

In Re: M. Sambayya

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Court : Andhra Pradesh

Decided On : Nov-28-1957

Reported in : 1958CriLJ729

Judge : Basi Reddy, J.

Appellant : In Re: M. Sambayya

Judgement :

ORDER

Basi Reddy, J.

1. The petitioner has been convicted of an offence under Section 353, Indian Penal Code and has been directed to be released under Section 4(1) of the Probation of Offenders Act on his executing a bond for Rs. 500/- with two sureties each for a like sum, to be of good behaviour and to keep the peace for a period of two years.

2. The charge against the petitioner was that he had used criminal force and obstructed the Executive Officer of Giddalur Panchayat Board while the said Officer was inspecting the petitioner's shop at Giddalur on 29-9-1955. The Executive Officer is said to have entered the petitioner's shop and demanded from the petitioner, who is an oil merchant, a sample of the oil for the purpose of ascertaining whether the petitioner had committed an offence under the Prevention of Food Adulteration Act. The petitioner refused to do so on the ground

that the Executive Officer had no authority to seize the oil and he is further stated to have pushed the Executive Officer aside.

3. It is contended by the learned Advocate for the petitioner that inasmuch as the Executive Officer of the Fanchayat Board had no power to enter the petitioner's shop and seize the oil in question for the purpose of determining whether it was adulterated, the Executive Officer cannot be said, to have been acting in the discharge of his lawful duties and, therefore, the petitioner was well within his rights in refusing to give a sample of the oil to the Executive Officer.

There is considerable force in this contention. under Section 7 of the Madras Prevention of Adulteration Act (Act III of 1918), the local Executive Officer was empowered to enter any place where articles of food were being manufactured or exposed for sale and inspect the same and seize any utensil or vessel used for the manufacturing, preparing or for storing such article.

But that Act was superseded by a Central enactment, the Prevention of Food Adulteration Act (Act XXXVII of 1954) which came into force on 1-6-1955. Under this Act, the State Government is authorised to appoint certain persons designated as Food Inspectors to carry out the purposes of the Act. under Section 10, Food Inspectors are empowered to take samples of any article of food from any person selling such article or from any person in the course Of conveying, delivering or preparing to deliver such article to a purchaser or consignee, and from a consignee after delivery of any such article to him, and to send such sample for analysis to the public analyst for the local area within which such sample was taken.

Food Inspectors are also empowered to enter and inspect any place where any article of food is manufactured, stored or exposed for sale and take samples of such articles of food for analysis. Section 25(1) which is of importance for purposes of this case runs thus:

If, immediately before the commencement of this act, there is in force in any State to which this Act extends any law corresponding to this Act, that corresponding law shall upon such, commencement stand repealed.

4.. Sub-section (2) is in the following terms:

Notwithstanding the repeal by this Act of any corresponding law all rules, regulations and bye-laws relating to the prevention of adulteration of food, made under such corresponding law and in force immediately before the commencement of this Act, shall, except where and so far as they are inconsistent with or repugnant to the provisions of this Act, continue in force until altered, amended or repealed by rules made under this Act.

Therefore, Section 7 of Madras Act Hi of 1918 stood repealed the moment the Central Act XXXVII of 1954 came into force. Consequently the local Executive Officers, who were exercising powers by virtue of Section 7 of the Madras Act, ceased to have such powers. Under the Central Act, Food Inspectors alone can exercise those powers. It is conceded by the learned Public Prosecutor that the saving clause contained in Sub-section (2) of Section 25 of the Central Act has no application to this case.

5. It follows that the conviction of the petitioner for using criminal force to a public servant in the execution of his duty as such public servant, is bad in law and must be quashed. The revision petition is accordingly allowed.

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