

Surinder Kumar Vs. the State

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Court : Delhi

Decided On : Feb-13-1974

Reported in : 11(1975)DLT44

Judge : Pritam Singh Safeer, J.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 7 and 20

Appeal No. : Criminal Revision Appeal No. 136 of 1972

Appellant : Surinder Kumar

Respondent : The State

Advocate for Pet/Ap. : F. Anthony,; A.S. Puri,; O.P. Soni,;

Judgement :

P.S. Safeer, J.

(1) The petitioner was tried Along with three others for having allegedly committed the offence under section 7 read with section 16 of the Prevention of Food Adulteration Act, hereafter called 'the Act' While aceused Nos. 2, 3 and 4 were acquitted the petitioner .was convicted under the afore mentioned provisions and sentenced to 9 months rigorous imprisonment and a fine of Rs. 3000.00 in default of payment whereof he was to further undergo rigorous imprisonment for a period of five months. Against his conviction in terms of the order passed by the Judicial

Magistrate 1st Class, Delhi on the 16th of February, 1971, the petitioner went up in appeal. Before the Appellate Court on the 4th of May, 1972, the petitioner being personally present he made the following statement which was taken down on the record and signed :-

'STATEMENT of the appellant: I do not challenge my conviction under section 7/16 of the Prevention of Food Adulteration Act. I pray for leniency. R.O. and A.C.'

The learned Addl. Sessions Judge while dealing with the appeal took note of the afore quoted statement in paragraph 6 of the judgment in which he, said :-

'THE appellant has given a statement before me that he does not challenge his conviction U/s 7/16 of the Prevention of Food Adulteration Act. He has only prayed for leniency in the matter of sentence. I have heard his learned counsel and the learned A P P. for the State assisted by Shri J.P. Jain, A.M.P. for the D M.C. and have perused the record carefully.'

(2) Although the learned Addl. Sessions Judge took into consideration the various aspects of the case urged before him he heard the arguments after recording the statement that the petitioner was not raising a challenge to his conviction under section 7/16 of the Act and was urging the appeal for reduction in sentence. It was noticed by the learned Addl. Sessions Judge that in the course of the trial section 13(2) of the Act had been invoked and One of the samples having been sent to Calcutta a certificate was received from the Director of Central Food Laboratory, which described adulteration as being due to Tartrazine a coal tar dye. There was divergence between the analysis made by the Public Analyst and that by the Director, Central Food Laboratory. The contention raised before me is that even though a statement had been made before the learned Addl Sessions Judge by the petitioner that he would not challenge his conviction the same deserved to be quashed inasmuch as at the time of instituting the prosecution under section 20 of the Act, the adulteration found by the Director of Central Food Laboratory, Calcutta could not have been taken into consideration and that the complaint filed on the basis of the analysis furnished by the Public Analysts could not have procured conviction. It is urged that. no prosecution for an offence under the Act could be instituted except by or with the written consent of the Central Government or the

State Government or a local authority or a person authorised in that behalf by general or special order by the Central Government or the State Government or a local authority and the postulation in the provision is that before the institution of the prosecution the authority must apply its mind to the precise adulteration before deciding whether the prosecution is to be instituted or not. The argument calls for a consideration of the scheme of the Act. There are provisions which demand compliance before a prosecution can be instituted. Section 10 of the Act gives the Food Inspector the power to purchase sample of any article of food from any person selling such article or any person who may be in the course of conveying, delivering or preparing to deliver any article to a purchaser or consignee. Sample can be purchased from a consignee after delivery of any article to him. In this case the food inspectors purchased 600 gms. of custard powder consisting of 24 packets with which they dealt in accordance with section 11 of the Act. They gave the notice in writing that the food stuff which was being purchased was to be analysed. One of the parts of the samples was delivered to the petitioner as enjoined by section 11(1)(c) and one part of the samples was sent to the Public Analyst for analysis. Section 13 may be noticed in entirety :-

