

Rakesh Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jan-24-1986

Reported in : 1987CriLJ1342; 1986(1)WLN715

Judge : Mahendra Bhushan Sharma, J.

Appellant : Rakesh

Respondent : State of Rajasthan

Judgement :

ORDER

Mahendra Bhushan Sharma, J.

1. The short question involved in this revision petition is as to whether in the facts and circumstances of this case the learned Magistrate should have ordered under Section 322 of the Code of Criminal Procedure, that the case should be sent to the Court of Chief Judicial Magistrate, Ajmer or he should have returned the case under Section 201 Cr. P.C. for being presented to a Magistrate having jurisdiction?

2. One Mr. K. V. P. Nair, Health Inspector/Food Inspector, Western Railway, Navli Junction inspected the refreshment stall of M/s Anandilal Khatri at Navli Junction on Dec. 25, 1985. He took a sample of groundnut oil from the owner of the stall. The sample was sent to the Public Analyst and the Public Analyst (Public Health Laboratory) Udaipur, found that the sample was adulterated as it did not conform

to the prescribed standard of purity. After obtaining the sanction for prosecution of the accused-petitioner under Section 20 of the Prevention of Food Adulteration Act, 1954 (for short the Act hereinafter) from the local authority, Western Railway, Ajmer a complaint was filed by the Food Inspector Western Railway Navli against the accused-petitioner in the court of Judicial Magistrate Railways First Class Ajmer Camp Navli Junction for an offence under Section 7/16 of the Act. An objection was raised before the Magistrate that by virtue of Section 16A of the Act he had no jurisdiction to try the case and the learned Magistrate under the impugned order directed that the case be sent to the Chief Judicial Magistrate, Ajmer and the accused should put an appearance before that Court on April 11, 1985.

3. The contention of the learned Advocate for the accused-petitioner is that groundnut oil is an article of food within the meaning of Section 3(v) of the Act and, therefore, the accused is said to have committed an offence by virtue of Section 16A of the Act is to be tried in a summary way by a Judicial Magistrate of the First Class specially empowered in this behalf by the State Government. The Judicial Magistrate (Railways) was not such a Magistrate and, therefore, he could not have tried the accused for an offence under Section 7/16(1) of the Act. According to learned Counsel Section 322 of the Code of Criminal Procedure will only apply in a case where the Magistrate has local or territorial jurisdiction in the first instance only after its taking cognizance of the offence, in the course of an inquiry into an offence or a trial from the evidence it appears to him to warrant a presumption that he has no jurisdiction to try the case or commit for trial, or that the case is one which should be tried or committed for trial by some other Magistrate in the District or that the case should be tried by the Chief Judicial Magistrate, he shall stay the proceedings and submit the case with his report explaining its nature to the Chief Judicial Magistrate or such other Magistrate having jurisdiction as the Chief Judicial Magistrate directs. According to the learned Counsel because the learned Magistrate had no jurisdiction and the offence was exclusively triable by a Magistrate specially empowered in this behalf by the State Government to try in a summary way, the proper course was that the Magistrate should have returned the case under Section 201 of the Code of Criminal Procedure to the Food Inspector for presentation to the proper court having jurisdiction in the matter. In support of

the submission the learned Counsel has placed reliance on a number of authorities. In *Satyanarain v. The State* 1953 Raj LW 472 referring to Section 201 of the Code of Criminal Procedure 1898, it has been held that if the complaint is filed in the court of a Magistrate having no jurisdiction, then the only direction necessary to be made in the case is that the Magistrate should return the complaint for presentation to a proper court under Section 201 Cr. P.C. In *State v. Amritlal* : AIR1964 Guj248 it has been held that where a First Class Magistrate trying a complaint after taking some evidence, finds that he has no territorial jurisdiction to try the case, he must have returned the complaint under Section 201 Cr. P.C. and cannot proceed under Section 346 Cr. P.C. It was further observed that under Section 346 the Magistrate acts only when he takes cognizance of the offence and thereafter feels that the case is covered by any of the clauses and as such should be tried by some other Magistrate or should be committed to the Court of Session. Referring to Section 346 Cr. P.C. 1898 which corresponds to Section 322 of the Cr. P.C. 1973, it was held :-

