

Badri Vs. the State

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Court : Rajasthan

Decided On : Mar-06-1965

Reported in : AIR1966Raj203; 1966CriLJ1057

Judge : Kan Singh, J.

Acts : Rajasthan Municipal Act, 1959 - Sections 67; [Prevention of Food Adulteration Act, 1954](#) - Sections 7, 16(1) and 20(1); [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 221(7) and 342(1)

Appeal No. : Criminal Revn. No. 63 of 1964

Appellant : Badri

Respondent : The State

Advocate for Def. : Amrit Raj, Dy. Govt. Adv.

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

Disposition : Reference partly accepted

Judgement :

ORDER

Kan Singh, J.

1. The revision before me is by one Badri and is directed against an appellate Judgment of the learned Sessions Judge, Jaipur City, dated 8-2-64 by which the learned Judge upheld the conviction of the petitioner and the sentence of imprisonment passed against him for an offence under Section 7/16 of the Prevention of Food Adulteration Act, 1954, hereinafter to be referred as the 'Act', by the Municipal Magistrate, First Class, No. 2, Jaipur City, who sentenced him to one year's rigorous imprisonment and a fine of Rs. 2,000; though in doing so the learned Sessions Judge, reduced the sentence of fine from Rs. 2,000 to Rs. 500, and in default awarded further rigorous imprisonment for three months only. Shortly stated the facts are these;

The accused petitioner holds a licence for selling milk and on 30-8-82, he was checked by Shri Satya Narain Sharma, Food Inspector in front of Sawai Mansingh Hospital at Jaipur when he was carrying two drums of milk. The Inspector took a sample from one of the drums and paid Rs. 0. 37 N.p. as the price of the sample and obtained a receipt Ex. P-1 in the presence of two motbirs. The Food Inspector then divided the sample so taken by mm and put it in several phials and sealed them in the presence of the motbirs and the accused. One phial was handed over to the accused while out of the other phials one was sent to the Public Analyst for examination and third one was submitted in court. As the report of the Public Analyst showed that the sample of milk was adulterated, the Food Inspector lodged a complaint for an offence under Section 16(1)(a) read with Section 7(i) of the Act, against the accused after obtaining the requisite sanction under Section 20 of the Act, from the Chairman of the Municipal Council, Jaipur.

The accused admitted that he was carrying two drums of milk and the Food Inspector Shri Satya Narain Sharma had taken the sample from one of the drums and had paid him for it. But, he stated that he was not the owner of the drum containing milk from which sample was taken and it belonged to one Moolia who had given it to him simply for the purpose of carrying the same to one Gulabchand, with whom Moolia had a prior arrangement. Thus, his stand was that the drum that he was having was not meant for sale by him, but he was simply a carrier thereof on behalf of Moolia and the same was to be handed over to one Gulabchand in Kundigaron-ke-Ghar-ka-Rasta, Johri Bazar, Jaipur. He proceeded to say that as

the Food Inspector wanted to take the sample he pointed out to him that the drum did not belong to him but to Moolia and he never wanted to sell the contents thereof.

The prosecution examined in all four witnesses. P. W. 1 Satya Narain Sharma was the Food Inspector who stated the facts as mentioned above in narrating the prosecution story. P. W. 2 Ramgopal and P. W. 3 Arjun Lal were the motbirs in whose presence the Food Inspector Shri Satya Narain Sharma took a sample of the milk from the drum which was being carried by the accused and paid for it. P. W. 4 was Shri Shyam Beharilal Saxena the President of the Municipal Council, Jaipur, at the material time and he stated that he had sanctioned the present prosecution under Section 20 of the Act and this he did in exercise of the authority delegated to him by the Municipal Council, Jaipur, vide its resolution Ex. P-7. The accused examined himself as his witness under Section 342-A of the Code of Criminal Procedure and in his statement as D. W. 1 he narrated the facts as mentioned above while stating his line of defence. D. W. 2 was Gulabchand who stated that he had asked Moolia to bring him about 10 seers of milk on that day as it was required in connection with the preparation of 'Khir' (rice pudding) on account of the anniversary of his mother. He further stated that Moolia himself did not come with the milk but the same was brought to him in a drum by the accused Badri who also gave him a receipt of Re. 0.87 nP., as according to him the Food Inspector had taken a sample from the drum and had paid this amount as its price.

