

Mahadeo Vs. State

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Court : Rajasthan

Decided On : Jan-20-1971

Reported in : 1971CriLJ1768; 1971(4)WLN6

Judge : Kan Singh, J.

Appellant : Mahadeo

Respondent : State

Judgement :

ORDER

Kan Singh, J.

1. This is a revision application by one Mahadeo. He was convicted by the Municipal Magistrate, Jodhpur of an offence Under Section 7/16 of the Prevention of Food Adulteration Act, 1954, hereinafter to be referred as the 'Act', and sentenced to one year's-rigorous imprisonment with a fine of Rs. 200/-, in default to undergo three months' simple imprisonment. His appeal was partially allowed by the learned Additional Sessions Judge No. 2, Jodhpur, who maintained the conviction but reduced the sentence to six months' rigorous imprisonment and a fine of Rs. 1000/-, in default three months' simple imprisonment.

2. The accused is a dealer in food articles in the city of Jodhpur. On 23-2-1966, the Food Inspector, Shri Laxman Singh (P.W. 1) went to the shop of the accused

and took samples of 'Til' oil and 'Sarson' (mustered) oil for payment, for analysis. He prepared the Memo and divided the samples in three phials as usual. One phial of each sample was given to the accused, two phials of each sample were sent to the Public Analyst at Jaipur and the remaining phials were kept with the local authority. The sample of 'Til' oil was found to be alright by the Public Analyst, but in the sample of 'Sarson' oil it was found that the saponification value was 181.1, when according to the prescribed standard it should have been between 168 and 175. Consequently a complaint was lodged by the Food Inspector in the court of the learned Municipal Magistrate with the result mentioned at the outset.

3. At the forefront of his argument learned Counsel for the petitioner has taken the point that the prosecution of the accused was without proper sanction or written consent of the competent authority as the order Ex. P/5 did not fulfil the requirements of law may deal with that question at this point. Section 20 of the Act reads as under:- '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 Central Government or the State Government or a local authority or a person authorised in this behalf, by general or special order, by the Central Government or 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 12, if he produces in court a copy of the report of the public analyst along with the complaint.(2) The court inferior to that of a Presidency Magistrate or a magistrate of the first class shall try any offence under this Act.

3A. For appreciating the contention I may read in full the order Ex. P/5:-

MUNICIPAL COUNCIL JODHPUR.

SANCTION

With the powers enjoined by me as the Chairman, Municipal Council, Jodhpur under the Rajasthan Municipalities Act, 1959, am competent to give sanction Under Section 20 of the Prevention of Food Adulteration Act, 1954.

I...Sukh Singh Bhati...after applying my mind to the facts and documents of this case and being convinced that a case is made out against Shri Mahadev s/o Tehal Ram hereby sanction launching of prosecution of Ma'hadev s/o Tehal Ram Under Section 7/16 of the Prevention of Food Adulteration Act, 1954. and of the rules made under this act in the court of law in the interest of justice and fair play. Sd/-Chairman,Seal of local (Local Authority)Authority. Municipal Council,Jodhpur.Sd/-

4. learned Counsel submits that the order Ex. P/5 is in a printed form. It does not show that the evidence in the case and specially the report of the Public Analyst had been perused by the Chairman of the Municipal Council before signing Ex. P/5 which more or less appears to be a mechanical act of the Chairman. learned Counsel maintains that before giving his 'written consent' for the launching of the complaint or prosecution it was the duty of the competent authority to have perused the evidence collected by the Inspector including the report of the Public Analyst and it is only after it was prima facie satisfied that the case was such as should be carried to the court that ' it should have given the consent for the prosecution. learned Counsel relied on Mithan Lai v- State 1968 Raj LW 54 : (1968 Cri LJ 431) and State of Bombay v. Purshottam Kaniyalal : [1961]1SCR458 fortify his contention. learned Counsel for the State, on the other hand, relied, on Shivraj v. Delhi Administration : 1969 CriLJ1 and Dhain Singh v. Municipal Board Saharanpur. : 1970 CriLJ492 .

