

Dinesh Kumar Vs. State and anr.

Dinesh Kumar Vs. State and anr.

SooperKanoon Citation : sooperkanoon.com/957471

Court : Delhi

Decided On : Feb-20-2013

Judge : Pratibha Rani

Appellant : Dinesh Kumar

Respondent : State and anr.

Judgement :

\$~32 & 33 * IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision :

20. h February, 2013 % + CRL.REV.P. 252/2012 DINESH KUMAR Through :
Petitioner Mr.Vivek Sharma, Advocate. versus STATE & ANR Through :
Respondents None for State/R-1. Mr.Mukesh Gupta, Standing Counsel for
MCD/R-2 with Mr.K.K.Gupta, Health Officer. AND + CRL.REV.P. 259/2012
DINESH KUMAR Through : Petitioner Mr.Vivek Sharma, Advocate. versus
STATE & ANR Through : Respondents None for State/R-1. Mr.Mukesh Gupta,
Standing Counsel for MCD/R-2 with Mr.K.K.Gupta, Health Officer. CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI % PRATIBHA RANI, J.

(ORAL) Crl.Rev.P. 252/2012 & Crl.M.A. No.5577/2012 Crl.Rev.P. 259/2012 &
Crl.M.A. Nos.5822 & 5824 o

1. Vide this order, I shall dispose of the two criminal revision petitions bearing
Nos.252/2012 and 259/2012 as in both the cases the petitioner has been
convicted for being found running Vinayak Restaurant at House No.1450, East

Jyoti Nagar, Loni Road, Shahdara, Delhi-110093 in an unhygienic condition without obtaining municipal licence. He was challaned on two different dates i.e. 27.08.2008 and 30.11.2010 vide challan numbers 316847 and 426772 respectively. In respect of Challan No.316847, the petitioner was convicted and sentenced to pay a fine of Rs.1150/- and in default, to undergo simple imprisonment for a period of three days. In Challan no.426772 also, he was convicted and sentence to pay a fine of Rs.1150/- and in default, to undergo simple imprisonment for a period of three days.

2. The petitioner preferred Criminal Appeals No.11/2012 and 12/2012 challenging his conviction and sentence in Challans No.316847 and 426772 which were dismissed by learned Addl. Sessions Judge.

3. Feeling aggrieved, the petitioner has preferred these two criminal revision petitions praying for his acquittal solely on the ground that he was holder of valid municipal licence to run Restaurant, hence could not have been challaned or convicted by the Courts below.

4. Briefly stating, the case of the prosecution is that the petitioner Dinesh Kumar was found running Vinayak Restaurant at House No.1450, East Jyoti Nagar, Loni Road, Shahdara, Delhi-110093 in an unhygienic condition without having municipal licence for which he was challaned twice. First time, he was challaned vide Challan No.316847 for being found running the Restaurant in an unhygienic condition without municipal licence during inspection of the premises on 27.08.2008 at 2.00 pm, for which he was prosecuted for committing the offence punishable under Sections 417/421/397 of DMC Act. Thereafter, again the premises of the petitioner was inspected on 30.11.2010 at about 1.00 pm. On being found running the Restaurant in an unhygienic condition without municipal licence, he was again challaned vide Challan No.426772 and prosecuted for committing the offence punishable under Sections 417/421/397/430 of DMC Act.

5. During trial, the plea of the petitioner was that he was holding a valid municipal licence to run the Restaurant.

6. After considering the evidence adduced by the MCD as well by the defence, the learned MM arrived at the conclusion that the licence not HTLCOGN0400030 produced by the petitioner was fake.

7. On behalf of petitioner, it has been submitted that on 08.03.2008, the petitioner submitted an application to the MCD for issuance of Health Trade Licence. He also deposited Rs.250 towards registration fee vide receipt No.1695154.

8. On 26.05.2008, he approached MCD to know the status of the application. There he was informed that his application had been allowed and he was asked to deposit the fee for issuance of licence. He deposited Rs.1810 vide receipt Nos. 1976276 and 1976277. On 27.05.2008 (the next day) licence No. HTLCOGN0400030 was issued to him by the Department of Health Trade Licence of MCD which was having the validity period upto 31.03.2011. It is further the case of the petitioner that when the MCD officials visited the Restaurant firstly in August, 2008 and second time in November, 2010, they were shown the original licence and photocopy of the same was also handed over but despite that he has been prosecuted. It has been further submitted that as per the replies received from the MCD on the application filed under RTI Act, the details of licence, Tr. Number of which is 275002 was reflected on the website.

9. On behalf of petitioner, it has been contended that when the petitioner is holding a valid municipal licence issued by the competent authority, he could not have been challaned, prosecuted and convicted for running the Restaurant without licence. Hence prayer has been made that the impugned orders may be set aside.

