

The Public Prosecutor Vs. Boggarapu Pullaiah

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Court : Andhra Pradesh

Decided On : Apr-11-1973

Reported in : 1974CriLJ155

Judge : A.D.V. Reddy, J.

Appellant : The Public Prosecutor

Respondent : Boggarapu Pullaiah

Judgement :

A.D.V. Reddy, J.

1. This appeal is by the State against the acquittal of the accused of the charge under Section 16(1) and Section 7 read with Section 2(1)(a)(L) of the Prevention of Food Adulteration Act, 1954.

2. On 31-12-1970 at 10 A.M. P.W. 1 the Food Inspector went to the fancy, peppermints and biscuits shop at Door No. 2, Street No. 7 in Nandyal and found 25 peppermint packets containing 200 grams each. Suspecting them to be adulterated, he asked the accused who was in the shop to give the sample for analysis and in the presence of mediators purchased 200 grams of peppermints and paid the money. He mixed up these peppermints, divided them into three portions, put them in three clean bottles and sealed them and sent one such bottle to the Public Analyst and his report showed that the sample contained ash

insoluble in dilute Hydrochloric acid, in excess of the prescribed limit and therefore it is adulterated hence the prosecution under the above section.

3. The accused denied the offence and stated that he was not in the shop on the morning of 31-12-70 when P.W. 1 is alleged to have visited the shop, that it is his sons that look after the shop in the morning and that when he went to the shop in the afternoon, P.W. 1 came and obtained his signatures by threats. It was also contended by the accused that he is only a partner in the firm of Boggarapu Pullaiah Chetty and Sons which is a registered firm and he filed the partnership deed pertaining to the said firm.

4. The Magistrate without scrutinising the evidence with regard to the allegation that he was present in the shop and it was from him that the peppermints were purchased by P.W. 1 held that it was a partnership concern, that therefore the prosecution must have been launched against the company first and then against the persons against whom they could proceed under Section 17 (1) and (2) of the Act, that therefore the prosecution against the accused alone is bad and in that view acquitted the accused of the charge. Hence this appeal.

5. The point that arises for consideration is whether even if it is a partnership concern, one of the partners present in the shop and managing the affairs of the firm cannot be prosecuted without action being taken against the firm and its partners as such. Section 17(1) of the Prevention of Food Adulteration Act stipulates that where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of and was responsible to the company for the conduct of, the business of the - company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. It is clear from the above provision that even where an offence is committed by the company every person who at the time of the offence was committed was in charge of and was responsible to the company for conducting its business is also guilty of the offence. The learned Counsel for the accused relied on an unreported decision of this Court in Crl. R. C. No. 850/66 a case under Gold Control Rules and Defence of India Act, with regard to possession of gold found in the premises of the firm

and one of the partners was prosecuted and it was held that the conviction and sentence cannot be sustained for the reason that only one of the partners has been prosecuted and convicted for a violation by the firm consisting of seven partners including the accused. Rule 135 of the Defence of India Rules is in pari materia with Section 17(1) of the Prevention of Food Adulteration Act, but in coming to the above conclusion, Narasimham, J. (as he then was) relied on two decisions of the Madras High Court in Public Prosecutor v. K. Jacob Nadar AIR 1951 Mad 886 (1) : 52 Cri LJ 1040 and In Re Behara Lachanna Patnaick : AIR1953 Mad332 . Those are cases for non-payment of the tax due under the Sales Tax Act and it was held that the assessment was made on the firm and the notice was issued to the firm and therefore one of the partners alone cannot be prosecuted for the offence under Section 15(h) of the Madras General Sales Tax Act for non-payment of the tax. The above decisions cannot be relied for the prosecution under Section 16(1) of the Prevention of Food Adulteration Act of one of the partners alone because in Section 17(1) the provision that relates to offence by companies it is specifically laid down that every person who at the time of offence is in charge of the conduct of the business of the firm is also liable. This is also the view held in Public Prosecutor v. Veerabhadra Rao (1959) 2 Andh WR 479 as well as in Public Prosecutor v. Subrahmanyam (1959) 2 Andh WR 509 : 1960 Cri LJ 1417. In B. K. Varma v. Corporation of Madras : AIR1971 Mad40 the case relied on by the learned Counsel for the accused the Plant Superintendent of the Southern Bottlers private Ltd., who are the manufacturers of a beverage aerated water, known as Coca Cola, was prosecuted for an offence under Section 16(1) on account of its containing saccharine, an artificial sweetener. In that case it was held that though under Section 17(1) of the Act, the company is liable to be prosecuted, every person in charge of the company for the conduct of the business also can be convicted, but on a scrutiny of the evidence it was found that it was not established that the accused there was in charge of the manufacture or sale of Coca-Cola, Therefore it is clear that every person in charge of conducting the affairs of the company at the time the offence was committed will also be liable and it is not incumbent that the company and the partners should be prosecuted as a condition precedent to the prosecution of the person in charge.

6. In this case, P.W. 1 the Food Inspector, as well as P.W. 2 an independent witness had stated that it was the accused who was in charge of the shop and it was from him that P.W. 1 had purchased peppermints. But the accused had denied having been there and stated that only his sons were managing the shop when P.W. 1 had visited and when he came to the shop in the afternoon, some signatures were taken from him by P.W. 1 on threats. This aspect of the case however has not been scrutinised by the Magistrate, and there is no finding as to who was in charge of the shop at the time of the visit of P.W. 1.

7. The Order of the Magistrate acquitting the accused is therefore set aside and the case is remanded to him for disposal according to law in the light of the observations made above. This appeal is allowed accordingly.

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