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Court : Madhya Pradesh

Decided On : Sep-08-1986

Reported in : 1987CriLJ46

Judge : V.D. Gyani, J.

Appellant : Nirmalkumar and anr.

Respondent : The State

Judgement :
ORDER

V.D. Gyani, J.

1. This revision petition arises out of the judgment dt. 4-3-1983, passed by the lst. Addl Sessions Judge, Dhar, in Criminal Appeal No. 82 of 1982, thereby upholding the petitioner's conviction and sentence as recorded against them by the Judicial Magistrate, lst Class, Bannawar, vide judgment dt. 22-7-82, in Criminal Case No. 221 of 1981.

2. The petitioners were prosecuted for the alleged offences punishable Under Section 16(1)(a)(i) and Section 16(1)(a)(ii) of the Prevention of Food Adulteration Act (for Short, the Act). On 16-12-1980 the Food Inspector Babulal (P. W. 1), by about 1.20 in the afternoon, inspected the premises of Jain Tea Stall, belonging to the petitioner 1 Nirmal Kumar. It was found that the articles of food stored for sale

were not covered at all. It was also alleged that the vessel containing the milk was not coated with zinc-kalai licence was not exhibited in the hotel and the cooking media was also not indicated.

3. During the course of investigation 660 Ml. milk was purchased by the Food Inspector Babulal from netitioner2 Anilkumar, who was present at the time of inspection. The milk sample was sent for analysis and was found to be adulterated by the Public Analyst. On these facts the petitioners were prosecuted in the Court of Judicial Magistrate, lst Class, Badnawar, who found them guilty of the aforesaid offences and convicted and sentenced them to undergo six months rigorous imprisonment and a fine of Rs. 1000/- or in default to suffer imprisonment for two months. The petitioners have further been sentenced to rigorous imprisonment for one month and to pay a fine of Rs. 100/- or in default to undergo further imprisonment for a term of 15 days, for contravention of Rule 49(2) and (3) and Rule 50(1) and (2) of the Prevention of Food Adulteration Rules (for short, the Rules). An appeal preferred by the petitioners met with dismissal. Hence the present revision.

4. The argument advanced by Shri Oberoi, learned counsl for the petitioners can conveniently be divided in the following sub-heads: (i) The report of the Public Analyst is not admissible in evidence and' could not have been used against the petitioners for the following reasons that Rr. 16(c) and 16(d), 17(a)(b) and Rule 18 of the Rules have not been complied with; (ii) Babulal (P. W. 1) was not a duly appointed Food Inspector, possessing requisite qualifications and as such the prosecution itself was without jurisdiction; (iii) that the milk in question was not meant for sale nor stored for sale, and (iy) the facts contravening Rr. 49(2)(3) and 50(1) and (2) are not established.

5. Taking up the question of validity of appointment of Babulal (P. W. 1) as Food Inspector, the lower appellate Court has discussed that the validity of appointment of Babulal (P. W. 1) has not been seriously challenged. However, the lower appellate Court considering the statement of Babulal (P. W. 1) and the documents Exs. P/l to P/10, produced by him, has come to the conclusion that his appointment as Food Inspector was valid and he was competent to file the present

complaint. As this point has been pressed by' the learned Counsel for the petitioners, it is being taken up for consideration.

6. So far as the statement of Babulal (P. W. 1) is concerned, para 1 of his statement relates to his appointment, tn his cross-examination it has been admitted by him that he has been appointed on the post of Sanitary Inspector and he has no qualifications in Chemistry nor is he a Bachelor of Science. He further stated in his cross-examination that it was not necessary for him to have undergone any training in food inspection and sampling work under any Food or Health authority approved for the purpose. He contended that this rule was not applicable to Sanitary Inspectors appointed as such prior to 1957 and further volunteered that he was a registered Pharmacist. The qualifications required of a Food Inspector are to be found in Rule 8, which reads as follows:

R. 8. Qualifications of Food Inspector- A person shall not be qualified for appointment as Food Inspector, unless he-

(i) is a medical officer in charge of the health administration of a local area, or

(ii) is a graduate or a licencee in medicine, and has received at least one month's training in food inspection and sampling work approved for the purpose by the Central or the State Government, or

