

**Ram Chandra Vs. State of U.P.**

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**SooperKanoon Citation :** [sooperkanoon.com/473743](http://sooperkanoon.com/473743)

**Court :** Allahabad

**Decided On :** May-22-1985

**Reported in :** 1985CriLJ1677

**Judge :** M. Wahajuddin, J.

**Appellant :** Ram Chandra

**Respondent :** State of U.P.

**Judgement :**

ORDER

**M. Wahajuddin, J.**

1. Applicant Ram Chandra has come forward with a prayer that the order dated 12-10-1983 of the Magistrate in criminal case No. 1590 of 1983 under the Food Adulteration Act, summoning the applicant Ram Chandra, as well as the criminal proceedings directed against him be quashed.

2. It would appear that the Food Inspector took sample of Mawa by purchase, which, on analysis, was found to be adulterated as well as deficient both in milk fats and non-fatty substance. The Nagar Swasth Adhikari. lodged a complaint under the Prevention of Food Adulteration Act concerning that sample of Mawa. As the person from whom the sample was taken and found to be adulterated told that his name is Raj Kumar and gave the address of one Raj Kumar, in the

complaint that name and address was mentioned of the accused. It was, however, later discovered that actually it was not Raj Kumar from whom the sample was taken, but it was the present applicant Ram Chandra son of Hub Lal and the latter gave a false name and address to the Food Inspector that of Raj Kumar. The Food Inspector moved an application that Raj Kumar was not the person from whom the sample was taken, but it was, as ascertained, Ram Chandra applicant. The Magistrate then discharged Raj Kumar and summoned the present applicant Ram Chandra.

3. A number of pleas have been raised against such summoning order. It is urged that there is lack of sanction for the prosecution of the applicant, the applicant could not be summoned on an application of the Food Inspector, the applicant is not the man from whom the sample was taken, the Food Inspector forcibly took signature of the applicant on certain papers, regarding which application was given to the superintendent of police, the copies have not been furnished to enable the applicant to defend himself, the applicant was not provided with any phial of the sample taken and his right to apply for analysis by the Director of Central Food Laboratory is defeated and the prosecution is frivolous.

4. I have considered all the arguments and pleas raised in this case. The complaint itself having been filed by the Nagar Swasth Adhikari, the authorised person to give sanction, any question of sanction would not arise. It is not filed by some other person but Nagar Swasth Adhikari itself.

5. As regards the name in the complaint of the accused, obviously the complaint related to prosecution of such person from whom sample was taken. Merely giving of wrong name, because the person concerned allegedly gave wrong name and address, would not defeat the complaint. The prosecution is directed against the person, who sold the alleged adulterated Mawa, and if on appreciation of evidence it is proved that it was the applicant who sold the Mawa found to be adulterated, naturally the identity would then be established. There would be no difficulty in the matter and (Sic) any absence of clinching proof one way or the other. Signatures are taken of the seller on the memo and if those signatures are found to be in the handwriting of the applicant, it would sufficiently establish that it was the applicant

from whom sample was taken. The further allegation that the signature of the applicant was taken on some blank papers is again a question of fact and cannot be entertained in proceedings under Section 482, Cr. P.C. It is the Magistrate-who will be competent to decide the matter on evidence before him. Reliance was placed upon the case of Nagar Mahapalika, Kanpur v. Sri Ram : AIR1964 All270 . The facts of the present case are distinguishable. It is the Nagar Swasth Adhikari himself who has filed the complaint. So the question of sanction does not arise. In exercise of inherent powers the Court will not defeat the ends of justice, nor any fraud, if really practised, can be permitted to succeed by exercising inherent powers on any technical consideration.

6. It was argued that the prosecution is hit by Article 20 of the Constitution of India. I do not find any force in this argument. If sample was taken from the applicant, as alleged now, it having been adulterated, it is the applicant who would be liable for prosecution.

7. As regards supply of papers, the prosecution is launched on a complaint. The copies of memo etc. are given to the person from whom the sample is taken and the case now being that it was the applicant who made the sale and signed the memo, he must have been furnished with a copy of the memo. However, as the matter is disputed, the trial court before proceeding further will furnish the applicant with a copy of the memo and other papers prepared at the spot. Of course, during the trial it would be determined whether the sample was taken from the applicant and it was the applicant who made the sale and that can easily be done by obtaining handwriting of the applicant and sending it to the expert for comparison with the handwriting of the person from whom the sample was taken as to establish for certain whether it was the applicant who sold the Mawa and this matter can also be looked into by the trial court. The trial court is not rendered helpless in such situation and the Legislature has itself taken care to enact Section 319, Cr. P.C. so that the real offender may be summoned and tried. All the questions involved in this case are questions of facts, the main question being whether it was the applicant who sold the Mawa to the Food Inspector and gave wrong name and address to defeat the prosecution.

8. As regards the discharge of Raj Kumar, when the Food Inspector himself gave an application that he is not the person who had sold the Mawa, obviously Raj Kumar could not be harassed further and in exercise of its inherent powers this Court will not interfere with the order of his discharge.

9. It was, further, argued that the application was given by the Food Inspector and not by the Nagar Swasth Adhikari in person. The Food Inspector must be having an authority to prosecute the case on behalf of the Nagar Swasth Adhikari and when that is the position, it will be a sheer technicality to give any importance to the matter that application was preferred by the Food Inspector and not by the Nagar Swasth Adhikari himself.

10. As I am proceeding to dismiss this application, I have avoided more detailed discussions to avoid any prejudice to the applicant during the trial. I may also make it clear that whatever observations I have made will in no way prejudice the applicant.

11. In the result, this application is dismissed.