

**Ramchandra Vs. State**

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**Court :** Rajasthan

**Decided On :** Jul-26-1965

**Reported in :** AIR1967Raj211; 1967CriLJ1187

**Judge :** C.B. Bhargava, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 556; Prevention of Food Adulteration Act

**Appeal No. :** Criminal Revn. No. 21 of 1965

**Appellant :** Ramchandra

**Respondent :** State

**Advocate for Def. :** S.N. Gurtu, Adv.

**Advocate for Pet/Ap. :** V.S. Dave, Adv.

**Judgement :**

ORDER

**C.B. Bhargava, J.**

1. This is an application in revision by Ramchandrar against his conviction wider Section 16(1)(a) read with Rules 49 and SO of the Prevention of Food Adulteration Act. He has been sentenced to rigorous imprisonment for one month and a fine of

Rs. 300.

2. The case by the prosecution against the petitioner was that he was running a hotel named as 'Azad Hind Hotel' on Nai Sarak Churu and was carrying on the business of selling bread, cooked meat and vegetables etc. without a licence. Further on 6th October, 1968 when Shri Mangilal, Food Inspector checked the hotel, there was neither any notice board, nor were the utensils enamelled nor was there any glass almirah for protection from sand and flies, Kneaded flour was lying since morning and had fermented. Sugansingh servant in the hotel was found working there at that time and he informed the Food Inspector that Ramchandrar petitioner was one of the owners of the hotel, Mangilal prepared a memo of inspection and after obtaining sanction for the prosecution of the petitioner from the Administrator Municipal Board Churu Shri S.K. Tak, filed a complaint in the court of the same gentleman who also happened to be the Sub-Divisional Magistrate in Churn. Along with the petitioner three more persons namely Sugansingh, Madanlal and Mst. Ghewari were prosecuted. Four witnesses were examined on behalf of the prosecution to prove that the petitioner was the owner of the hotel which was being run without a licence and that the above mentioned contravention of the rules framed under the Act were noticed by the Food Inspector.

3. The petitioner denied the allegations and stated that he was not the owner of the hotel and had been falsely implicated by Shri Mangilal Food Inspector with whom he was on inimical terms. He stated that Shri Mangilal had also filed a case of theft against him.

4. Before the learned Sub-Divisional Magistrate it was only contested that the other two persons namely Madanlal and Mst. Ghewari had no concern with the hotel. On the evidence on record the learned Sub-Divisional Magistrate came to the conclusion that Madanlal and Mst. Ghewari had no concern with the hotel and acquitted them. However, he convicted the petitioner and Sugan Singh for contravention of Rules 49 and 50. Conviction of both of them was upheld by the learned Additional Sessions Judge who discussed the evidence of the prosecution witnesses and came to the finding that the petitioner was the owner of the hotel.

Sugansingh did not Me any revision application against his conviction. Only the petitioner has come to this Court in revision and it is contended by his learned counsel that his trial is vitiated because Shri S.K. Tak who tried this case as Sub-Divisional Magistrate was disqualified from trying it in view of the fact that he had accorded sanction for prosecuting the petitioner and in that order he gave expression of his view that an offence under Section 16(1)(a)(i) had been committed. Reference in this connection is made to illustration under Section 556 of the Criminal Procedure Code. Reliance is also placed on Emperor v. Bisheshar Bhattacharya, (1910) ILR 32 All 635, Deendayal v. Emperor, AIR 1917 Nag 64, Muhammad Bakhsh v. Emperor, AIR 1929 Lah 718 and Emperor v. Valli Mohammad, AIR 1948 Bom 72(1) (FB). It is next contended that there is no proof on the record that the petitioner was the owner of the hotel.

5. Section 556 of the Code is as follows:

'Case in which Judge or Magistrate is personally interested:--

No Judge or Magistrate shall, except with the permission of the Court to which an appeal lies from his Court, try or commit for trial any case to or in which he is a party, or personally interested, and no Judge or Magistrate shall hear an appeal from any judgment or order passed or made by himself.

Explanation:--A Judge or Magistrate shall not be deemed to be a party or personally interested, within the meaning of this section, to or in any case by reason only that he is a Municipal Commissioner or otherwise concerned therein in a public capacity, or by reason only that he has viewed the place in which an offence is alleged to have been committed, or any other place in which any other transaction material to the case is alleged to have occurred and made an inquiry in connection with the case.

