908](#)

Appeal No. : Criminal Appeal No. 63 of 1953

Appellant : The State

Respondent : Mansi Karamsi

Advocate for Def. : K.S. Daundkar, Adv.

Advocate for Pet/Ap. : H.M. Choksi, Govt. Pleader

Judgement :

Chainani, J.

1. This is an appeal by the State of Bombay. The opponent owns a grocery shop within Thana municipal limits. In this shop he used to store and keep for sale ghee made from milk. Clause (f) of Sub-section (1) of Section 61, Bombay Municipal Boroughs Act, which applies to the Thana Municipality, empowers the Municipality

to make bye-laws prescribing 'the conditions on which sweetmeats, milk, butter or other milk products may be sold and on which licences may be granted, refused, suspended, or withdrawn for carrying on the trade or business of a dealer in sweet-meats, milk, butter or other milk products, or for the use, for purposes of trade, of any place for stabling milch cattle, for storing or selling milk, or for making, storing or selling butter or other milk products.

The marginal note to Clause (f) is 'milk shops'. Under this clause of Section 61, the Thana Municipality has made by-laws, the heading of which is 'Licensing of Milk Shops and Milk Products Shops'. The first by-law is as follows :

'Unlicensed places for storing or selling milk and milk products prohibited. -- Every person who uses any place for storing or selling milk or for making, or storing or selling butter or other milk products shall obtain a licence in the appended form, which shall be distinct from and in addition to the licence for stabling milch cattle.'

By-law No. 2 prescribes the conditions to be observed by a licensee, while by-law No. 3 prescribes the penalty for contravention of these by-laws, which is a fine which may extend to Rs. 50. As the opponent was keeping ghee for sale at his shop, the Chief Officer of the Thana Municipality asked the opponent to obtain a licence, as required by the above by-laws. As the opponent did not do so, he was prosecuted for storing and selling ghee at his shop, without obtaining a licence from the Municipality.

The opponent pleaded not guilty to the charge. He stated that his shop was a grocery shop, where he sold all kinds of articles, such as tea, coffee, aerated waters, hair oils and stationery, and that he sold only small quantities of ghee at this shop. He, therefore, contended that his shop was not a milk shop or a milk products shop and that consequently the above by-laws did not apply to him. The learned Magistrate accepted this contention, and in doing so he principally relied on the marginal note to Clause (f) of Sub-section (1) of Section 61 and the heading of the by-laws. He was of the opinion that the above by-laws apply only to those shops, where the principal business is done in milk, or in the milk products. He accepted the opponent's statement that his shop is mainly a grocery shop, and that he only did small business in ghee at this shop. The learned Magistrate,

therefore, held that it was not necessary for the opponent to obtain a licence and accordingly acquitted him. Against his order acquitting the opponent, the present appeal has been filed.

2. It cannot be seriously disputed that ghee, other than what is commonly known as vegetable ghee, is a milk product, in the sense that the primary substance from which it is made is milk. It has been urged that as it is not directly produced from milk, but is made from butter, it cannot be said to be a milk product. This contention, is, in our opinion, unsound.

It is true that in order to make ghee, one has first to make butter. But the only further process that has to be gone through in order to produce ghee is to melt butter. No other substance is added to butter in order to make ghee. Ghee produced from butter, which is made from milk, is, therefore, clearly a milk product. Under Clause (f) of Sub-section (1) of Section 61, Bombay Municipal Boroughs Act, the Thana Municipality was, therefore, competent to make a by-law requiring that a licence must be obtained for carrying on trade or business in ghee.

It is true that the wording of the marginal note to this clause is 'milk shops'. But a marginal note cannot control or restrict the plain meaning of a section : see -- *Emperor v. Sadashiv Narayan* (A). Moreover, the marginal note in this case is not quite correct, for Clause (f) in terms refers, not only to places, at which trade or business is done in milk, but also to places, at which trade or business is done in sweet-meats, butter and other milk products, and to places for stabling milch cattle.

3. The learned Magistrate has also relied on the heading to the by-laws, which is 'Licensing of Milk Shops and Milk Products Shops'. But like a marginal note, a heading can be referred to for the purpose of finding out the meaning of a doubtful expression in a section. It cannot control the plain meaning of the section : see -- *'Emperor v. Ismail Sayadsaheb'* AIR 1933 Bom 417 (B) and -- *'Ramkrishna v. Bapurao'* AIR 1938 Bom 284 (C). By-law No. 1, which I have quoted above, is clear in terms, and states that every person who uses any place for storing or selling butter or other milk products shall obtain a licence in the form prescribed. The by-law does not state that a licence is necessary only if the principal business

done is in butter or other milk products. The by-law makes it necessary to obtain a licence, if any place is used for storing or selling butter or other milk products.

4. Consequently, it was necessary for the opponent to obtain a licence from the Municipality under by-law 1. He was, Therefore, wrongly acquitted. We set aside his acquittal, convict him under by-law 3 of the by-laws, made by the Thana Municipality for 'Licensing of Milk Shops and Milk Products Shops' and impose upon him a fine of Rs. 10.

5. Order accordingly.

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