

Manohar Lal Vs. State

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Court : Delhi

Decided On : Oct-13-1988

Reported in : 36(1988)DLT394; 1989(16)DRJ226

Judge : M.K. Chawla, J.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 20(1)

Appeal No. : Criminal Revision Appeal No. 30 of 1979

Appellant : Manohar Lal

Respondent : State

Advocate for Pet/Ap. : O.P. Soni and; M.S. Siddique, Advs

Judgement :

M.K. Chawla, J.

(1) On 29th July, 1976, the petitioner before this Court was found selling cow's milk, opposite to a place known as Mahavir Restaurant 'C' block, Connaught Place, New Delhi. Food Inspector Sh. S.D. Sharma purchased a sample of cow's milk from him, which on analysis by the Public Analyst, was found adulterated due to 0.2 deficiency in milk fat percentage which is equivalent to 5.7 percentage deficiency in milk fat. The report of the Public Analyst is dated July 31, 1976. A charge under Section 7/16 of the Prevention of Food Adulteration Act was framed

against the petitioner. After trial, the petitioner was convicted of the offence charged with and sentenced to undergo S.I. for six months and to pay a fine of Rs. 1000.00 only. In default of payment of fine, to further undergo S.I. for 2 months. In appeal, the order of conviction and sentence was confirmed by the Additional Sessions Judge on February 17, 1979.

(2) In the present revision petition, learned counsel for the petitioner has challenged the very basis of the filing of the complaint, inasmuch as the order of sanction to prosecute, has neither been proved accordance with law nor it has been given by the Director of Health Services, after proper application of mind, in reference to the facts on which the proposed prosecution was to be based.

(3) There is some force in the argument. Ex. Public Witness . I/B is the consent inquestion. It is sought to be proved from the evidence of PW-1 Shri R.C. Sharma, M.P., New Delhi Municipal Committee, in the following words :-

'COMPLAINTEx. PW-1/A has been signed by me and Shri S.P. Gupta, Amp, N.D.M.C. We have filed the complaint on the written consent of Director of Health Services, Delhi Administration, which is Ex. PW-1/B.

(4) Learned counsel for the petitioner has taken me through this document, The so-called consent accorded by the Director of Health Services is on a stereo-typed cyclostyled proforma in which the blanks have been filled. in by someone. It only mentions that the sample of cow's milk was lifted on July 29, 1976 by Shri S.D. Sharma, Food Inspector. The name and address of the accused is written at the bottom.

(5) Can this document be said to have been legally proved or does it satisfy the requirement of the provisions of Section 20(1) of the Prevention of Food Adulteration Act. On both courts, the answer is in the negative.

(6) When a document is tendered in the evidence, the Court has to consider three aspects, namely, (1) Its authorship in order to ensure that it is a genuine document; (2) correctness of its contents so that the document is correctly construed ; and (3) truthfulness of its contents. To satisfy the above requirements,

the prosecution was duty bound to prove the written consent by producing the Director of Health Services who has signed/ executed the document or an official conversant with his handwriting. There are various other modes of proving the signatures/handwritings of an executant in case he is not available. In this case, it was open to the prosecution to prove the consent in question in any of the following manners : 1. By calling as a witness a person who wrote the document ; or 2. Who saw it written or signed ; or 3. Who is qualified to express an opinion as to the handwriting or signature by virtue of Section 47 of the Evidence Act ; or 4. By a comparison of the handwriting as provided by Section 73 ; or 5. By an admission of the person against whom the document is tendered ; or 6. By expert evidence under Section 45 ; and 7. By internal evidence as afforded by the contents of the documents. (Mobarik Ali Ahmad v. The State of Bombay)

(7) The prosecution has chosen not to adopt any of the modes to prove the consent in question. PW-1 Sh. R.C. Sharma has not said a word about this document. It is not shown as to who, at the relevant time, was the Director of Health Services and in whose presence he is alleged to have signed the consent. Even his signatures have not been identified by this witness. This document thus has not been proved in accordance with the provisions of the Evidence Act and should not have been exhibited. It cannot be read in evidence. The learned lower courts went wrong in relying on this inadmissible order of consent. This illegality completely knocks out the very basis of the complaint.

(8) On the second aspect also, the prosecution has miserably failed to prove that the Director of Health Services applied his mind to the facts of the case at the time of granting his consent to prosecute. Undoubtedly, the burden of proving that the requisite valid consent had been obtained rests upon the prosecution. The sanction to prosecute is an important factor which constitutes a condition precedent to the launching of the prosecution. It is not an idle formality. The sanction which simply names the person to be prosecuted and specifies the date of lifting the sample of cow's milk by a particular Food Inspector is not a sufficient compliance of Section 20(1) of the Prevention of Food Adulteration Act. There is no evidence to suggest that at the time of granting the sanction, the authority was aware of the facts constituting the offence or applied its mind to all

the relevant documents. There is not a whisper about the contents of the report of the Public Analyst, nor does the order indicate the specific provisions of law, under which the respondent was sought to be prosecuted. (State v. Brij Mohan.).

(9) Looking this document from any angle, I find that the learned lower courts failed to examine the document in its true perspective and ignored the multi-facet lacunae in the order of sanction. It is not a valid sanction to prosecute and cannot be acted upon to record the conviction.

(10) On this short ground, the Judgment of the lower court dated March 3, 1978 and confirmed by the Additional Sessions Judge on February 17, 1979 are set aside. The revision is accepted. The petitioner is acquitted of the charge. He is on bail, his bail bond is discharged.

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