(iii) is a qualified Sanitary Inspector having an experience as such for a minimum period of one year and has received at least (fortyfive days) training in food inspection and sampling work under the Food (Health) Authority approved for the purpose by the Central Government, or

(iv)is a graduate in Science with Chemistry as one of the subjects, or (a Graduate in Pharmacy or) a graduate in Agriculture, Food Technology or Dairy Technology, and has received at least (Fortyfive days) training in food inspection and sampling (under the Food (Health) Authority approved for the purpose by the Central Government, or

(v) the period of training referred to in Clause (iii) and (iv) shall be extended to three months whenever considered necessary by the concerned Food (Health)

Authority:Provided that a person who is a Food Inspector on the date of commencement of the Prevention of Food Adulteration (Amendment) Rules, 1968, may continue to . hold office as such subject to the terms and conditions of service applicable to him, even though he does not fulfil the qualifications laid down in Clause (i) to (iv).

7. A perusal of this rule would go to show that a person, who was a Food Inspector on the date of commencement of the Prevention of Food Adulteration (Amendment) Rules, 1968 (for short, the Amended Rules), was permitted to continue to hold office as such subject to the terms and conditions of service applicable to him, even though he did not fulfil the qualifications laid down in Clause (i) to (iv). The word used in the proviso is 'may', but in order to attract this proviso it is necessary that the Food Inspector must establish that he was a Food Inspector duly so appointed prior to the commencement of the Amended Rules. Babulal (P. W. 1) has no where in his statement before the Coucttstated that he was a Food Inspector on the (fate of commencement of the Amended Rules. His voluntary statement to the effect that he was a registered Pharmacist, cannot be equated with a graduate in Pharmacy as mentioned in Clause (iv) of Rule 8. The Statement, therefore, that he was a registered Pharmacist is of no-avail of assistance to the Food Inspector for determining the validity of his appointment as a Food Inspector. Documents Exs. P/1 toP/10 may also be considered. Exhibit P/l is a true copy of Resolution No. 96 dt. 10-11-1978. This true copy is signed by the Food Inspector himself. This is not a certified copy of the said resolution issued by the Municipal Council, Badnawar. learned Counsel for the petitioners contended that the Food Inspector has no authority in law, either to attest or endorse as true copy of any resolution passed by the Municipal Council.

7A. Learned Government Advocate, appearing for the respondent State could not point out any particular rule or bye-law framed by the Municipal Council authorising the Food Inspector to endorse and attest such true copies. Although the true copy has been admitted in evidence, but strictly speaking it could not have been admitted in evidence, as it is neither a certified copy nor has been issued by the Municipal Council in due course of law. Attention was invited by the learned Govt. Advocate to the statement of Babulal (P. W. 1) stating that he had some

articles with him, but the witness did not specify the original document he was having at the time of making the statement. In fact the original should have been produced and proved and after making them exhibits, they could have been obtained back by the complainant, on filing certified copies thereof but this course has not been adopted by the complainant. It has also not been specified as to which of the documents were public documents, such as Gazette Notifications of which the Court could have taken judicial notice.

7B. The witness Babulal (PW1) further states that Ex. P/2 dt. 30-6-58 is the order of his first appointment as Sanitary Inspector. This order is nothing but a self-attested true copy. It is a printed material. The order read as follows:

The following departmental candidates, who have passed the Sanitary Inspector training course from G..R. Medical College Gwalior in the month of April '58 are hereby appointed temporarily until further orders as Sanitary Inspector on Rs. 80/- P.M. plus usual D.A. in the pay Scale of Rs. 80-80-4-120-EB-3-150 and transferred from duty to the places shown against their names from the date of joining their duties:

1-Shri Babulal Odichya-Camp under C. H. Ratlam-C. D. Block Alote, Distt. Ratlam.

ed/-Director.

