State Vs. Brij Mohan

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Court : Delhi

Decided On : Dec-21-1984

Reported in : 27(1985)DLT322; 1985(8)DRJ223; 1985RLR204

Judge : J.D. Jain, J.

Acts : Evidence Act, 1872 - Sections 47

Appeal No. : Criminal Revision Appeal No. 166 of 1984

Appellant : State

Respondent : Brij Mohan

Advocate for Pet/Ap. : R.P. Lao,; B.D. Batra and; amices Curiae, Advs

Judgement :

J.D. Jain, J.

(1) The facts giving rise to this revision petition which is directed against order dated 18th July 1984 of Shri V.K. Shali, Metropolitan Magistrate, New Delhi, succinctly are that on 25th August 1983 Sanjiv Kumar, Food Inspector, purchased a sample of mustard oil from M/s. Durga Provision Store, Street No. 12, Kailash Nagar, Delhi, in accordance with the provisions of the Prevention of Food Adulteration Act (for short 'the Act') and the rules made there under for analysis. The said oil had been stored by the aforesaid firm for sale and .was meant for

human consumption. The respondent-Brij Mohan was conducting the business of the firm at the relevant time. The sample oil was sent to the Public Analyst for analysis and it was found to be sub-standard in quality. Thereupon, after obtaining the consent of the State Government (Secretary (Medical), Delhi Administration) a complaint was instituted by the Delhi Administration for the prosecution of the respondent under Section 7/16 of the Act.

(2) During the course of trial Shri S.K. Verma, Senior Prosecutor, who had been authorised by the Secretary (Medical), Delhi Administration, to launch the prosecution appeared in the witness box and he, inter alia, wanted to prove the consent granted by the Secretary (Medical), Delhi Administration as he claimed to be conversant with the hand-writing and signatures of the Secretary (Medical). However, the learned Magistrate vide impugned order held that only the Secretary (Medical) namely Shri M.C. Verma, who had given the consent for prosecution was competent to prove not only the factum of sanction but also his signature thereon. Hence, he directed that Shri M.C. Verma be summoned as a witness in court.

(3) Feeling aggrieved the Delhi Administration has filed this revision petition contending that the learned Magistrate has slipped into a grave error in holding that only Shri M.C. Verma could prove the sanction as well as his signatures thereon and no other witness could be permitted to do so unless and until the prosecution showed that the Secretary (Medical), Delhi Administration, was not. available unreasonable delay or expense. The impugned portion of the order is extracted below for ready reference:

'THE purpose of these provisions is to see that the best possible evidence is brought to the court. When the document itself has been produced in the court that can be proved only by the author who has drawn the document. In the instant case the document which is sought to be proved by the learned Additional P.P. through the complainant Public Witness I S.K. Verma is the consent granted by Shri M.C. Verma, Secretary (Medical), Delhi Administration, Shri M.C. Verma is still working as Secretary (Medical). This is not the case of the prosecution that Shri M.C. Verma is not available or his attendance cannot be procured without any

unreasonable delay or expense. thereforee, in my view, it is M.C. Verma, Secretary (Medical) only who is competent to prove the contents of the consent granted by him under Section 20 of the P.F.A. Act.'

(4) The attention of the learned Magistrate was invited to Section 47 & 67 of the Evidence Act in this context by the prosecution. However, the learned Magistrate was of the view that Section 47 has no application to the present case. Says he :

'...IT only pertains to an opinion as to the handwriting and lays down that when the court has to form its opinion as to the person by whom the document was written or signed the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed or that it was or was not written or signed by that person, is relevant fact. But in the instant case this court is not to form an opinion regarding the writing or signature of the Secretary (Medical). It is the admitted case the consent bears the signature of the Secretary (Medical) who is still available. thereforee, it is he who has to prove his handwriting and signature. Unless and until the prosecution shows that Secretary (Medical), Delhi Administration, is not available it cannot examine any other witness to prove the signature or handwriting of Shri M.C. Verma who happens to be acquainted with the same.'

(5) As for Section 67 he has observed that the said Section deals with the proof of signature and handwriting of a person alleged to have signed or written a document and lays down that the document so alleged must be proved to be in that person's handwriting. The best person to prove his own handwriting would be that person himself. thereforee, he was of the view that Shri M.C. Verma, Secretary (Medical) must prove his own handwriting and signature.