10. Trial Court Record of both the cases were summoned and perused. The so called original licence issued by the MCD to the petitioner is also placed on record and perused. The moot question requiring determination in this case is whether the petitioner is holder of a valid municipal licence to run the Restaurant at House No.1450, East Jyoti Nagar, Loni Road, Shahdara, Delhi-110093 and at the time of his prosecution vide challans No. 316847 and 426772, he was holding a valid municipal licence.

11. In order to ascertain whether the petitioner applied for municipal licence to MCD and pursuant to his application, licence No. HTLCOGN0400030 had been issued to him, learned counsel for the MCD/respondent No.2 was asked to explain the procedure for obtaining the licence.

12. The procedure as brought on record by the MCD by filing written synopsis, is to the following effect : (i) As per rules/procedure for obtaining Health Trade Licence, the application has to be filed in Citizen Service Bureau (CSB). (ii) Then, file comes to the office of DHO and marked to Public Health Inspector of concerned area for inspection of the premises who submits the report for grant or rejection of the application. (iii) If it is a case of grant of licence by the competent authority, then sanction letter is issued to the applicant for depositing the requisite licence fee of the particular trade in CSB. (iv) Before April, 2011, the sanction letter was feeded online by the CSB Operator in their head quarter (sark is the feeding agency) which is situated at Lajpat Nagar, Delhi under the supervision of DC (IT). (v) The entire process is completed within minimum period of seven days and maximum period of 60 days. In any case, the process cannot be completed on the same day. (vi) The Health Trade Licence is issued by the concerned Zone where the premises is situated. (vii) Health Trade Licence is issued only for a period of one year and not for three years. (viii) The arrear with late fee is charged only in case of renewal of Health Trade Licence being applied after month of April. (ix) Health Trade Licence for the eating house is granted under Section 417/421 of DMC Act and not under Section 416/417 of DMC Act. The licence allegedly issued to the petitioner mentions the Sections as 416/417 of DMC Act. (x) The sanctioning authority of the licence is DHO and not the Additional Commissioner (as mentioned on the licence with the petitioner).

13. On behalf of respondent No.2, it has been submitted that the licence in possession of the petitioner is a fake licence allegedly issued from City Zone whereas the premises is situated in East Delhi and this licence has not been issued by any Zone of MCD at any point of time. It is admitted case of the petitioner that as on date, the Restaurant is lying sealed under the order of competent authority.

14. In order to show that the licence in possession of the petitioner is fake licence, learned counsel for the respondent No.2/MCD has referred to the various applications filed by the petitioner for obtaining the licence three times i.e. in the year 2005, 2008 and 2010 and all the three applications were rejected by the MCD. It has been urged that if the petitioner was having a valid licence for the period 2008 to 31.03.2011, there was no occasion for him to apply for licence in the year 2010. Referring to the receipt relied upon by the petitioner in support of his contention that he obtained the licence after following the proper procedure and depositing the requisite fee, it has been submitted that receipt not AZ01976277 reflects the arrears with late fee which can only in case of renewal of licence whereas the case of the petitioner is that it was a new licence. Apart from that, it has been submitted that there is no record in any of the Zone of MCD including Shahdara regarding issuance of any such licence to the petitioner and otherwise also, Health Trade Licence cannot be issued/renewed in respect of premises situated on the roads other than the notified commercial roads as per MPD 202. and the premises of the applicant falls on the notified mixed land use road and not on the notified commercial road, due to this reason, Health Trade Licence cannot be issued/renewed for this premises.

15. Learned counsel for the respondent No.2/MCD submitted that in respect of the forgery committed by the petitioner, during pendency of these revision petitions, FIR No.290/2012 under Section 468/471 IPC, PS Farsh Bazar has also been registered against the petitioner and investigation is going on.

16. I have given careful thought to the rival contentions and perused the Trial Court Record of both the cases. In order to satisfy about the correctness of finding recorded by the two Courts below, it is necessary to consider the evidence adduced by the prosecution to prove that the petitioner was running restaurant at house No.1450, East Jyoti Nagar, Loni Road, Shahdara, Delhi-110093 without any Health Trade Licence issued by the competent authority and that the licence placed on record by him is fake and forged.

17. Submission of the petitioner that after applying for Health Trade Licence and depositing the fee vide receipt No.1695154, he visited the MCD office on

26.05.2008 when he was informed that his application has been allowed and he was asked to deposit the receipt fee, is falsified from the record. Pursuant to deposit of fee in respect of application No.245259 dated 08.03.2008, the petitioner was communicated through rejection letter dated 23.04.2008 that his case has been rejected due to the shop situated in residential area. Once MCD has already informed about the rejection of his application No.245259 dated 08.03.2008, there was no occasion for him to visit the MCD office on 26.05.2008 or to be informed that his application has been allowed.