Reading the order as it is, the witness was temporarily appointed until further orders as Sanitary Inspector and at the time of appointment he was a Compounder in the Civil Hospital, Ratlam. Exhibit P/3 is his transfer order. Both these orders, Exs. P/2 and P/3 are not orders notified in the Government Gazette. They have been issued by the authorities concerned. They cannot be said to be public documents and in absence of their originals being produced, these documents could not have been received in evidence. By Ex.P/4, the witness Babulal PW. 1 was appointed as Food Inspector for the area mentioned against his name, which was to take effect from 20-101978. This Ex. P/4 is the order on the basis of which the witness Babulal claims to have been appointed as a Food Inspector. Reading the Proviso to Rule 8, it is obvious that relaxation in qualifications in respect of such Food Inspectors is restricted and confined to those

Food Inspectors, who on the date of commencement of the Amended Rules 1968, were actually working as Food Inspectors and only such Food Inspectors have been allowed to continue to hold the office as such, even if they do not fulfil the qualifications, laid down in els. (i) to (iv), but indisputably in view of Ex. P/4, Babulal (PW. 1) was not a Food Inspector on the date of commencement of the Amended Rules, 1968. He cannot, therefore, claim any relaxation in his qualifications as laid down by Rule 8.

8. In this view of the matter, Babulal (P.W. 1) cannot be held to be a Food Inspector duly so appointed under the Act and the Rules framed thereunder, as he does not possess the required qualifications of a Food Inspector, as laid down by Rule 8 and also for the reason that he was not a Food Inspector duly so appointed on the date when the Amended Rules of 1968 came into force.

9. Coming to the question whether Babulal (P.W. 1) had the authority to launch the prosecution, Babulal (PW. 1) has referred to Exs. P/9 and P/10, in his statement as the documents authorising him to launch the prosecutions, Exhibit P/9 is a Gazette Notification published in the Govt. Gazette dt. 14-5-1972. A reading of this Notification,reproduced below, leaves no manner of doubt that only such Food Inspectors possessing the requisite qualifications on the date were appointed Food Inspectors:

(Matter in vernacular omitted - Ed.)

10. In view of the foregoing discussion, it has already been held that Babulal (PW. 1) did not possess the requisite qualifications as laid down in Rule 8 for appointment of a Food Inspector. He cannot, therefore, base any claim or derive any authority as Food Inspector in pursuance of Ex. P/9. As Ex. P/10 authorises all Food Inspectors appointed under the Act to institute or give written consent to prosecute for offences under the said Act within the local areas respectively assigned to them, but as the witness Babulal (PW. 1) was not a Sanitary Inspector, possessing the requisite qualifications laid down under the Rule 8, he cannot be conferred with any authority to institute or to give consent for prosecution for offences under the Act Exhibit P/10 does not help the witness Babulal (PW. 1) for laying a claim as a Food Inspector. The prosecution, therefore,

must be held to be one without jurisdiction.

11. The contention advanced by the learned Counsel for the petitioner deserves to be allowed on both counts that Babulal (P.W. 1), as Sanitary Inspector did not possess the requisite qualification so as to lay claim to have been appointed as a Food Inspector and authority to launch prosecutions under the Act.

12. It was urged by the learned Govt. Advocate that the prosecution should be considered as launched by a citizen on his own, as provided by the proviso to Section 20(1) of the Act. This is entirely a different matter. So far as the question of validity of appointment of Babulal (P.W. 1), as Food Inspector, is concerned, it is held to be invalid and the prosecution as one without jurisdiction. The proviso to Section 20(1) of the Act may be invoked in a given case but the validity of appointment as Food Inspector depends on various other factors. An otherwise invalid appointment cannot be validated in view of the proviso to Section 20(1) of the Act. What is the effect of it on merits of the case, will be considered at a latter stage.

13. Taking up the submission made by.' the learned Counsel that the milk in question was neither meant for sale nor stored for sale, in this connection it is not disputed that the milk was purchased by Babulal (P.W. 1) from a Tea Stall. The Supreme Court in an identical case of Food Inspector, Calicut v. C. Gopalan : 1971 CriLJ1277 , where sugar stored for preparing tea was purchased from a Tea Stall owner selling tea, Sugar was kept only for the purpose of being mixed with tea and it was not at all intended to be sold as 'sugar' and even in face of admission on the part of the Food Inspector that sugar as such was not sold in the Tea Stall, yet on a sample of sugar being taken from the Tea Stall by the Food Inspector and found to be adulterated on analysis, the Tea Stall owner was found guilty of selling adulterate sugar. His conviction was maintained by the Supreme Court. The submission made by the learned Counsel for the petitioner cannot, therefore, be accepted.

