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Court : Karnataka

Decided On : Oct-25-1962

Reported in : AIR1963Mys157; 1963CriLJ785

Judge : M. Sadasivayya and ; T.K. Tukol, JJ.

Acts : Prevention of Food Adulteration Act, 1954 - Sections 20(1); General Clauses Act, 1897 - Sections 15

Appeal No. : Criminal Appeal No. 220 of 1962

Appellant : The State of Mysore

Respondent : Danjaya

Advocate for Def. : A.G. Holla, Adv.

Advocate for Pet/Ap. : G. Shannkara Chetty, Addl. Asst. Adv. General

Judgement :

T.K. Tukol, J.

1. This is an appeal by the State against the order of acquittal passed by the District Magistrate, South Kanara, Mangalore, acquitting the accused of the offence punishable under Section 16(1)(a) read with Section 7 of the Prevention of Food Adulteration Act, 1954.

2. Briefly, the story of the prosecution is that on 15-11-1961 the accused Dhananjaya sold milk to the Food Inspector, Vincent Silva (P.W. 2), just near the house of Nazareth (P.W. 1) at Karongalpady Road in Mangalore Town. Mr. Silva took the milk to the verandah of Mr. Nasareth, divided the same into three parts and put it into three bottles which he corked and sealed in the presence of the accused and gave him one of the sealed bottles. He sent one bottle to the Public Analyst, who certified that the milk was adulterated and contained 60 per cent of water. The accused was then charge-sheeted for selling adulterated milk. On the evidence, the learned Magistrate took the view that the prosecution had not been successful in establishing its claim that the Food Inspector had taken the sample from the accused and sampled the same in conformity with Section 11 of the Act. As a result of this finding, he recorded an order of acquittal by his judgment dated 23-4-1962.

3. Being aggrieved by this decision, the State has preferred this appeal and the learned Additional Assistant Advocate General has contended that the grounds recorded by the Magistrate for acquitting the accused were most unreasonable and inconsistent with the evidence on record and that his findings deserved to be interfered with in appeal. On the other hand, the learned Advocate for the accused has tried to support the judgment by contending that the prosecution had failed to establish that the milk sold by the accused to the Food Inspector was intended for sale. It has also been contended that the Food Inspector who had filed the complaint had not been validly authorised as required by Section 20(1) of the Prevention of Food Adulteration Act, 1954, and that the prosecution instituted by him was bad in law. (His Lordship held after discussing the evidence that the accused was a professional milk vendor, that the milk was intended for sale and that the accused had sold milk in contravention of Section 16(1)(a). The judgment then proceeded :)

4-6. It has been argued on behalf of the respondent that the Food inspector was not competent to institute the prosecution since the authorisation relied upon by the prosecution did not satisfy the requirements of Section 20(1) of the Act. That Section reads thus :

'20(1) No prosecution for an offence under this Act shall be instituted except by, or with the written consent of, the State Government or a local authority or a person authorised in this behalf by the State Government or local authority.'

As evidence of compliance with this Section, the prosecution produced a copy of the Resolution of the Municipal Council, Mangalore, at Ex. P-7 passed at a meeting held on 10-7-1959. The relevant portion reads as follows:-

'The Municipal Council authorises all the Food Inspectors of this Municipality to institute prosecutions for the offences under Sub-section (1) of Section 20 of the Prevention of Food Adulteration Act 1954.'

What is urged against this Resolution authorising the Food inspectors to institute prosecutions under the Act is that a general authorisation of the type envisaged by the Resolution would not satisfy the requirements of Section 20(1) of the Act since the manifest object of the legislation in imposing this restriction is to see that some responsible person considers the facts of each case and satisfies himself before filing a complaint that there was a prima facie case for launching a prosecution. According to the submission of the learned Advocate, a general authorisation of the type that we have in the case is likely to be abused by Food Inspectors and would frustrate the very object of the legislation.

In State of Bombay v. Parshottam Kanaiyala, : [1950]1SCR840 the scope of Section 20(1) of the Act and the nature of authorisation contemplated by it came up for consideration by their Lordships of the Supreme Court. Their Lordships were dealing in that case with a consent that had been given by the Chief Officer of the Baroda Municipality to file a complaint against the accused who had been charged for selling adulterated milk.

