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Court : Rajasthan

Decided On : Nov-09-1964

Reported in : AIR1965Raj96; 1965CriLJ597

Judge : L.N. Chhangani, J.

Acts : Prevention of Food Adulteration Act, 1954 - Sections 20

Appeal No. : Criminal Ref. No. 212 of 1964

Appellant : Bijai Lal

Respondent : State

Advocate for Def. : B.C. Chatterji, Deputy Govt. Adv.

Disposition : Reference accepted

Judgement :
ORDER

L.N. Chhangani, J.

1. This is a reference by the Additional Sessions Judge, Jaipur City, recommending that the order of the Municipal Magistrate, First Class No. 2. Jaipur, dated 2-1-1961 issuing process against the accused-petitioner Hijai Lal, be set aside.

2. The facts giving rise to the present reference are briefly as follows:

That there is a cinema house Ganga Talkies at Sanganeri Gate, Jaipur'. One Gopal Chand was given a contract to run a restaurant in the premises of the cinema house to cater to the needs of the cinema visitors and other persons also. Gopalehand not obtained the requisite licence as required by Rule 50 of the Rules made under the Prevention of Food Adulteration Act. On 2nd January, 1961. the Perokar of the Municipal Council, Jaipur, presented, after obtaining the consent of the local authority, a complaint against Gopalchand only for offences punishable under Section 16 of the Prevention of Food Adulteration Act (hereafter referred to as the Act) read with Rule 50 of the Rules. The Municipal Magistrate not only issued process against Gopalchand but also against the petitioner Bijailal on the ground that he being the manager of the cinema house was also liable for the offence committed by the contractor for running a restaurant without a licence. The petitioner Bijailal feeling aggrieved by the order of the Magistrate issuing process against him, presented a revision application which was disposed of by the Additional Sessions Judge, Jaipur City. The Additional Sessions Judge having observed that 'there was no proper sanction for the initiation of the proceedings against the petitioner' has made me present reference recommending that the proceedings against the petitioner be quashed.

3. The accused-petitioner Bijailal did not care to appear in this Court. The Deputy Government Advocate was, however, heard and he has supported the order of reference.

4. The question of law arising for determination in this ease is whether a Magistrate taking cognizance of an offence under the Act on a complaint filed against some person or persons after a proper compliance with the provisions of Section 20 of the Act can issue process and initiate prosecution against other persons appearing to be concerned in the commission of the offence without there being a specific complaint against them by or with the consent of the authorities or persons specified in Section 20. The relevant statutory provision contained Section 20, Sub-section (1) reads as follows :

'No prosecution tor an offence under this Act shall be instituted except by, or with the written consent of, the State Government or a local authority or a person authorised in this behalf by the State Government or local authority.'

It is true that Section 20 uses the expression 'no prosecution for an offence' and not 'no prosecution of an offender'. But the question, however, is whether the use of this language can be reasonably interpreted to authorise a Magistrate to take cognizance of an offence against persons whose prosecution was not initiated by the authorities Specified in Section 20. The Magistrate in support of his view, in his explanation, dated 21st July, 1964, relied upon the following observations from Sudhir Ranjan v. N.K. Mazumdar, AIR 1944 Pat 210:

'The ordinary rule is that when a Magistratetakes cognizance of an offence he takes cognizanceof the case as a whole, and is empowered tosummon all persons against whom there appears tobe any reason for their prosecution, even thoughtheir names arc not mentioned for this purpose inthe petition of the complaint.'

It will be useful to point out here that the learnedJudge in that very case added that specialconsiderations might arise in a prosecution underthe Companies Act. It appears that the learnedJudge in this case laid down an ordinary rulewhich has to be adopted only when the prosecution is under the general law and there are nospecial considerations. Now, Section 20 of the Actclearly implies that the legislature) has thought itproper to treat the offences under the Act us falling into special category and requires that theprosecution for these offences can be instituted byor with the consent of the authorities and personsnamed in the sub-section. In my opinion, theexpression 'prosecution' reasonably interpretedmust have reference to specific individuals and tospecific facts against them. It follows that theauthority instituting the prosecution or authorisingthe prosecution by his consent should apply hismind to the alleged commission of an offence bythe accused person and should be satisfied that theaccused has to be prosecuted for the said offence.

In view of the special nature of the offences and the special provisions made in the Act, the legislature introduced the above salutary provisions in Section 20 and in

view of these special considerations the ordinary rule laid down in AIR 1944 Pat 210 cannot be extended to prosecutions under the Act and to dispense with the compliance of the provisions of Section 20 by adopting a view that once a prosecution is launched for an offence against some individual or individuals there can be prosecution of other persons on the basis of that complaint. In support of the above view, I may refer to City Corporation of Trivandrnm v. Arunaclialani Reddiar, AIR 1960 Ker 356, where Sankaran C. J. speaking on behalf of a Bench of the Kerala High Court made the following observations while interpreting Section 20 of the Act:

'The sanction required by Section 20 is not an empty formality. The sanction must show that the authority giving the sanction had applied his mind to the alleged commission of an offence by the accused person and was satisfied that the accused has to be prosecuted for the said offence.

Necessarily it follows that the sanction must be for the prosecution of specified individuals and for specific offences.'

In that case the Food Inspector had been generally authorised to launch prosecution for offences that might be committed under the Act. Their Lordship did not consider prosecution by the inspector as valid. Though the facts in that case were peculiar but the general principle stated therein supports the above view.

5. On a reasonable and proper interpretation of Section 20, I am inclined to hold that a Magistrate while taking cognizance of an offence under the Prevention of Food Adulteration Act on a complaint filed against specified individual or individuals cannot issue process and initiate prosecution against other persons. Now, in the present case the Municipal Council Jaipur City, while authorising the complaint applied its mind to the facts of the case as against Gopalchand. It had no occasion to examine the liability of the petitioner as the Manager of the Cinema House and it cannot be said that the Municipal Council had applied its mind to the desirability of prosecuting the present petitioner. In these circumstances, the Municipal Magistrate had no justification to initiate prosecution against the petitioner suo motu on the complaint filed against Gopalchand.

6. The reference made by the AdditionalSessions Judge is in order and deserves to beaccepted. The reference is accepted and the orderof the Municipal Magistrate, Jaipur City, issuingprocess against the petitioner is set aside. Theproceedings against him are quashed.

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