14. It was next submitted by the learned Counsel for the petitioners that the report of the Public Analyst, Ex. P/18, was not admissible in evidence and at any rate, not conclusive of the facts stated therein, for non-compliance of the Rr. 16(c) and

(d) and 17(a) and (b) and Rule 18 of the Rules. It must be proved by reliable evidence that these rules had in fact been followed and complied with by the Food Inspector, in packing and sealing the sample and despatching of containers. On the basis of the finding recorded by the appellate Court it cannot be said that the Rr. 16(c) and (d) were not followed, but as regards compliance of Rule 17(a) and (b), the appellate Court has noted that the use of term 'sealed-container' by Babulal (PW. 1) in his statement is itself indicative of the fact that Memorandum in Form No. VII was sent to the Public Analyst along with the7 sample-bottle and similarly sealed containers of the remaining two parts of the sample and two copies of the Memoranda in Form No. VII were also sent in sealed packet to the Local (Health) Authority. learned Counsel for the petitioners submitted that mere use of the term 'sealed-container' would not mean and connote what the appellate Court has wrongly attributed to the term 'sealed-container'. The requirements of Rule 17(a) and (b) cannot be fulfilled by mere reference to the term 'sealed-container'.

15. The Rules lay down the manner of sealing the sample bottles or packets and the container and it must be deposed to by the Food Inspector. learned Counsel appearing for the respondents submitted that the Public Analyst's report Ex. P/18 should be read for the purpose as it supplements what has been omitted by the Food Inspector in his statement. According to the learned Counsel, Ex. P/18 is conclusive evidence of the facts stated therein. Petitioner's counsel, on the other hand, contended that unless there is evidence to prove compliance of the rules, the Public Analyst's report cannot be admitted and acted upon for the purpose urged by the respondents' counsel. The Supreme Court in Municipal Corpn., Delhi v. Kacheroo Mai : 1976 CriLJ336 held that although the report of the Public Analyst is per se evidence by virtue of Section 13 of the Prevention of Food Adulteration Act, but this does not mean the ipse dixit would be conclusive and binding on the Court. To treat so would be to leave the determination of the guilt of the accused to the whims and fancies of the. Public Analyst. The Act would not countenance such abdication of its judicial functions by the Court. Leaving the case as it were to be tried by the Analyst, it is fit for the Court to weigh his opinion and reach its own findings.

16. It was next contended by the respondents' counsel that regularity or the report can be presumed Under Section 114 of the Evidence Act. The report will be legal evidence, but it will not be conclusive of the facts stated therein. The presumption Under Section 114 of the Evidence Act will arise only when it is proved that all the steps required to be taken for the obtaining of the report have been taken. The Court is free to act on the report or not to act, as it thinks fit. (See Mangaldas v. State : : 1966 CriLJ106

17. This Court in State of M. P. v. Chhotekhan : AIR 1970 MP29 held that the regulated report of the Public Analyst, which is a public document may be presumed Under Section 114 of the Evidence Act. The report will be legal evidence of the fitness or otherwise of all the article for human consumption, but it would not be conclusive on the matters stated therein. The presumption Under Section 114 of the Evidence Act will arise only when it is proved that all the steps required to be taken for obtaining the report have been taken (See 1976 Cri LJ 421 (Pat)). The Supreme Court in the case of Mangaldas (supra) observed that the Court is free to act on the report or not as it thinks fit.

18. Going through the evidence on record, it is not safe to come to the conclusion that all the necessary steps required for taking and despatching of sample in question were in fact taken. In such circumstances, the presumption Under Section 114 of the Evidence Act cannot be invoked in the instant case.

19. In view of the fact that the prosecution itself has been held to be one without jurisdiction, the petitioners' conviction and sentence for the violation of Rr. 49 and 50 of the Rules also cannot be allowed to stand. They are accordingly set aside.

20. For the foregoing reasons the convictions and sentences as recorded by the trial Court and upheld by the lower appellate court against the petitioners are liable to be set aside and are accordingly set aside. The petitioners are acquitted of the offences charged against them. Fine, if recovered, be refunded to them. Their bail bonds are discharged.

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