(6) The main grievance of the learned counsel for the Delhi Administration is that the learned Magistrate has misconstrued the scope and ambit of both Sections 47 & 67 of the Evidence Act and has gone away by misreading the object and scope of the said provisions of law. I am constrained to say that it appears to be a case of total non-application of judicial mind by the learned Magistrate while interpreting these two important provisions of law. The least he could do was to consult any standard commentary on the subject if not the case law. Unfortunately it would

appear that he went astray because of his misunderstanding of the term 'primary evidence' in its application to proof of authorship of a document.

(7) When a document is tendered in 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.

(8) Section 61 of the Evidence Act lays down that the contents of a document may be proved either by primary or by secondary evidence. Section 62 thereof defines primary evidence as meaning the document itself produced for the inspection of the court. In other words, the primary documentary evidence of a transaction (evidenced by writing) is the document itself which should be produced in original to prove the terms of the contract/ transaction, if it exists and is obtainable. Since the original sanction was admittedly placed on record by the prosecution, the requirements of this provision stood satisfied and the question of any secondary evidence for proving the contents of the sanction as such did not arise. Primary evidence in the context of oral evidence, however, means an oral account of the original evidence i.e. of a person who saw what happened and gives an account of it recorded by the court. That question does not appear to have arisen in the instant case because the matter was still at the stage of proof of the consent accorded by the Secretary (Medical). Since Sections 61 to 66 of the Evidence Act deal with the mode of proving the contents of the documents, either by primary evidence or by secondary evidence, I need not dwell upon the same in view of the original document having been placed on the. record.

(9) Then comes the most important question viz. the genuineness of a document produced in evidence i.e. is a document what it purports to be and this is dealt with in Sections 67 to 73 of the Evidence Act. Section 67 refers to documents other than documents required by law to be attested. It simply requires that the signature of the person alleged to have signed a document (i.e. the executant) must be proved by evidence that the signature purporting to that of the executant is in his handwriting. Further it requires that if the body of the document purports to be in the hand-writing of someone, it must be proved to be in the hand-writing of

that person. However, Section 67 does not in terms prescribe any particular mode of proof and any recognised mode of proof which satisfies the Judge will do. Thus, the execution/ authorship of a document may be proved by direct evidence i e. by the writer or a person who saw the document written and signed or by circumstantial evidence which may be of various kinds, for example, by an expert or by the opinion of a non-expert who is acquainted with the hand-writing in any of the ways mentioned in Explanationn to Section 47 or even by comparison etc. (See Sections 45, 47, 73 & 90 of the Evidence Act). Thus, there are various modes of proving signatures/hand-writing of a person. It was open to the prosecution to prove the document 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 hand-writing or signatures by virtue of Section 47 or (4) by a comparison of the hand-writing as provided by Section 73 of (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. Reference in context may be made with advantage to Mobarik Ali Ahmed v. The State of Bombay, 0043/1957 : 1957 CriLJ1346 . However, the value of evidence of a person acquainted with the signatures/ hand-writing of the executant as contemplated in Section 47 of the Evidence Act depends not merely upon the fact that the witness has seen the party write or has corresponded with him but also upon the extent of the opportunities he has had to becoming familiar with the hand-writing in question, and upon his own habit of accurate observation. Obviously the stage of evaluation of the testimony of Shri S.K.. Verma did not reach in the instant case because of the opinion expressed by the learned Magistrate that he is not a competent witness so long as the Seer.tary (Medical) is available and can be called in court without unreasonable delay or expense to the prosecution. It may be pertinent to notice here a reported decision of the Supreme Court in The Stale of Rajasthan v.Tarachand Jain, : 1973 CriLJ1396 . In the said case the sanction for the prosecution of the accused had been accorded by the Chief Minister. One Umraomal who was working as Office Superintendent, Appointments Department at the relevant time, was examined as P W. 20. Although no question with respect to the giving of sanction by the Chief Minister

was put to him in the examination-in-chief, he stated in reply to a question put to him in cross-examination that the Chief Minister had signed the sanction. He, however, added that he was not present at the time the Chief Minister had signed the sanction but his statement about the signing of the sanction by the Chief Minister did not appear to have been challenged by putting any further question to the witness. 'Under these circumstances the Supreme Court held that there was positive evidence on record of the said case that sanction for the prosecution of the accused had been accorded by the Chief Minister. The Supreme Court, inter alia, observed that the witness was working as Office Superintendent, Appointments department at the relevant time and as such would be presumably familiar with the signatures of the Chief Minister in the ordinary course of business. So, in their Lordship's opinion the judgment of the High Court in this respect was vitiated by its omission to taken into account a material piece of evidence.