D. W. 3 was Moolia who has supported the story given by the accused about the ownership of the drum. According to Moolia, the milk and the drum belonged to him and the accused was simply conveying it to his customer D. W. 2 Gulab Chand. D. W. 4 was Gulab Singh who stated that he was present at the time the Food Inspector took the sample from the drum which was being carried by the accused. According to him, the accused mentioned to the Food Inspector that the milk did not belong to him and he was simply carrying it for Moolia to be delivered at the house of Gulab Chand D. W. 2.

2. In assailing the judgment of the learned Sessions Judge the learned counsel for the petitioner submits that in the first place the proceedings taken against the

petitioner are vitiated for want of a proper sanction from the competent authority namely, the Municipal Council, Jaipur, as required by Section 20 of the Act. He maintains that the sanction Ex. P-7, purporting to have been given only by the Chairman of the Council, was not a valid sanction in conformity with Section 20 of the Act. Secondly, it is urged that as it has been established from the evidence on the record that the accused was only a carrier of milk belonging to another person namely, Moolia and he was not to sell it the offence under Section 16 of the Act was not made out against the accused petitioner.

In this regard it is urged that both the learned trial Magistrate as well as the learned appellate Judge have overlooked certain important features of the evidence and have consequently come to an erroneous conclusion. In particular it is pointed out that they were clearly in error in thinking that the plea taken by the accused that the milk belonged to Moolia was an after-thought. The learned counsel read to me the entire evidence in the case and I propose to deal with this matter at the appropriate place.

3. As to whether the sanction Ex. P-7, accorded by the Chairman of the Municipal Council, Jaipur, was a proper sanction within the meaning of Section 20, will depend upon a consideration of the relevant provisions of the Act, as well as the provisions of the Rajasthan Municipalities Act, 1959, the provisions of which I propose to read.

Section 20 of the Act provides:--

'Section 20, Cognizance and Trial of Offences:--(1) No prosecution for 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 a local authority:

Provided that a prosecution for an offence under this Act may be instituted by a purchaser referred to in Section 17 if he produces in Court a copy of the report of the public analyst along with the complaint.

(2) No Court inferior to that of a Presidency Magistrate or a Magistrate of the First Class shall try any offence under this Act'.

The term 'local authority' has been defined by Section 2(viii) to mean in case of

'(1) Local area which is (a) a municipality, the municipal board or municipal corporation, (b) a cantonment, the cantonment authority; and (c) a notified area, the notified area committee.'

4. Now it is argued that the words 'a person authorised' in this behalf by the State Government or a local authority' as used in Section 20, Sub-section (1) of the Act cannot be construed to mean that a general authorisation in favour of that person by the State Government or a local authority will be sufficient for the purpose. This authorisation according to learned counsel, will have to be given separately for each case as and when the occasion for according sanction by that person authorised arises. Reliance is placed in this behalf by the learned counsel on K.G. Anjaneyalu v. Chairman, Puri Municipality, AIR 1903 Orissa 158. The learned Chief Justice who was dealing with a complaint filed by Chairman of the Municipality in pursuance of a general resolution of the Board while construing the words 'in this behalf' observed as follows:--

'Under Section 2(31), General Clauses Act and Section 2(viii)(1)(a), Prevention of Food Adulteration Act, a municipality is a local authority within meaning of Section 20 of Prevention of Food Adulteration Act.

The language of the Sub-section (1) of Section 20 makes it clear that the initiation of a prosecution against the offender should be (i) by the municipality, or (ii) by some one with the consent of the municipality, or (iii) by a person authorised in this behalf. The words 'in this behalf' in the sub-section seem to require that the authorisation of the person to initiate prosecution must be with special reference to the particular case under the Prevention of Food Adulteration Act that was placed before the Municipality.

A general authorisation given long ago by a resolution of a Municipal Council at its general meeting, authorising the Chairman to file and conduct all sorts of litigation

on behalf of the Municipality is not sufficient. In such a case, therefore, the Chairman of the Municipality cannot be said to be a person authorised in this behalf by the Municipality.'

