

The Public Prosecutor Vs. R. Karuppian

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Court : Chennai

Decided On : Sep-19-1957

Reported in : AIR1958Mad143; 1958CriLJ527; (1958)IMLJ20

Judge : Somasundaram, J.

Appellant : The Public Prosecutor

Respondent : R. Karuppian

Judgement :

Somasundaram, J.

1. This is an appeal against the acquittal of the second appellant (accused 3) by the Sessions Judge of West Tanjore in C. A. No. 290 of 1956 on his file.

2. The Co-operative Milk Supply Society at Papanasam was prosecuted along with two other accused for adulteration of milk an offence punishable under Section 16 (1) of the Central Act 37 of 1954. There is no doubt about the fact that the milk sold was adulterated. This fact is not disputed even by the learned Counsel for the respondent here. Accused 2 was the actual vendor of the milk and he was convicted by the trial court and his conviction has been upheld by the Sessions Judge.

The Co-operative Society represented by the Secretary was also convicted and the Secretary himself (accused 3) was convicted by the trial court. On appeal the Sessions Judge confirmed :the conviction of the Co-operative Society but acquitted accused 3, the Secretary, on the ground that he was in charge only as secretary of accused 1 Society and not in his individual capacity. Very strangely before the lower appellate court the Public Prosecutor conceded that the Co-operative Society and the Secretary cannot separately be convicted. The view taken by the learned Sessions Judge on the concession by the learned Public Prosecutor of the lower court is not correct.

3. Section 17 (1) of the Act clearly says that where an offence under the Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. There is a proviso to this clause to the effect that the Secretary or the other person can prove that the offence was committed without his knowledge and that in spite of his exercising all due diligence, he could not prevent the commission of such offence.

But under Clause (2) of Section 17, if the prosecution establishes that the offence had been committed with the consent or connivance of or that it is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary, or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

4. In this case It is contended by the learned advocate for the respondent that it is not quite clear under what part of Section 17 the prosecution was launched against accused 3. If it is under Clause (1), then the prosecution must have distinctly let in evidence as to who was responsible to the Society for the conduct of the business of the Society. Only if it is under Clause (2), the prosecution will have to let in evidence about the consent or connivance or of the neglect on the part of the Secretary.

The evidence that has been let in, by the prosecution in this case only shows that accused 3 was the secretary and he was in charge of the day to day working of the society and that he used to answer questions put to him by the Inspector whenever he went there. The Secretary himself has given evidence in which he says that he does not go to office daily and that there is a paid clerk and that he goes into the Society whenever he goes to the bazaar street and checks the amounts collected by the clerk and signs the daily accounts.

The evidence therefore at the most disclosed that what the Secretary was doing was checking the cash received by the clerk and checking the accounts rendered by the clerk. Apparently the day to day business of selling the milk was done by the clerk, because on his own showing the secretary who was only a honorary secretary was not going to the society daily and the business was left in the hands of the clerk with a check over him by the secretary.

This would not make him a person who at the time the offence was committed was in charge and was responsible to the Society for the conduct of the business of the society. The prosecution could have let in evidence when particularly it was prosecuting accused 3 under Clause (1) that the secretary is the person who was responsible to the society for the conduct of the business of the society. In terms of this section, the prosecution has not let in evidence and the evidence let in falls short of the strict standard of proof required for conviction under Section 16 (1).

In this view the Secretary, accused 3, cannot be convicted. The acquittal is therefore confirmed but not for the reason given by the lower appellate Court. The appeal is therefore dismissed.