Illustration: A, as Collector, upon consideration of information furnished to him directs the prosecution of B for a breach of the Excise Laws. A is disqualified from trying this case as a Magistrate.'

The section is based on the principle that no man can be a Judge in his own cause (*memo debet esse judex in propria causa*). Explanation to Section 556 shows that the Judge or Magistrate shall not be deemed to be a party or personally interested in any case by reason only that he has been otherwise concerned with it in another public capacity. From the illustration given under Section 556 it appears that an officer who directs the prosecution of an accused becomes disqualified from trying the case as a Magistrate and in that case the explanation will not be applicable. The question therefore is whether the present case falls within the explanation or is hit by the illustration to Section 556 of the Code of Criminal Procedure. In *Rameshwar Bhartia v. State of Assam*, AIR 1952 SC 405 where a similar question came up for consideration, their Lordships of the Supreme Court held that:

'Where a Magistrate, who had granted a sanction for prosecution of the accused under Section 38 of the Assam Food Grains Control Order in his capacity as a Director under that Order, tries the case himself, the trial is not rendered illegal, as it cannot be said that by reason of granting such sanction he had become 'personally interested' in the case within the meaning of Section 556, Criminal P. C.' Their Lordships pointed out that 'a sanction for prosecution does not stand on the same footing as a direction for prosecution. In both cases of sanction and direction, an application of the mind is necessary, but there is this essential difference that in the one case there is legal impediment to the prosecution if there be no sanction, and in the other case, there is a positive order that the prosecution should be launched. For a sanction, all that is necessary for one to be satisfied about is the existence of a *prima facie* case. In the case of a direction a further element that the accused deserve to be prosecuted is involved. The fulfilment of a technical requirement imposed by a statute may not, in many cases, amount to a mental satisfaction of the truth of the facts placed before the officer. Whether sanction should be granted or not may conceivably depend upon considerations extraneous to the merits of the case. But where a prosecution is directed, it means that the authority who gives the direction is satisfied in his own mind that the case must be initiated. Sanction is in the nature of a permission, while a direction is in the nature of a command.'

6. In view of this decision it is therefore, settled that an officer who grants sanction for the prosecution of the accused does not become personally interested and is not disqualified from trying the case as a Magistrate. In other words such a case falls within the explanation to Section 556 of the Code and not under the illustration to that section.

7. In Bisheshar Bhattacharya's case, (1910) ILR 32 All 635 the Magistrate who tried the case had ordered the prosecution of the accused as President of the octroi sub-Committee of Municipal Board and with the consent of the accused had tried it. It was held that:

'The Magistrate must be deemed to have been personally interested within the meaning of Section 556 of the Code of Criminal Procedure and was not qualified to try the case of the applicant, whose consent could not confer jurisdiction upon him.'

In Deendayal's case, AIR 1917 Nag 64 the applicants were tried and convicted of an offence under the C. P. Municipal Act, for an encroachment upon Municipal land by a Magistrate, who in his capacity as President of the Municipal Committee at whose instance the prosecution was started took part in promoting the prosecution by concurring in the sanctioning of the same. It was held that:

'The Magistrate was disqualified under Section 556, Criminal P. C. from trying the case of reason of the existence of the personal interest over and above what might be felt by every Municipal Commissioner in the affairs of the Municipality.'

In Muhammad Bakhsh's case, AIR 1929 Lah 718, the Magistrate who had tried the case had presided over the meeting of the Municipal Committee in which a resolution for prosecuting the accused was passed. It was therefore, held that 'he was disqualified from trying the case.'

8. All these cases are therefore, distinguishable because in all of them the prosecution was directed by the Magistrate himself and therefore the case fell within the ambit of illustration to Section 556 of the Code.

9. In Valli Mohammad Sheikh Mohammad's case, AIR 1948 Bom 72 a warrant was issued by a Magistrate under the Bombay Prevention of Gambling Act and the case against the accused was tried by the same Magistrate. It was held by a Bench consisting of Chagla and Gajendragadkar, JJ. as their Lordships then were that:

'It is wrong in principle that the Magistrate who issues the warrant under Section 6 should be the same judicial authority who should try the accused who has the right to challenge the validity or propriety of that very warrant. Section 556, Criminal P. C. does not apply to such a case but a more important and a more fundamental legal principle is involved. The trial by the Magistrate who issues a warrant is therefore vitiated.'