The learned Chief Justice in making the observation made reference to *Gour Chandra Rout v. Public Prosecutor, Cuttack*, AIR 1963 SC 1198. In the Supreme Court case their Lordships were dealing with the requirement of a sanction for a complaint filed by a Public Prosecutor in respect of certain defamatory passage contained in a newspaper scandalising the Governor. In that case their Lordships observed that the first requirement of Section 198-B (3) of the Code of Criminal Procedure was that the Governor should have sanctioned the lodging of the complaint and the other was that the sanction should be accorded by a Secretary to the Government authorised by the Governor in this behalf. The following passage from the judgment will bring out the rationale of that case:--

'There are two restrictions placed upon the power of the Public Prosecutor to lodge a complaint with respect to defamation of a high dignitary such as the Governor. The first is that he must have been given a sanction to lodge such complaint and the other is that the sanction should be accorded by a Secretary to the Government, authorised by the Governor in this behalf. This means that the Governor has first to consider for himself whether the alleged defamatory statement is of a kind of which he should take notice and seek to vindicate himself or whether the defamatory statement being of a trivial nature or having been by an irresponsible person or for some other reason should be ignored. This decision has to be taken by the Governor himself and he cannot leave it to some other person or an authority like the Government to decide whether a complaint should be lodged or not.'

To my mind this case will not be of much assistance in construing the provisions of Section 20 of the Act, the frame of which is not identical with the provision of Section 198-B of the Code of Criminal Procedure which their Lordships had to deal with. The provisions of Section 20 can be analysed like this: No prosecution for an offence under this Act shall be instituted except by or with the written consent of (i) the State Govt. or (ii) a local authority, or (iii) a person authorised in this behalf by

the State Government or a local authority. Now, so far as the question of authorisation that is dealt with here under (iii) is concerned, it is an authorisation by an executive act of the State Government or a local authority. This will not cover a case where the power is exercisable by a functionary in accordance with the provisions of the statute, itself. The term 'local authority' has been defined to mean the Municipal Council or Board. Now a Municipal Board is an amorphous entity and it can function only in accordance with the statute that brings that body into being.

The Board functions in several respects through the members thereof acting in a body and in other respects it functions through smaller committees and yet in certain other specified matters it can function through the Chairman or the Vice-Chairman or any of its officers. Now the local authority functioning at Jaipur was the Municipal Council for the Jaipur City which is a creature of the Rajasthan Municipalities Act, 1959. The Rajasthan Municipalities Act, 1959 makes elaborate provisions for the conduct of its business including the functions of the Chairman. Section 67 of the Rajasthan Municipalities Act, which defines the functions of the Chairman, is as under:--

'Section 67. Function of Chairman. It shall be the duty of the Chairman of a Board. (a) to convene and preside, unless prevented by reasonable cause, at all meetings of the board and subject to the provisions or the rules for the time being in force under Clause (a) of Section 88 to regulate the conduct of business at such meetings;

(b) to watch over the financial and executive administration of the board and bring to the notice of the board any defect therein;

(c) to perform all the duties and exercise all the powers specifically imposed or conferred upon him by or delegated to him under and in accordance with this Act;

(d) subject to the provision of Section 78 and of the rules for the time being in force, to perform such other executive functions as may be performed by or on behalf of the board over which he presides;

(e) to exercise supervision and control over the acts and proceedings of all officers and servants of the board in matters of executive administration and in matter concerning the accounts and records of the board, and subject to the rules for the time being in force, and to the provisions of Chap. XIII, to dispose of all questions relating to the service of the said officers and servants, and their pay, privileges and allowances;

(f) to furnish to such officer as may be appointed or authorised by the State Government in this behalf, a copy of every resolution passed at any meeting of the board; and

Notes

Copy of every resolution shall be furnished under Clause (f) to the Director of Local Bodies, Rajasthan, vide Notification No. F 4 (34) LSG/ 59, dated 25-11-59.

(g) to furnish any extract from the minutes of the proceeding of the board or of any committee or other document or thing which the officer, appointed or authorised by the State Government in this behalf, from time to time, calls for under Section 283.'