'S. 13(1) The Public analyst shall deliver, in such form as may be prescribed, a report to the food inspector of the result of the analysis of any article of food submitted to him for analysis. (2) After the institution of a prosecution under this Act the accused vendor or the complainant may, on payment of the prescribed fee, make an application to the court for sending the part of the sample mentioned in sub-clause (1) or sub-clause (iii) of clause (c) of sub-section (1) of section 11 to the Director of the Central Food Laboratory for a certificate, and on receipt of the application the court shall first ascertain that the mark and seal or fastening as provided in clause (b) of sub-section (1) of section 11 are intact and may then dispatch the part of the sample under its own seal to the Director of the Central Food Laboratory who shall thereupon send a certificate to the court in the prescribed form within one month from the date of receipt of the sample, specifying the result of his analysis. (3) The certificate issued by the Director of the Central Food Laboratory under subsection (2) shall supersede the report given by the public analyst under sub-section (1). (4) Where a certificate obtained from the Director of the Central Food Laboratory under sub-section (2) is produced in any

proceeding under this Act, or under sections 272 to 276 of the Indian Penal Code, it shall not be necessary in such proceedings to produce any part of the sample of food taken for analysis. (5) Any document purporting to be a report signed by a public analyst, unless it has been superseded under sub-section (3), or any document purporting to be a certificate signed by the Director of the Central Food Laboratory, may be used as evidence of the facts stated therein in any proceeding under this Act or. under sections 272 to 276 of the Indian Penal Code: Provided that any document purporting to be a certificate signed by the Director of the Central Food Laboratory shall be final and conclusive evidence of the facts stated therein'.

In this case one of the samples was exhausted by the Public Analyst who analysed the sample and gave the report within section 13(1) to the food .inspector. How was the prosecution thereafter to be instituted and by whom Section 20 which provides for the institution of the prosecution, is:-

'S. 20(1) No prosecution for an offence under this Act shall be instituted except by, or with the written consent of the Central Government or the State Government or a local authority or a person authorised in this behalf, by general or special order, by the Central Government or the State Government or a local authority : Provided that a prosecution for an offence under this Act may be instituted by a purchaser referred to in section 12, if he produces in court a copy of the report of the public analyst along with the complaint. (2) No court inferior to that of a Presidency Magistrate or a magistrate of the first class shall try any offence under this Act.'

It is significant that the provision repeats in its later part the words 'the Central Government or the State Government or a local authority' According to my reading of the provision it .is in two distinct parts. In one way it will be read :-

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

Another independent way of reading it, would be :-

'NO prosecution for an offence under this Act shall be instituted except by a person authorised .in this behalf by general or special order by the Central Government or the State Government or a local authority.'

Where the first intendment in the provision is utilized there would be a written consent of the Central Government or the State Government or the concerned local authority on the basis of which the prosecution may be instituted. Why is the Central Government also mentioned in the provision? There may be cases where food adulteration is found in such a situation that the Central Government may make the the choice of exercising the authority of instituting a prosecution. It will then give its written consent. Once such consent is given by the Central Government for instituting prosecution a for a precise offence under the Act there will be no need for the State Government or a local authority to give any consent in duplication. Consent given by the Central Government will suffice within the first part of the provision for instituting the prosecution. The Central Government, the State Government or the local authority within the first part of section 20(1) may give the written consent to a particular person who may then institute the prosecution. The giving of the 'written consent' cannot be equated with the delegation of power to institute the complaint. It can be the giving of a direction to a particular person to institute the prosecution. In a given case the circumstances may be such that the central .Government or the State Government or a local authority may consider it appropriate to withhold consent. The second part of the provision does not use the word 'consent' which was consciously used by the Legislature in the first part. Instead of 'the written consent' the second part in section 20(1) provides that the prosecution for an offence under the Act may be instituted by a person authorised in that behalf by a general or special order made by the Central Government or the State Government or a local authority. The term 'authorised' distinctly employed by the Legislature in the second part of the provision permits the delegation of authority to institute the prosecution. It is significant that such delegation can be 'by general or special order.' By a general order the Central Government or the State Government or a local authority may confer on a person the authority to institute prosecutions in respect of the offences which may be committed under the Act. A person having such general authority would be competent to institute prosecutions in respect of the offences under the