5.' In 1968 Raj LW 54 : (1968 Cri LJ 431), decided by me. the question that came up for consideration was about the validity of a sanction for prosecution given Under Section 6 of the Prevention of Corruption Act, 1947. After reviewing cases of the Supreme Court and of the Privy Council it was held that the object of the provision for sanction is that the authority giving the sanction should be able to consider for itself the evidence collected in the case before it comes to a conclusion that the prosecution in the circumstances be sanctioned or forbidden. Further it should be clear from the form of sanction that the sanctioning authority considered the evidence before it and after consideration of all the circumstances of the case sanctioned the prosecution and, therefore, unless the matter can be proved by other evidence, in the sanction itself the fact should be referred for

indicating that the sanctioning authority had applied its mind to the facts and circumstances of the case. '

6. In : [1961]1SCR458 their Lordships of the Supreme Court were considering the scope of Section 20(1) of the Prevention of Food Adulteration Act, 1954 itself. Their Lordships had examined the question as to what is the implication of the words 'written consent' used in the section. In that case the accused had a milk shop in the city of Baroda- The Food Inspector of the Municipality visited the shop of the accused and purchased milk for analysis. On analysis the sample was found to be adulterated. The Inspector then applied to the Chief Officer of Baroda Municipality for his consent for instituting a complaint. A consent in writing to the initiation of proceedings was given by the Chief Officer and thereafter the complaint was lodged.

It was contended before the learned Magistrate that prosecution was incompetent for want of compliance with the provisions of Section 20(1) of the Act. The Magistrate overlooked the objection and eventually convicted the accused. The accused- appealed to the Sessions Judge who set aside the conviction holding that the Food Inspector was not competent to institute the proceedings Under Section 20(1) of the Act. He relied on a decision of the Madras High Court. The matter was then brought up before the High Court of Bombay. by the State. The High Court affirmed the order of the learned Sessions Judge. They, however, disagreed with him in his interpretation of Section 20(1) of the Act that a prosecution could not be instituted with the written consent of any authority other than the State Government. The High Court, however, held that the written consent should name the person who could institute the complaint and that as the consent in that case had not named the Food Inspector as the person authorised to file the complaint, the prosecution was not legally initiated.

This view was challenged by the 'State of Bombay in the special appeal before the Supreme Court. Their Lordships agreed with the High Court that on the terms of Section 20(1) a prosecution could be instituted with the written consent not merely of the State Government but of a local authority or a person authorised in this behalf by the Government or a local authority. Their Lordships pointed out that

on the language of Section no other construction appeared possible. However, their Lordships examined the correctness of the Madras case namely, 1955-2 Mad LJ 465. Their Lordships, however, did not enter into relevant 'scope of the language of 'Section 197 Criminal Procedure Code and Section 20(1) of the Act, but considered the question whether the complainant shall be named in the written consent. It was in this context that their Lordships pointed out that the rule has undoubtedly been designed to prevent the launching of frivolous or harassing prosecutions of traders. It was, therefore, provided that the complaint should be filed either by a named or specified authority or with the written consent of such authority and then their Lordships went into the question as to when a written consent to initiate a proceeding is to be accorded by too competent authority. I may read the relevant observations of their Lordships in full:-

In the first place, the reason of the rule could not suggest or imply such a condition, The rule has undoubtedly been designed to prevent the launching of frivolous or harassing prosecutions against traders. It therefore provides that the complaint should be filed, Either by a named or specified authority or with the written consent of such authority. To read by implication that before granting a written consent, the authority competent to initiate a prosecution should apply its mind to the facts of the case and satisfy itself that a prima facie case exists for the alleged 'Offender being put up before a Court appears reasonable but the further implication that the complainant must be named in the written consent does not, in our opinion, follow. In the present case, the Analyst's Report was before the Chief Officer of the Municipality and it was after considering that report and the connected documents that the written consent or sanction was given. In the second place the sub-section itself contains an indication that the written consent is for the launching of a specified prosecution and not one 'in favour' of a complainant authorising him to file the complaint. Omitting for the moment the State Government and 'the local authority' which are specified in the provision as competent by themselves to initiate prosecutions, persons 'authorised' by these two authorities are further included. The expression 'person authorised in this behalf' obviously refers to a named person who is so authorised. In the case of these four categories, the authority or person filing the complaint has itself or himself to consider the reasonableness and propriety of the prosecution and be