It does not apply to cases where the Magistrate cannot from the beginning try the case but applies to cases where the Magistrate feels that the case should be fully tried by some other Magistrate although he himself has properly commenced the trial. Section 346 Cr. P.C. does not apply to cases where the Magistrate is not competent to take cognizance which expression is used in Section 201 Cr. P.C, but applies to cases where, although the Magistrate is competent to take cognizance he feels that the case should not be tried or committed for trial by some other Magistrate of his own District.

Mohd. Abbas v. Indra Prakash Kapur AIR 1965 All 626 : 1965 (2) Cri LJ 740 is also a case in which similar view has been taken and it has been held that Section 346 comprehends all cases of absence of local or territorial jurisdiction. In the two cases *A. N. Deen v. K. D. Jacob* 1980 Cri LJ NOC 130 (Ker) and *Upendara Kumar Joshi v. Manaklal Chatterjee* (1981 Cri LJ NOC 12) (Pat) the same position of law has been enunciated.

4. It will be clear from the perusal of Section 322 and Section 201 of the Cr. P.C. 1973, that the former section will only apply when the Magistrate has initially

jurisdiction and in the course of an inquiry into an offence or trial from the evidence it appears to him to warrant a presumption that he has either no jurisdiction or the case is one which should not be tried by him or should be committed for trial or should be tried by the Chief Judicial Magistrate that he has to stay the proceedings and submit the case with his report explaining its nature to the Chief Judicial Magistrate. The Chief Judicial Magistrate either should try the case himself or should send the case to any Magistrate subordinate to him having jurisdiction. In case the Magistrate has initially no jurisdiction or is not competent to take cognizance of the offence, Section 322 of the Code of Criminal Procedure will not be attracted and in such a case the only course open will be to return the complaint under Section 201 Cr. P.C. to the complainant for presentation to the proper court.

5. In the instant case a very look at Section 16(1) of the Act will show the offence being one under Section 7/16(1) of the Act is to be tried in a summary way by a Judicial Magistrate of the First Class specially empowered in this behalf by the State Government. Section 16A Cr. P.C. starts with the wording 'notwithstanding anything contained in the Code of Criminal Procedure.' Therefore, an offence under Section 16(1) of the Act has to be tried in a summary way by the Judicial Magistrate specially empowered in this behalf by the State Government, and by no other Magistrate. Thus the Judicial Magistrate (Railways) had no jurisdiction to try the present case which was exclusively triable initially by such a Judicial Magistrate of the First Class who is specially empowered in this behalf; by the State Government. Therefore, it cannot be said that during the course of inquiry or trial from the evidence it so appeared to the Magistrate that there is a warrant for presumption that he has no jurisdiction. Thus Section 322 Cr. P.C. is not applicable and the case could not have been sent to the Chief Judicial Magistrate, Ajmer.

6. Because the learned Judicial Magistrate had no jurisdiction and was not competent to try the accused for an offence under Section 7/16(1) of the Act by virtue of Section 16A of the Act, the only course open to him was to return the complaint to the Food Inspector under Section 201 of the Cr. P.C. for presentation to the proper court with an endorsement to that effect. Thereafter, it will be for the

Food Inspector to file the complaint in the court having jurisdiction.

7. Consequently, this revision petition is allowed, the order of the learned Judicial Magistrate (Railways) Ajmer, Camp Udaipur, dt. 11-1-85 is set aside and he is directed to return the complaint with an endorsement as aforesaid to the complainant under Section 201 Cr.P.C. for presentation to the Court having jurisdiction in the matter.

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