It will be seen that under Sub-section (d) the Chairman is authorised to perform such other executive functions as may be performed by or on behalf of the board over which he presides, though that is made subject to the provisions of Section 78, and of the rules for the time being in force. Section 78, which empowers the board to delegate its powers, duties and functions, runs as under:--

'Section 78. Powers, duties and functions which may be delegated--(1) Any powers, duties or executive functions which may be exercised or performed by or on behalf of the board may be delegated, by the board to the Chairman or to the Vice-Chairman or to the executive officer or to the secretary or to the chairman of any committee or to one or more stipendiary or honorary officers. Without prejudice to any powers that may have been conferred on any committee by or under Section 73; and each person, who exercises any power or performs any duty or function so delegated shall be paid all expenses necessarily incurred by him therein.

(2) When the office of a chairman becomes vacant and there is no vice-chairman to take over, the board shall delegate the powers, duties and executive functions of the chairman to such member of the board as it thinks proper to be exercised by him till a chairman is elected in accordance with the rules in force.'

It is not open to doubt that the matter of according sanction for prosecution is nothing but an executive function of the board and there is no resolution under Section 78 of the Rajasthan Municipalities Act, 1959, which, in any manner takes away the power of the Chairman of the board under Section 67 (d), nor have any rules been brought to my notice as would fetter the exercise of this power in any manner by the Chairman. The resolution of the Board Ex. P-7, adverted to by Shri Saxena P. W. 4, not only does not restrict the Chairman's powers under Section 67 (d), but it only advances them. Indeed the Chairman does not need any delegation of this power and for him it is a superfluity. In view of the provisions of Section 67 (d) of the Rajasthan Municipalities Act, therefore, it cannot be said that the Chairman will come in the category of a person authorised in this behalf by the local authority' within the meaning of Section 20 of the Act. In my view when the Chairman is exercising his statutory powers in accordance with Section 67 of the Rajasthan Municipalities Act, for and on behalf of the Municipal Council over which he presides he is functioning as the Municipal Council or local authority itself. Shri V.S. Dave himself very fairly at this stage placed before me a decision of the Allahabad High Court, *Kishenlal v. Emperor*, AIR 1928 All 254, which lends support to my above observations. The learned Judge in dealing with similar provisions of the U. P. Municipalities Act (No. 2 of 1916), vis-a-vis the provisions of the Prevention of Food Adulteration Act made the following observations:--

'In view of Section 50 (e) it makes no difference to the legality of the sanction that the Board expressed itself against prosecution. In such a case the Chairman is the Board and his act binds the Board. The policy of the Municipalities Act, is to enable certain functions of the Board to be exercised by the Chairman so as to avoid the delay necessitated by reference of the matter to the Board. Section 12. Prevention of Adulteration Act (U. P. Act 6 of 1912), which is a general provision as to sanctions of prosecution for adulteration cannot control Section 50 (e), Municipalities Act, for two reasons. One is that a general enactment cannot affect

a special one; and the other reason is that the latter Act, was passed later than the former one.'

In these circumstances I am unable to hold that the sanction accorded by the Chairman of the Jaipur Municipal Council, Shri Saxena P. W. 4, was in any way defective on account of the alleged lack of competence on his part to accord the same on behalf of the Council.

5. Turning now to the other question argued before me I have to observe that even if the version of the accused that the milk belonged to Moolia and accused was only conveying it to another person were to be accepted, that will not help the accused for showing that no offence under Section 16 of the Act was committed by him. The term 'sale' is defined in Section 2(xiii) of the Act as under:

2. 'Sale' with its grammatical variations and cognate expressions, means the sale of any article of food, whether for cash or on credit or by way of exchange and whether by wholesale or retail, for human consumption or use, or for analysis and includes an agreement for sale, an offer for sale, the exposing for sale or having in possession for sale of any such article and includes, also an attempt to sell any such article.'

Now, both the courts have held that the sample was purchased by the Food Inspector from the accused and he accepted the price thereof. It is not necessary under the law that the person who sells an adulterated article should himself be the owner thereof. The gravamen of the charge under Section 16 of the Act is the sale of adulterated article and the ownership of such article is wholly immaterial to the consideration of the question about the sale. Now, no provision of the Act to my mind, made it incumbent on a person to sell the article or for that matter to accept the price thereof. Section 10 of the Act, which defines the powers of the Food Inspector, empowers the Food Inspector to take samples of any article and this he can do from any person selling such articles, or from any person who is in the course of conveying such article to a purchaser or consumer. The relevant portion of Section 10 of the Act reads as under:

'Section 10(1). A food Inspector shall have powers:

(a) to take samples of any article of food from;

(i) any person selling such articles;

(ii) any person who is in the course of conveying, delivering or preparing to deliver such article to a purchaser or consumer;

(iii) a consignee after delivery of any such article to him; and XX XX XX XX.'