satisfied that the prosecution is not' frivolous and is called for. Turning next to the other class. the relevant words are 'no prosecution shall be instituted except with the written consent of ' Here the emphasis is on the consent to the filing of the prosecution, not to the person filing it. The preliminary examination of the facts to ascertain, the desirability and propriety of the prosecution is in this last case, the responsibility of the person or authority giving the written consent not of the person who figures as the complainant. The two classes are distinct and the employment of different phraseology to designate the two types of devolution of authority constitutes an indication on that in the second class of cases-where , prosecutions are filed on the basis of written consents granted by the competent person or authority, the specification of the name of the complainant is not a statutory requirement the consent being to a specified prosecution, We, therefore, consider that the prosecution in the present case was instituted on a complaint which fulfilled the requirements of Section 20(1) of the Act.

7. It is clear from the above passage that the complainant need not be named in the 'Written consent' , but before giving such written consent the competent authority. should apply its mind to the facts of the case and satisfy itself that a prima face case exists for the alleged offence being put up before a court and it should consider the reasonableness . and propriety of the prosecution and be satisfied that the prosecution is not frivolous and is called for.

8. In : 1969 CriLJ1 which was a case of sanction Under Section 6 of the Prevention of Corruption Act, their Lordships observed that if the order of sanction on the face of it shows which were the facts constituting the offence charged and that the material had been fully and carefully considered by the competent authority then that sanction fulfilled the requirements of law. This decision is in line with Gokalchand Dwarkadas v. The King (A.I.R. 1948 PC 82) and other case of the Supreme Court noticed by me in Mithanlal's case 1968 Raj LW 54= 1968 Cri LJ 431.

9. In : 1970 CriLJ492 , the Food Inspector of the Municipal Board. Saharanpur, lodged the complaint in respect of the accused selling coloured sweets. This he had done under orders of the Municipal Board. The accused was acquitted by the

trial court- Against the acquittal the Municipal Board lodged an appeal as a complainant Under Section 417 (3), Criminal Procedure Code in the High Court. The Government had not preferred the appeal under the first part of Section 417, Criminal Procedure Code. On such appeal the High Court reversed the acquittal and convicted the accused. The accused then went up in appeal to the Supreme Court on special leave being granted. Two contentions were raised before their Lordships the first was that the appeal filed lay the Municipal Board. Saharanpur before the High Court was not maintainable, as the Municipal Board, was not the complainant; and second contention was that the accused could not have been convicted on the strength of the certificate of the Public Analyst annexed to the complaint.

In the present case we are concerned only regarding the first contention. Their Lordships held that where a 'complaint for an offence under the Prevention of Food Adulteration Act was purported to have been filed by the Municipal Board, but it was signed by its Food Inspector, the Municipal Board was competent to file the appeal Under Section 417 (3) of the Criminal Procedure Code because in that event it was the complainant.

Their Lordships pointed out that the Municipal Board itself as Local Authority could have filed the complaint and it was also competent to authorise someone else to file the complaint on its behalf. Where it has authorised its Food Inspector, it would still be the complainant within the meaning of Section 417 (3), Criminal Procedure Code. The question whether the Food Inspector had the authority to file- the complaint in that case on behalf of the Municipal Board, Saharanpur, was not permitted to be raised by their Lordships as it was a question of fact and had not been agitated in the trial court or in the High Court. The learned Counsel for the accused further argued that a permission Under Section 20 of the Act to file a complaint was condition precedent for validly instituting a complaint and, therefore, that condition must be satisfied by the complainant before a court can entertain a complaint. Gokulchand Dwarkadas Morarka's case; (A.I.R. 1948 PC 82) was cited so also earlier case of the Supreme Court-Madan Mohan Singh v. State of U. P. : AIR 1954 SC637 , but their Lordships pointed out that both those decisions deal with the question of the validity of sanction given for the institution of certain

criminal proceedings and the ratio of those decisions had no bearing on the facts of this case. It was in this context that their Lordships observed as follows:-

Under Section 20 of the Prevention of Food Adulteration Act, 1954, no question of applying one's mind to the facts of the case before the institution of the complaint arises as the authority to be conferred under the provision can be conferred long before a particular offence has taken place. It is a conferment of an authority to institute a particular case or even a class of cases. That section merely prescribes that persons or authorities designated in that section are alone competent to file complaints under the statute in question-

For the reasons mentioned above, we- are unable to accept the contention of the accused that the Municipal Board of Saharanpur was not competent to file the appeal.