On facts, it was not disputed that there was a valid consent in writing given by the Chief Officer who had been duly authorised in that behalf by the Baroda Municipal Borough to institute proceedings under the Act. The objection Men against the validity of the consent was that the person to whom consent had been given had not been named. The complaint had been actually filed by the Food Inspector with the consent of the Chief Officer. The Municipality had invested the Chief Officer

with the power to give consent in writing for launching prosecutions under the Act.

The plain grammatical meaning of the Section is that the written consent may be of the State Government or a local authority, or a person authorised in that behalf by the State Government or local authority. In our view, under this Section a prosecution can be instituted

(1) by the State Government;

(2) by a local authority;

(3) by a person authorised in that behalf by the State Government; or

(4) by a person similarly authorised by a local authority. Further, a prosecution can also be instituted with the consent of any of these four authorities. It was contended before Their Lordships that the consent given in writing for filing a complaint should name the complainant. In repelling this contention their Lordships observed :

'. . . To start with, the Statute does not in terms prescribe that the complainant shall be named in the 'written consent'. The only question therefore, is whether such a limitation or condition could be gathered as a necessary intendment of the provision. In the first place, the reason of the rule could not suggest or imply such a condition. The rule has undoubtedly been designed to prevent the launching of frivolous or harassing prosecutions against traders. It therefore provides that the complaint should be filed, either by a named or specified authority or with the written consent of such authority. To read by implication that before granting a written consent, the authority competent to initiate a prosecution should apply its mind to the facts of the case and satisfy itself that a prima facie case exists for the alleged offender being put up before a Court appears reasonable, but the further implication that the complainant must be named in the written consent does not, in our opinion, follow.'

Their Lordships further observed :

'Omitting for the moment the State Government and the 'local authority' which are specified in the provision as competent by themselves to initiate prosecutions, persons 'authorised by' these two authorities are further included. The expression 'person authorised in this behalf obviously refers to a named person who is so authorised.'

On the strength of the last sentence, it has been argued by the learned counsel for the respondent that the person authorised should be named. In this connection, reference may be made to Section 15 of the General Clauses Act, 1897 (Central Act X of 1897) which lays down --

'Where, by any Central Act or Regulation, a power to appoint any person to fill any office or execute any function is conferred, then, unless it is otherwise expressly provided, any such appointment, if it is made after the commencement of this Act, may be made either by name or by virtue of office.'

If this Section is therefore read with Section 20(1) of the Prevention of Food Adulteration Act, it would be clear that the 'person to be authorised' under Section 20(1) could be a person who is authorised by virtue of his designation or the office that he holds. In this connection, it may be pointed out that in the last portion of paragraph 13 of their judgment, their Lordships have clearly indicated the distinction between the person who institutes a prosecution with the consent of the authority and a person who is authorised under the Section to file a complaint himself. The Section obviously contemplates that a prosecution can be instituted by a person with the consent of the State Government, local authority, or a person duly authorised under that Section as also by a person with the written consent of the person who is authorised in that behalf by the State Government or the local authority. (Sic) In view of this legal position, we are unable to accept the contention of the learned counsel for the accused that the general authorisation in the form of a resolution by the Municipal Council was not valid.

7. In this connection, mention may be made of a decision of a Full Bench consisting of six Judges of the Allahabad High Court in Powell v. Municipal Board of Mussoorie, ILR 22 All 123. Their Lordships were dealing with a similar provision contained in Section 69 of Act XV of 1883, which provided that

'A Court shall not take cognizance of an offence punishable under this Act or the rules made under this Act, except on the complaint of the Municipal Board, or of some person authorised by the Board in this behalf'.

The accused in that case was prosecuted at the instance of the Municipal Council and the complaint had been filed by the Secretary. It was contended that he had not been duly authorised by the Board and that the Court was not, therefore, competent to take cognizance of the offence. The resolution which authorised the Secretary to file the complaint had been worded as follows:

'Resolved that the Chairman, Vice-Chairman, Health Officer and Secretary be vested with authority under Section 69, Act XV of 1883, to institute prosecutions on behalf of the Board.'