Act which may come to his notice in compliance with the relevant provision in the Act. To be precise where a particular food inspector or where a body of food inspectors functioning with a local authority is authorised by a general order to institute prosecutions under the Act then any one so authorised on receiving the report from the public analyst within the meaning of section 13(1) of the Act may on its basis institute the prosecution. The provision was interpreted by me while disposing of Criminal Revision Nos. 391 to 306 of 1972 on the 18th of January, 1973. The contention raised in that case was that Shri Manohar Lal Gupta, Assistant Municipal Prosecutor had not been duly authorised by the Municipal Corporation of Delhi to institute prosecutions under the Act. The resolutions on which reliance was placed for urging that he had been validly authorised were discussed in the judgment and in terms of Section 20 of the Act it was held that the power had been validly delegated for instituting the complaints. Mr. Frank Anthony appearing for the petitioner has invited my attention to the observations made in State v. Prem Kumar Jaunar. There the Court was dealing with the same provision. The observation made, was:-

'SECTION 20. of the Act makes the necessary consent of the prescribed authority, or person authorised, a condition precedent to the institution of the proceedings. In other words the required consent must precede the institution, but, section 20 of the Act cannot be interpreted to mean that the consent must also be proved before the court prior to the institution of the proceedings.'

The observation propounded that a consent of the prescribed authority must precede the institution of the complaint. Where action is performed within the first part of section 20 the 'written consent' has to precede the institution of the prosecution. In the same case it was further observed :-

'IT is also to be noted that section 20 of the Act 'does not require the written consent to be in any particular form. All that this provision requires is that the consent should be written and should be of the prescribed authority or person authorised in that behalf.'

Of course where consent is to be given to the institution of a prosecution it has to be given in writing by the prescribed authority. The observations in that case do

not in any way help the argument preferred before me. Another case which has been cited, is Jammu Municipality v. Faquir Hussain. In paragraph 5 it was expressed :-

'THE sanction in this case has been given on a printed form which purports to be signed by the Health Officer and this authority authorizes Shri Bansi Lal to file a complaint in the Court. This is Exhibit P.B.in this case. We should have wished that the printed form contained some additional sentence or part thereof to the effect that the sanctioning authority had examined the record and after examination satisfied itself that there was a case for prosecuting a particular accused.'

With all respect to the learned Judges I am of the view that section 20 does not postulate the granting of any sanction. The giving of 'sanction' carries a different import. What is the act of sanctioning a prosecution It is an act by which it is disclosed that the authority concerned applied its mind to the particulars placed before it and decided that it was legally tenable that the prosecution should be sanctioned. Sanction is required by those statutory provisions which provide protection to the accused requiring that the case against him be examined at a stage prior to the institution of the prosecution. Sanctioning the institution of a prosecution stands in a different category than that of prescribing special authorities under a special statute which alone may institute prosecution. Section 20 in the Act is confined to the prescribing of the enumerated authorities who can give (1) the written consent for institution of the prosecution or (2) authorise a person by a general or a special order to institute prosecutions. If the provision is not read in accordance with Legislative intent then a confusion can arise. If the Parliament did not intend that the provision should be read in independent part in the manner it has been interpreted by me then it would not have repeated the words 'the Central Government or the State Government or a local authority' is the ultimate part. The repetition coins the provision in two parts. It is beyond controversy that the Central Government or the State Government or a local authority can by a general or a special order authorise a person to institute prosecutions for an offence under the Act. It is not necessary that while delegating the authority within the provision 'the person' must be named. Section 15 in the

General Clauses Act allows delegation within section 20 of the Act to the persons having particular designations on account of the posts which they may be holding. All Food Inspectors functioning under a local authority may by a general order receive the delegation of the authority to institute prosecutions for offences which may be committed under the Act. Section 20 of the Act came in for consideration in *Dhian Singh v. Municipal Board, Saharanpur and another*. The observations in paragraph 5 disclose that after considering the law laid down by the Privy Council in and by itself in *Madan Mohan Singh v. State of Uttar Pradesh*, it was noticed that the provisions which require a prior sanction by a prescribed authority for the institution of a prosecution were distinct in themselves. The Supreme Court observed :-

'THE provisions under which sanction was sought in those cases required the sanctioning authority to apply its mind and find out whether there was any justification for instituting the prosecutions. The Judicial Committee as well as this Court has laid down that in such cases the Court must be satisfied of that from the order of sanction or from the other evidence that all the relevant facts had been placed before the sanctioning authority and that authority had granted the sanction after applying its mind to those facts. The ratio of those decisions has no bearing on the facts of this case, Under section 20 of the [Prevention of Food Adulteration Act, 1954](#), no question of applying one's mind to the facts of the case before the institution of the complaint arises as the authority to be conferred under that provision can be conferred long before a particular offence has taken place. It is a conferment of an authority to institute a particular case or even a class of cases. That section merely prescribes that persons or authorities designated in that section are alone competent to file complaints under the statute in question.'

