

A.D. Kumar Vs. State

A.D. Kumar Vs. State

SooperKanoon Citation : sooperkanoon.com/687255

Court : Delhi

Decided On : Sep-03-1982

Reported in : 23(1983)DLT3

Judge : M.L. Jain, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 340

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 416 of 1978

Appellant : A.D. Kumar

Respondent : State

Advocate for Pet/Ap. : Y.S. Chitale and; Rishikesh, Advs

Judgement :

M.L. Jain, J.

(1) Three persons, namely Rajinder Kumar Dharminder Kumar and Faquir Chand, were partners of the firm M[s. Nand Kishore Dharminder Kumar. They were prosecuted for the sale of adulterated 'Saunf by Rajinder Kumar, to Food Inspector R. K. Mann on Septembr 27, 1976. The sample was lifted at the instance of some programme implementation committee of which Sh. J.K. Jain was member perhaps more than usually active one. The public Analyst found two pieces of Rodent hair and excreta in the sample. The learned Metropolitan Magistrate

discharged the accused on 17th March, 1978. He noticed that there was some interpolation in the sample memo Ex. PC. This read 'This saunf was lying in a open tin (about 4 kg). It was not for sale.' There were some erasures and overwriting in the words in the bricket. The learned Magistrate, therefore, directed an enquiry against the Food Inspector R. K. Mann, Dr. A. D. Kumar and J.K. Jain and others, to be instituted under section 340 Cr. P.C. Certain strictures against the conduct of Dr. A. D. Kumar, Health Officer were also passed. A revision against the discharge order was led and Dr. Kumar also filed a miscellaneous application for expunging of the remarks made against him. Dr. Kumar did not appear in spite of several adjournments. By my order dated 19-9-1980 the revision of the Corporation was dismissed. In respect of the applicant of Dr. Kumar I observed that the remarks respecting the conduct of Dr. Kumar appear to be exaggerated. but not wholly unjustified. I, therefore, did not expunge the remarks.

(2) On 26-9-1980 Dr. Kumar made an application for recalling the order because he was not heard. This application was dismissed on 29-9-1980. It appears that against that order, he moved an application Cr. A. 855 of 1981 before the Supreme Court which remanded the case to the High Court for re-hearing after giving an opportunity to the appellant to be heard in the matter of expunction of remarks against him. Hence, this case has again come up for consideration before me.

(3) In the petition, the petitioner has quoted the remarks with which he is aggrieved. They are as follows:

'(A)According to Food Inspector R. K. Mann writing encircled at portion A on Ex. Pc 'reading as This saunf was lying in an open tin 'about 4 kg.'. It was not for sale', was not written at the spot when Ex. Pc was prepared by him. Dr. A. D. Kumar, Assistant Health Officer, Mpl. Corporation of Delhi, had summoned the file from Food Inspector R. K. Mann on 2-11-1976 and on the same day the file was returned back to Food Inspector R. K. Mann personally by Dr. A. D. Kumar with the instructions to submit the same to the clerk of Health Department, immediately. On inspection of documents including Ex. Pc, as per deposition of Food Inspector R. K. Mann; he found writing encircled at portion A on Ex. PC. which was not there

when file had been handed over to Dr. A. D. Kumar. According to Shri R. K. Mann, such writing, was added to Ex. Pc subsequently which was brought to the notice of Dr. A. D. Kumar, but Dr. A. D. Kumar directed the Food Inspector R. K. Mann to submit the file as desired by him, in the same tered the threat to Food Inspector R. K. Mann that in case the file was not submitted in that condition, action may be taken against him and he . may be detained even under MISA. In view of such threat Food Inspector R. K. Mann submitted the file to Health Department on 2-11-76 itself. From the deposition of Food Inspector R. K. Mann, to the said effect it is evident that he seeks to disown the liability for forgery encircled at portion A on Ex. Pc, and in terms of his testimony, Dr. A. D. Kumar appears to have been mainly instrumental in getting the forgery committed in the document Ex. PC.'

(B)'It appears that Food Inspector R. K. Mann was equally active in getting forgery committed in Ex. Pc in connivance with Dr. A. D. Kumar and others.'

(C)'Atleast this much stands proved that when the case was instituted it was within the knowledge of Food Inspector R. K. Mann and Dr. A. D. Kumar that the document bearing forged writing vide Ex. Pc was being filed in the Court for use in judicial proceedings.'

(D)'The plea of the accused that word 'dustbin' was written before '4 kg.' may be taken to be substantially true, keeping in view erratic behaviour of the Food Inspector R. K. Mann as well as persons playing their role behind the curtain, in committing forgery.'