10. The above observation, no doubt, create an impression that Under Section 20 no question of applying one's mind to the facts of the case before the, institution of the complaint arises, but it has to be remembered that the pointed question .before their Lordships was whether the Municipal Board could be regarded as the complainant for the purposes of Section 417 (3) Criminal Procedure Code. The case of : [1961]1SCR458 does not appear to have been cited before their Lordships. Therefore, it cannot be held that their Lordships had departed from what was said in the earlier case.

The generality of the observations in a case have to be taken to be circumscribed by the particular facts and circumstances of that case and I am unable to come to the conclusion that their Lordships had done away with the requirement of the application of mind by the competent authority where, it. itself does not launch the prosecution, but has given a written consent to someone else to launch the prosecution. In my humble view, both the cases can be reconciled. Where the competent authority, itself launches the prosecution there could hardly be any question of applying its mind separately because in the act of launching the complaint itself it will undoubtedly be applying its mind to the facts and circumstances of the case when it is taking upon itself the task of bringing home the guilt to the accused in a court of law, but where the authority itself does not

launch the complaint but 'gives its written consent of initiating the prosecution in favour of another, then before placing the responsibilities for the prosecution on another the authority giving the written consent must satisfy itself that this is a fit case to be carried to court and for that it has to peruse the evidence and come to the conclusion that there is a prima facie case for prosecution.

In the present case there is no authority given Under Section 20 of the Act to the Food Inspector to launch the prosecution. I have quoted in extenso the order Ex. P/5 and it does not say in so many words that Laxman Singh is authorised to lodge the present complaint which he had done. The sanctioning Chairman, therefore should have complied with the requirements of law as interpreted by their Lordships in A.I.R. 1961 SC 1 namely, that he should have applied his mind to the facts of the case and satisfy himself that a prima facie case existed for the alleged offender being put up before a court.

11. Now the order Ex. P/5 is on a printed form. At the bottom below the signatures of the Chairman there are the initials of someone dated 8th of May. I enquired from learned counsel for the State as to who this Gentleman putting his initial was and he stated at the Bar and I am thankful for it that he was no other than Shri Laxman Singh, Food Inspector. The form of sanction has been filled up by Shri. Laxman Singh. The body of the sanction does not refer to the, present case at all. The impression is irresistible that the act of giving written consent performed by the Chairman was nothing but the mechanical act of rubber-stamping as it were. Such a written consent is not one that is contemplated by law and cannot be taken as a valid written consent for the launching of a complaint by another within the meaning of Section 20 of the Act-. The statement of Shri Laxman Singh is 'that he prepared the papers and submitted them to the Chairman. There is nothing to show that the Chairman considered the papers in his presence and also it is not clear what papers were submitted by him and whether it included the report of the Public Analyst ' or not. I may guard myself against being understood to lay down about the mode of authorisation of a particular person for launching a prosecution. This could be by a general or special order and, if a person, who is authorised by the local authority, lodges the complaint then it will be as if the local authority itself is lodging the complaint and the very act of filing the complaint will be tantamount

to the application of the mind by the person authorised to launch the complaint. But, in, the present case, as. I have already observed-, there is nothing to show that Shri. Laxman Singh had any general or special order in his favour as an authority for lodging the complaint. If that were so, then there. would have been no necessity for the Chairman being approached to give the written consent vide Ex. P/5. In Jaipur Municipality v. Sewan Das A.I.R. 1971 Raj 5 a Division Bench of this Court had pointed out that a Food Inspector could be authorised by the Municipality even by a general order for lodging a complaint, because Section 20 lays down that the local authority could authorise a person by a general or a special order to institute a prosecution by its consent in writing. In the circumstances, therefore, the complaint cannot be said to have been validly instituted.

12. In the result, the revision application is allowed, the conviction and the sentences of the accused are set aside and the proceedings are quashed. The accused shall stand discharged.

13. learned Counsel for the State prayed for grant of a certificate under Article 134(1)(c) of the Constitution for. appealing to the Supreme Court- However, as I have based my judgment on the cases of the Supreme Court, I do not consider it to be a fit case for grant of a certificate. The prayer for the certificate is accordingly hereby refused.