Section 11 of the Act contains the procedure to be followed by a Food Inspector in taking samples. That section too nowhere requires the person in possession of the food articles to sell them. Section 16(1)(b) no doubt provides that if a person prevents a Food Inspector from taking a sample as authorised by this act, then he commits an offence under that section. But, here again it is really the prevention of taking a sample as authorised by this Act which had been made an offence and it will not mean that if a person were merely to refuse to accept the price of the sample or for that matter decline to enter into a transaction of sale he will be thereby acting in contravention of the law.

It has not been brought out in the present case that the accused was unwilling to sell any sample and that this was really forced on him. On the contrary, the conduct of the accused on his own showing was that he took the money to the so-called owner of the commodity namely, D. W. 2 Gulabchand. I am, therefore, satisfied that both the courts have reached the correct conclusion that the sample was sold to the Food Inspector by the petitioner accused and this amounts to a sale as defined by the Act, because the sale here was clearly for the purpose of analysis. The accused has, therefore, been rightly convicted of an offence under Section 16(1) of the Act. He has been awarded the sentence of imprisonment because this was considered to be his second offence within the meaning of Section 16(1)(ii) of the Act. The relevant provisions thereof read as under:

'Section 16(1)(ii). For a second offence with imprisonment for a term which may extend to two years and with fine.'

It is plain that the offence which can be said to be the second offence must have been committed after the so-called first offence was committed. In other words, the

commission of the first offence must be anterior to the commission of the so-called second offence. It is also necessary that this should be brought out both in the charge as well as in the examination of an accused under Section 342 of the Code of Criminal Procedure. Now, a perusal of the charge framed against the accused in the present case does not disclose as to when the so-called first offence was committed. Though it has been put in the charge that the conviction for the so-called first offence was made prior to the framing of the charge.

This, to my mind, was not enough to meet the clear requirements of the law. Then, the accused has not been questioned about the date of the commission of the so-called first offence. Apart from everything this Court has taken the view that in interpreting the provisions of Section 16 of the Act the term 'second offence' should be construed to mean that the offence which has been committed after the offender had been convicted for the first offence and similar meaning should be given to the third and subsequent offences. In *State v. Badri, D. B.* Criminal Ref. No. 279 of 1963, dated 18-12-1964: (AIR 1965 Raj 152) it was observed as follows:

'We are of the opinion that in interpreting the law which provides the enhanced penalty the legal meaning of the phrase used therein should prevail over the grammatical construction thereof. We are of the opinion that the phrase 'the second offence' should be construed as that offence which has been committed after the offence, and similar meaning should be given to 'the third and subsequent offences'. This meaning, in our opinion, shall be in consonance with the object for which this provision has been enacted in the law.'

Now, in the present case the offence was alleged to have been committed on 30-8-1962; whereas the conviction for the so-called first offence was made on 12-11-1962. This clearly means that the offence committed by the accused cannot be said to be the second offence within the meaning of Section 16(1)(ii) of the Act. Consequently the two courts were clearly in error in holding the accused liable for the enhanced penalty under Section 16(1)(ii) of the Act.

6. The result is that while maintaining the conviction of the accused for the offence under Section 16(1) of the Act, the sentence of Imprisonment has to be reduced to

that already suffered by the accused petitioner. The sentence of fine will also have to be reduced in view of the circumstances disclosed in the evidence. Inasmuch as the accused was only carrying the drum from which sample was taken for another and was himself not supposed to sell it, a sentence of a fine of Rs. 100 should meet the ends of justice.

7. Accordingly I partially accept the revision and while maintaining the conviction I reduce the sentence of imprisonment to that already undergone and that of fine to Rs. 100 only; in default the accused shall undergo one month's simple imprisonment. One month's time shall be allowed to the accused to deposit the fine, if he has not already done so, from this date.

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