(10) This authority clearly illustrates not only that the evidence of a person acquainted with the hand-writing of the executant or author of a document is relevant but also what value should normally be attached to the same in the context of official documents which emanate from a Government Department. Indeed, there is a presumption of official acts having been done regularly in the discharge of official duties of the concerned official. The learned Magistrate seems to have overlooked these basic principles of law of evidence while placing a very narrow and restricted interpretation on Section 67. Not only that, he went to the extent of saying that Section 47 of the Evidence Act was not even attracted to the facts of the case thus altogether ignoring the legal position that Section 47 prescribed one of the modes of proving the signatures/hand-writing of a person. Hence, the impugned order is liable to be quashed on this short ground.

(11) As for the second aspect of the matter, namely, that the prosecution must prove that the Secretary (Medical) had applied his mind in granting the consent and that the same had not been granted in a mechanical manner, suffice it to say that the law on the subject is well settled by now. Undoubtedly the burden of proving that the requisite sanction had been obtained rests upon the prosecution. Such burden includes proof that the sanctioning authority had given the sanction in reference to the facts on which the proposed prosecution was to be based. These

facts might appear on the face of the sanction or it might be provided by independent evidence that sanction was accorded for prosecution after these facts had been placed before the sanctioning authority. It was, thereforee, open to the learned Magistrate to satisfy himself that the sanction had been given by the Secretary (Medical) after proper application of mind. As observed by the Privy Council in Gokulchand Dwarkadas Morarka v. The King :

'THE sanction to prosecute is an important matter; it constitutes a condition precedent to the institution of the prosecution and the Government have an absolute discretion to grant or withhold their sanction. .....A sanction which simply names the person to be prosecuted and specifies the provision of the Order which he is alleged to have contravened is not a sufficient compliance with Clause 23 of the Cotton Cloth and Yarn (Control) Order, 1943.'

(12) Similarly in Mohd Iqbal Aimed v. State of Andhra Pradesh, : 1979 CriLJ633 , it was observed :

'WHAT the Court has to see is whether or not the Sanctioning Authority at the time of giving sanction was aware of the facts constituting the offence and applied its mind for the same; any subsequent fact which may come into existence after the grant of sanction is wholly irrelevant. The grant of sanction is not an idle formality or an acrimonious exercise but a solemn and sacrosanct act which affords protection to Government servants against frivolous prosecutions and must thereforee be strictly complied with before any prosecution be launched against the public servant concerned.'

(13) (SEE also in this connection Jarnail Singh v. State of Punjab, : 1958 CriLJ265).

(14) Mr. Batra, amices Curiae representing the respondent has contended that the consent accorded by the Secretary (Medical) in the instant case does not on its face show that he applied his mind to all the relevant facts and, thereforee, the learned Magistrate was justified in calling the Secretary (Medical) to satisfy himself that all the relevant facts were present to the mind of the Secretary (Medical) when he accorded his consent. In particular he has invited my attention to the fact that

there is no reference to the nature of adulteration found in the instant case. In other words, there is not a whisper about the report of the Public Analyst in the consent. Not only that, the consent does not even indicate the specific provision of law under which the respondent was sought to be prosecuted. According to him, the written consent of the Secretary (Medical) to the prosecution of the respondent is nothing more than a stereo-typed cyclostyled proforma in which the blanks had been filled in by the official concerned. Looked at this document from this angle, I find that the learned Magistrate was justified in summoning Shri M.C. Verma, Secretary (Medical), Delhi Administration, to satisfy himself about these apparent lacunae in the sanction.

(15) To sum up, thereforee, I allow this petition and set aside the impugned order as regards refusal of the Magistrate to examine Shri S.K. Verma, P.A. to the Secretary (Medical) to prove his hand-writing/signatures on the consent on the ground that it could be done only by Shri M.C. Verma and none else. However, the second part of the order summoning Shri M.C. Verma to seek clarifications regarding the lacunae in the consent order is perfectly justified. The learned Magistrate shall now proceed further in the case in accordance with the above observations.