It was contended on behalf of the petitioner that the words 'authorised by the Board in this behalf did not include a general authority to prosecute In regard to offences under the Act or rules generally such as that given by the resolution, but were confined to a specific authority to be given by the Municipal Board in relation to the specific offence with which the accused was to be prosecuted. Their Lordships held that a general authority as contained in that resolution was sufficient compliance with the requirements of law. It was also argued before their Lord ships that such a power might be abused. That objection was answered by stating that a remedy had been provided for under the Act. Their Lordships clearly indicated the purpose behind such provisions in an enactment as follows :

'it is clear that the section was enacted with a twofold purpose. The object was, In the first place, to exclude prosecutions for what may be called municipal offences from the interference of irresponsible persons, and to secure that such prosecutions should have the guarantee of the responsibility of the Municipal Board. A further object, in my opinion, was to relieve the Municipal Board of the necessity of itself dealing with each individual case of prosecution for a municipal offence, and to enable it to assign that particular function to some other person or persons.'

Dealing with the words 'authorised by the Board in this behalf which are identical with the words used in Section 20(1) of the Act, their Lordships observed :

'A general authority, that is an authority to act in all cases or in a class of cases, is a familiar form of authority to an agent or an officer. The word 'authorised' would include it just as much as the narrower kind of authority, which consists in authorising an agent merely to take specific action in a particular case.'

Their Lordships further referred to the other provisions where the words 'authorised in this behalf' had been used and went on to discuss the inadvisability of giving a restricted meaning to these words :

'The Government Advocate has pointed out what would be the result of restricting it in the manner suggested. In some of the larger Municipalities constituted under this Act he said -- and I think with truth -- that the section would be utterly unworkable if so restricted. In a large community with a multiplicity of local business, and where offences against bye-laws of greater or less importance are of constant occurrence, it is impossible that the Municipal Board should meet and deliberate and pass resolutions in every case before any complaint could be instituted. The meetings of the Board are subject to regulations as regards convening, notices to be sent to the members, and as to quorum, and so pre-suppose a machinery which often means considerable delay, and which could not possibly be applied as a preliminary to each and every prosecution for a municipal offence. That is precisely the consideration which induced the Legislature to enact the concluding words of Section 69. I can see no a priori improbability, no considerations of public policy which would make it unlikely that the Legislature should entrust to a Municipal Board power to confer on other persons not only a specific authority to file a particular complaint, but a general authority to prosecute for municipal offences, including authority to determine whether a prosecution is desirable.'

This decision has been followed by the Kerala High Court in Municipal Health Officer and Food Inspector, Kozhikode v. Anthelia Tea Estate Co., : AIR1961 Ker84 , where the complaint had been laid by a Food Inspector duly appointed under Section 9 of the Act. There, all Food Inspectors had been duly authorised by

the State Government to institute prosecutions for offences under the Act, by a notification. The preliminary objection raised on behalf of the accused was that the prosecution was not in accordance with Section 20(1) of the Act and that the cognizance was therefore barred. It was also contended that the authorisation should be in respect of each offence. Repelling these contentions, it was laid down--

'It is obvious that the very object of the second clause is to enable the State Government and local authorities to appoint some other person to exercise on their behalf the discretion vested in them by the first clause since, if the State Government or the local authorities had to consider each particular case and determine whether a prosecution should be launched or not, the section would become altogether unworkable having regard to the large number of offences that are committed. And that very object would be defeated by the interpretation sought to be placed on the clause.'

For these reasons, we find no substance in the contention that the authorisation in the present case is not valid and that the prosecution instituted was not in accordance with Section 20(1) of the Act.

8. In the result, we allow the appeal and set aside the order of acquittal passed by the learned District Magistrate. We hold the accused guilty of the offence for which he was charged in the Court below and convict him of the same and sentence him to pay a fine of Rs. 100/- and in default to suffer simple Imprisonment for two months.

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