(E)'The aforesaid statement and circumstance emerging out of such statement clearly indicate that the Food Inspector R. K. Mann has in some way or the other connived with Dr. A. D. Kumar or others in getting forgery at encircled portion A on Ex. Pc effected. (f) 'Even at second visit no sample was taken as no article stored in the premises was suspected to be adulterated. Finding no article for taking sample Shri J. K. Jain ultimately desired that sample be taken from the cannister lying there. Dr. A. D. Kumar reluctantly instructed Food Inspector R. K. Mann to take the sample from the said Cannister containing 'kuda' '. (g) 'The reluctance on the part. of Dr. A. D. Kumar to direct the Food Inspector R. K. Mann to take sample from cannister also supports the defense version to the said effect. Visit to

the shop of accused twice by the members of Implementation Committee along with Food Inspector R. K. Mann and others shows the anxiety on the part of members of Programme Implementation Committee for somehow or the other entangling the accused in false case. In the circumstance of the case, whatsoever might have been the reason, neither Dr. A. D. Kumar nor Food Inspector R. K. Mann were justified in yielding to pressure of Shri J. K. Jain and other members of Implementation Committee because in any case they are found to have added in violation of relevant provisions of Food Adulteration Act.' (h) 'Here is an instance where members of Programme Implementation Committee had assumed character of super food inspectors and the functions which were required to be discharged by the food inspectors were virtually performed by them.' (i) 'Even if there had been a threat of any action regarding suspension, dismissal from the service or detention under Misa, none of the two officials, namely, Dr. A. D. Kumar and Food Inspector R. K. Mann should have yielded to the pressure of Programme Implementation Committee who were acting under malicious designs, and in arbitrary fashion. In any case Food Inspector R. K. Mann and Dr. A. D. Kumar have been parties to illegal acts which were initiated by members of Programme Implementation Committee particularly by J. K. Jain.' (j) 'No appropriate terminology may be appropriately used to condemn unscrupulous acts of the aforesaid persons who in the name of implementation and prevention of adulteration in food matters, acted as the members of a gang of dacoits. A gang of dacoits also knows no bounds of law and can behave in the same whimsical fashion as Shri J. K. Jain and his company has acted. Such unscrupulous and irresponsible attitude on the part of Shri J. K. Jain and others may be politically motivated as pleaded by accused.' (k) 'In the light of foregoing discussion I find it extreme case composed of acts and omissions on the part of Food Inspector R. K. Mann, Dr. A. D. Kumar -and Mr. J. K. Jain and his follow members of Committee which can never be approved of.'

(4) As stated earlier, the memo Ex Pc contained an endorsement 'This Saunf was lying in a open tin (about 4 kg.). It was not for sale'. This endorsement has overwriting in the quantity of saunf. This gave rise to controversy as to who was responsible for this endorsement and overwriting.. R. K. Mann (Public Witness 2) depbsed that when he filed the prosecution report in the Health Department along

with other documents. the disputed endorsement was not there. He had submitted the report on 2-11-76 to. Dr. A. D. Kumar who had personally summoned the file from him. Dr. A. D. Kumar returned the file at 1.00 P.M. with instructions to give the file to the clerk of Health Department. It was at that time that he noticed the disputed endorsement and brought it to the notice of Dr. A. D. Kumar that the writing had subsequently been inserted and that it was also had some erasure and overwriting. Dr. A. D. Kumar threatened him that if he failed to submit the file as directed, then action against him including detention under Misa will be taken as this case pertained to some big man. In the presence of this threat, he yielded and delivered the file. Dr. A. D. Kumar then asked him to write a similar endorsement on the duplicate copy of the inventory which was also enclosed with the file. He did so at the instance of Dr. A. D.Kumar.

(5) Out of the said remarks, the portions (a) to (e) E referred to the testimony of Food Inspector R. K. Mann, who disowned the liability of forgery shown in circle 'A' on Ex. Pc and suggested that Dr. A. D. Kumar was mainly instrumental in getting the forgery committed in the document Ex.PC, though the Food Inspector was equally enthusiastic in the said forgery. When the case was instituted, it was within the knowledge of Food Inspector R. K. Mann and Dr. A. D. Kumar that the document contained some forged writing. Portion (f) refers to the observation; that Dr. A. D. Kumar reluctantly instructed Food Inspector R. K. Mann to take sample from the said cannister containing 'Kuda'. The portions (g) to (i) refer to the obscuration that Dr. A. D. Kumar was reluctant to direct the Food Inspector R. K. Mann to take sample from the cannister, which was an illegal act committed at the instigation of the members of Programme Implementation Committee. Portions (j) to (k) refer to the observations of the learned Magistrate that no appropriate terminology may succeed in condemning the unscrupulous acts of the aforesaid persons in the name of implementation and prevention of adulteration in food matters, acted as the members of a gang of dacoits. A gang of dacoits also knows no bounds of law and can behave in the same whimsical fahion as J. K. Jain and his company had done. Upon this closer examination of the remarks, it will be noticed that the Magistrate deprecated the intervention of the said Committee and the alleged part of Dr. A. D. Kumar in the interpolation in the record.

(6) Mr. Chitale appearing on behalf of the petitioner submitted that the remarks were made in the absence of the petitioner Dr. A. D. Kumar and were not relevant to the controversy and were likely to damage the career of the petitioner. He pointed out that already an enquiry has been instituted with regard to the matter of so-called interpolation in Ex. PC. He also pointed that during the period alleged interpolation is said to have been made Dr. Kumar had ceased to be in charge of food adulteration. That is a matter of separate enquiry. At this stage, the only question that calls for determination is whether upon the evidence that was recorded these remarks were justified. These remarks have been made in the absence of Dr. A. D. Kumar and even earlier I had felt that they were exaggerated. I agree that it was not possible without examining Dr. Kumar to say that he had any hand in the said interpolation in order to help the accused persons.

(7) Considering all the circumstances of the case I hereby direct that the aforesaid remarks in so far as they relate to Dr. Kumar shall be and are hereby expunged. However, this should not preclude the Magistrate to proceed with the enquiry which he has already undertaken and to reach independent conclusions separately. The petition stands disposed of accordingly.