I am therefore, of the view that the decision of the Supreme Court in Rameshwar Bhartia's case, AIR 1952 SC 405 fully governs this case and the trial cannot be held to have been vitiated on the ground that Shri S.K. Tak in his capacity as Administrator of Municipal Board, Churu had given sanction for the prosecution of the petitioner.

10. Learned counsel for the petitioner says that the order passed in this case does not merely amount to sanctioning the prosecution of the petitioner, but is a direction to the Food Inspector to file a complaint against him. In my view this is not so. It is true that the complaint for contravention of the provisions of the Act can be filed by the local authority itself but such complaint can also be filed by the written consent of the local authority. In the present case the Food Inspector filed the complaint with the consent of the Administrator. The complaint was lodged on the initiative of the Food Inspector and because he could not himself file the complaint without the consent of the local authority he obtained it from the Administrator. Under these circumstances it cannot be said that the Administrator directed the prosecution of the petitioner. It will only amount to giving of consent for the prosecution of the petitioner on the request of the Food Inspector. I must confess that in a similar matter which came before me in Chamber where the parties or their counsel were not present, I directed a retail holding that it was opposed to the principles of natural justice that a Magistrate who in his capacity as

Administrator of the Municipal Board gives sanction for the prosecution of an accused, should try the case himself as a Magistrate. At that time the above decision of the Supreme Court was not in my view. All the same I must say that though Section 556 of the Code does not strictly apply to the case the learned Sub Divisional Magistrate would have been better advised if he had not tried the case himself and had left it to be tried by some other Magistrate. As was observed by Lush, J. in *Serjeant v. Dale*, (1877) 2 QBD 558 that: --

'The law does not measure the amount of interest which a Judge possesses. If he has any legal interest in the decision of the question one way he is disqualified, no matter how small the interest may be. The law, in laying down this strict rule, has regard not so much perhaps to the motives which might be supposed to bias the Judge as to the susceptibilities of the litigant parties. One important object, at all events, is to clear away everything which might engender suspicion and distrust of the tribunal, and so to promote the feeling of confidence in the administration of justice which is so essential to social order and security.'

Similarly, it was held by the Calcutta High Court in *Sudhindra Nath Dutt v. The State*, AIR 1957 Cal 677 that :--

'Merely because the trial Judge had previously as Legal Remembrancer, settled the draft of the order according sanction or merely because he had had some part in allotting the case for the purpose of a previous trial to some other tribunal or merely because he had arranged for the accommodation of that tribunal, it cannot be said that he had become personally interested in the sense of becoming interested in the success of the prosecution'.

But the learned Chief Justice observed without making any reflection of any kind at all on the impartiality of the Learned Judge or any doubt as to the absolute fairness of the trial held by him that he would perhaps have exercised his judicial discretion better, if he had acceded to the prayer made to him by the appellant and had not presided over the trial. Learned chief Justice observed that:

'Perhaps the most highly prized asset of any civilised system of jurisprudence is the fairness of the trials held under its provisions. Such fairness does not merely

mean fairness in fact but includes the appearance of fairness to all concerned including particularly the accused to whom no cause is given to form or entertain any reasonable apprehension that he may not be fairly dealt with.'

I therefore, overrule the first objection.

11. As regards the second objection it may be pointed out that though Shri Mangilal Food Inspector had no personal knowledge about the petitioner being the owner of the hotel and if the case had rested only on the information which he received from Samandarsingh it would have been difficult to maintain the conviction of the petitioner. But there is evidence on record of Roopchand (P. W. 3) and Malaji (P. W. 4) who stated that the petitioner was the owner of the hotel. Their evidence has been believed by the learned Additional Sessions Judge and as stated earlier it appears to have been conceded before the trial Magistrate that the petitioner alone was the owner of the hotel. In view of this finding it is not open to the learned counsel to agitate this question in this Court that the petitioner had not been proved to be the owner of the hotel. It is clear that the petitioner had no licence with him and he had also committed contravention of the rules as mentioned above.

12. Thus there is no ground to interfere with the conviction of the petitioner. As regards the sentence, the sentence already undergone by him and a fine of Rs. 300 imposed by the trial court will meet the ends of justice. In default of payment of fine he will undergo imprisonment as ordered by the trial court.

13. The revision is partly allowed, conviction is maintained, but the sentence is reduced as stated above. The petitioner is on bail and he need not surrender to it. One month's time is allowed for payment of fine.

14. Prayer for leave to appeal to the Supreme Court is refused.