

Francis Vs. Dinesan

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Court : Kerala

Decided On : Sep-02-2002

Reported in : 2003(1)ALT(Cri)209; 2003(1)KLT370

Judge : T.M. Hassan Pillai, J.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 20A; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 397(1), 397(2) and 482

Appeal No. : Crl. M.C. No. 3155 of 2000

Appellant : Francis

Respondent : Dinesan

Advocate for Def. : N.A. Muraleedharan,; M.K. Chandra Mohandas and; Thomas C

Advocate for Pet/Ap. : Cherian Varghese, Adv.

Judgement :

ORDER

T.M. Hassan Piliai, J.

1. The fourth accused in C.C. No. 612/1997 on the file of the Chief Judicial Magistrate Court, Ernakulam, who has been impleaded as per the order passed by

the learned Magistrate in CrI. M.P. 2949/99 filed by the 3rd accused asserting that he had purchased the adulterated article from M/s. Sindhu Traders, Basin Road, Ernakulam (petitioner herein is the proprietor of M/s. Sindhu Traders). Learned Magistrate allowed the impleading application CrI. M.P. 2949/99 relying on the decision rendered by this Court in Chanda v. Food Inspector (1990 (1) KLT 572) and issued summons. Pursuant to the summons issued the 4th accused appeared before the court below and filed a petition (CrI. M.P. 3900/99) to discharge him under Section 245(2) Cr.P.C. mainly placing reliance on the decision rendered by the Apex Court in Omprakash Sivaprakash v. K.I. Kuriakose and Ors. (1999 (3) KLT 861). That application was rejected by the learned Magistrate on the ground that Magistrate has no power to review his own order. That order passed is assailed before me by the learned counsel for the revision petitioner and the main contention urged on behalf of petitioner by the learned counsel for the petitioner is that before impleading the 4th accused (petitioner herein) under Section 20A of the Prevention of Food Adulteration Act, (for short the Act) four conditions are to be satisfied and counsel contended that learned Magistrate erred grossly in allowing the application to implead the petitioner as 4th accused without satisfying the existence of the four conditions.

2. Counsel on both sides fairly submitted that the impleading application was filed by the 3rd accused to implead the 4th accused/petitioner before the Magistrate asked other accused persons (accused 1 to 3) whether they plead guilty or not as envisaged in Section 251 of the Code and before recording the plea of the accused. Needless to point out that evidence in a trial under the Act can be adduced only after recording the plea of the accused. As rightly pointed out by the learned counsel for the petitioner the four essential conditions to be satisfied under Section 20A of the Act to implead a person under Section 20A of the Act are: (1) the trial should have begun already; (2) the trial must be of any offence under the Act allegedly committed by a person other than the manufacturer or distributor or dealer of the food article; (3) the Court must have been satisfied that such manufacturer or dealer or distributor is also concerned with the offence; (4) such satisfaction must have been formed on the evidence adduced before the Court.

3. I have already stated that impleadment of the 4th accused has been ordered and summons has been issued before commencement of the trial and the order impleading the 4th accused is not sustainable on the ground that above stated four conditions were not satisfied and the Magistrate erred in allowing to implead the petitioner under Section 20A of the Act. In the decision cited supra the Supreme Court considered the meaning of the term 'trial' and the following observations are made by the Supreme Court.

'10. The term 'trial' cannot be given a fixed meaning to be applied in all cases uniformly. The connotation of that word changes with the differences in which the term is employed in a particular provision of any statute. This Court has said in *The State of Bihar v. Ram Naresh Pandey* (AIR 1957 SC 389 = 1957 SC 279) thus:

'The order 'tried' and 'trial' appear to have no fixed or universal meaning. No doubt, in quite a number of sections in the Code to which our attention has been drawn the words 'tried' and 'trial' have been used in the sense of reference to a stage after the inquiry. That meaning attaches to the words in those sections having regard to the context in which they are used. There is no reason why where these words are used in another context in the Code, they should necessarily be limited in their connotation and significance. They are words which must be considered with regard to the particular context in which they are used and with regard to the scheme and purpose of the provision under consideration.

11. We will examine the relevant provisions to ascertain as to when the trial in a case involving offences under the Act would commence. Section 16-A of the Act empowers a judicial Magistrate of First Class to try the offence under Section 16(1) of the Act in a summary way. Chapter XXI of the Code deals with summary trials of which Section 262 says that the procedure specified for trial of summons cases shall be followed for summary trial subject to some variations. Chapter XX is titled 'Trial of Summons Cases by Magistrate'. Section 251 of the Code is the commencing provision of that Chapter. It requires that when the accused appears or is brought before the Magistrate the particulars of offence shall be stated to him and he shall be asked whether he pleads guilty or not. Section 254(1) of the Code says that if the Magistrate does not convict the accused he shall proceed to hear

the prosecution and 'take all such evidence'.

12. The above scrutiny of the relevant provisions reveals that the trial of offences under the Act begins when the Magistrate asks the accused whether he pleads guilty or not as envisaged in Section 251 of the Code, if the Magistrate opts to hold summary trial. Hence, evidence in a trial under the Act can be adduced only after recording the plea of the accused as envisaged in the said section. Thus, it is clear that a Magistrate can implead any person under Section 20-A of the Act only after reaching the stage envisaged in Section 254(1) of the Code.'

4. In *Amar Nath v. State of Haryana* (1977 SCC (Cri.) 585) the Supreme Court held that the order summoning the accused by the Magistrate straightaway is not an interlocutory order which could not be revised by the High Court under Section 397(2) of the 1973 Code. The order summoning the 4th accused is undoubtedly a matter of moment and a valuable right of the 4th accused had been taken away by the Magistrate passing an order prima facie in a mechanical fashion without applying his mind. If the petitioner is not summoned he need not have to face the trial at all and the order compelling the petitioner to face the trial without proper application of mind cannot be held to be an interlocutory order. By deciding to issue summons a serious question as to the right of the petitioner to be put on trial is decided. This Cri. M.C. is not liable to be dismissed on the ground that petitioner has not filed any revision challenging the orders impleading and issuing of summons and refusing to discharge him and the Supreme Court held in the above cited decision that the order summoning the accused does not fall within the mischief of Sub-section (2) of Section 397 of the 1973 Code and is not covered by the same. That being the position, a revision against the order impugned is fully competent under Section 397(1) or under Section 482 of the 1973 Code, because 'the scope of both these sections in a matter of this kind is more or less the same.' (See *Amar Nath's case*).

5. The Cri. M.C. is not liable to be dismissed on the ground that no revision has been preferred by the petitioner under Section 397(2) Cr.P.C. Therefore, the order passed by the learned Magistrate impleading the 4th accused invoking the powers under Section 20A of the Act and also the order passed by him refusing to

discharge the 4th accused/petitioner under Section 245(2) Cr.P.C. are quashed invoking the powers of this Court under Section 482 Cr.P.C. It is open to the Magistrate to allow an application for impleadment of the petitioner in case of filing fresh application for impleading him as an accused, if on the basis of the evidence available there is sufficient material to implead him as accused after commencement of the trial and before the termination of the trial.

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