A final approach to the true meaning of section 20 can be made only after bearing in mind the entire scheme of the Act. If it were to be the intention in the provision that the Central Government or the State Government or a local authority was to apply its own mind then that would have been legislatively provided. It is urged that even where there is a case of delegation of authority to a person to institute the prosecution that person must be shown to have applied his mind to the precise adulteration before filing the complaint. The argument is that if the

complaint is filed on the basis of one type of adulteration in the food stuff found on analysis by the Public Analyst and then his report is superseded by the certificate issued by the Director of Central Food Laboratory and the adulteration in the food stuff is found to be of a different kind that would displace the very competence of the institution of the prosecution. Mr. Frank Anthony emphasizes that the institution of the prosecution on the basis of the Public Analyst's report lost legality inasmuch as at the time when the decision was made to institute prosecution the data contained in the certificate issued by the Director of the Central Food Laboratory Calcutta was not available. If that was to be accepted as the intention in the various provisions in the Act then the result would be that three samples having been separately made under section 11 of the Act, one of them will stand exhausted on being analysed by the Public Analyst and the second on being analysed by the Director, Central Food Laboratory and section 13(2) will become unavailable in case a fresh prosecution is instituted on the basis of the certificate issued under sub-section (3) of section 13 of the Act. In that situation only one sample will remain available. There may be cases in which in the course of the trial the accused as well as the food Inspector may invoke section 13(2) simultaneously. The two samples in their possession sent to the Director, Central Food Laboratory in order to find out the precise adulteration in a food stuff will then cease to exist. In that situation the certificate issued by the Director, Central Food Laboratory will exhaust the two samples. No sample of the food stuff purchased by exercising the power given by section 11 of the Act will at all then be available in case of reinstitution of a prosecution on the basis of the certificate issued by the Director, Central Food Laboratory. Such a situation is not contemplated or permitted by the Act. It may be said that the document purporting to be the certificate issued by the Director of Central Food Laboratory will be the conclusive evidence in terms of section 13(5) and in case of institution of a fresh complaint on its basis the authorities concerned will be able to secure the conviction of the accused person. That would jeopardise the protection provided by section 13(2) of the Act. The institution of a prosecution within section 20 should be measured by its purpose. What does the Act seek to punish? That would be clear from section 7 thereof, which, is :-

'S. 7. No person shall himself or by any person on his behalf manufacture for sale, or store, sell or distribute- (i) any adulterated food ; (ii) any misbranded food ; (iii) any article of food for the sale of which a license is prescribed, except in accordance with the conditions of the license ; (iv) any article of food the sale of which is for the time being prohibited by the Food (Health) Authority (in the interest of public health) or (v) any article of food in contravention of any other provision of this Act or of any rule made there under.'

Where there is a breach of section 7 the Court may then after trying the accused in consequence of a competent institution of prosecution convict him under section 16 of the Act. What kind of prosecution will be sustainable It is the adulteration of food which would entail punishment. If the certificate issued under section 13(3) of the Act by the Director, Central Food laboratory superseding the report by the Public Analyst certifies that the food stuff is adulterated, it will suffice as a breach of section 7 of the Act and section 16 thereof will come into play. The Court will be well within its right to convict the accused in that situation.. I am not called upon to appreciate evidence. This petition has been preferred in a case where before the Court of appeal the petitioner and his counsel clearly stated that they do not challenge the conviction. The food stuff was found adulterated though on different counts both by the Public Analyst as well as the Director, Central Food laboratory, Calcutta. I conclude that the institution of the prosecution did not incur any illegality. I do not find any scope for interfering with the conviction of the petitioner who has already been leniently dealt with by the Court below. The petition is dismissed.