18. The receipt dated 26.05.2008 shows that he again deposited fee of Rs.250/- vide receipt No.4245473 i.e. Rs.200/- for Health Trade Licence processing fee and Rs.50/- as handling charges. If the application for grant of licence was already allowed and so communicated on his personal visit, where was the opportunity for him to deposit the processing fee again on 26.05.2008. Further another receipt No.4245474 dated 26.05.2008 is also placed on record as per which Rs.1560/- was deposited by the petitioner i.e. Rs.50/- towards arrears with late fee, Rs.1500/- towards trade licence fee and Rs.10/- towards transaction fee. This receipt No.4245474 bears the following endorsement at the bottom: HTRADE RNWL : Old_G8 : EATING ESTABLISHMENTS :

118. : CATEGORY-2 :VALID UPTO :

31. 03/2011 M/S VINAYAK RESTURANT RESTAURANT WITH 4 SEATS 19 It is admitted case of the petitioner that he was applying for the licence for the first time and payment was not towards renewal of the licence. Apart from that, the MCD licence HTLCOGN0400030 (copy of which is placed on record as Annexure P-5 in CrI.Rev.P. No.259/2012) has been issued on 27.05.2008 i.e. just on the next working day and in column No.5, it is mentioned, Addl. Commissioner (Health), whereas the competent authority to issue licence is DHO (MCD). It is worth mentioning that during the trial, the petitioner did not move any application for dropping of the proceedings or quashing his prosecution on the ground that he was holding a valid municipal licence to run the restaurant. During prosecution in Challan No.316847, when he was questioned as to whether he wanted to lead defence evidence, answer given was Yes. I want to examine myself as defence

witness. However, the petitioner preferred not to enter the witness box but summoned Dr. Ajay Handa, DHO, Shahdara North, MCD in his defence and examined him as DW-1. Examination of DW-1 Dr. Ajay Handa in defence proved suicidal for the petitioner as he made statement on the basis of record giving complete details as to when the applications for Health Trade Licence were received and the details of their rejection. He also stated that licence bearing No. HTLCOGN0400030 is not entered in the data of MCD. The report was obtained from all the Zones of MCD which established that none of the 12 MCD Zones had issued the said licence. He also deposited that the licence can be issued only by the concerned Zone within whose territorial jurisdiction, the Restaurant has to be run and authorised signatory for issuance of Health Trade Licence in respect of the restaurant is DHO of the Zone. While describing the procedure for grant of licence, he stated as under :Whenever an application is moved for granting the trade licence first of all the applicant has to deposit the same with prescribed fees in the CSB and a G8 receipt No. 1976276 is also issued by the CSB thereafter the file is sent by the CSB to the health department where it is to be processed by the area inspector and licence clerk and finally if the licence is to be made or rejected it has to be under the signature of the DHO. This entire process has to be completed within a period of two months but seven days are the minimum which are required for completion of this process. However as per the receipts filed by the accused on the court record the application to CSB was moved on 26.05.2008 and the licence was made on very next date i.e. 27.05.2008 as the G8 receipt for the filing of application was of 26.05.2008 and its serial no. is 1976276 and the fees paid after the grant of licence was also paid on 26.05.2008 vide receipt no. 1976277 this is very unlikely to happen.

20. During hearing before this Court, the petitioner was asked to bring on record any communication received by him from MCD i.e. application for grant of licence has been accepted by MCD thereby requiring him to deposit the requisite fee, he failed to bring on record any communication. The plea taken before this Court was that he himself visited the MCD office to inquire the status of his application and on coming to know that it stands allowed, he deposited the charges. He was also asked to mention the name or designation of the official/officer contacted by him who conveyed this information to him or the seat/office visited by him, he was

answerless.

21. Taking into consideration the documentary evidence available on record and that application No.245259 filed by the petitioner on 08.03.2008 for which processing charges were filed vide receipt No.4069167 and the said application already stood rejected which was communicated to him vide rejection letter dated 23.04.2008, there was hardly any occasion for the petitioner to visit MCD office on 26.05.2008.

22. The revisional court is empowered to exercise all the powers conferred on the appellate court by virtue of the provisions contained in Section 401 Cr PC. Section 401 Cr PC is a provision enabling the High Court to exercise all powers of an appellate court, if necessary, in aid of power of superintendence or supervision as a part of power of revision conferred on the High Court or the Sessions Court. Section 397 Cr PC confers power on the High Court or Sessions Court, as the case may be, "for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court". (Rel. State of Maharashtra vs. Jagmohan Singh Kuldip Singh Anand 2004 CriL.J.

4254).

23. It is also well settled that concurrent findings of fact should not be generally disturbed unless it causes grave injustice.

24. In the case Duli Chand v. Delhi Admn. (1997) 4 SCC 122, the Apex Court has observed that : The High Court in revision was exercising supervisory jurisdiction of a restricted nature and, therefore, it would have been justified in refusing to reappreciate the evidence for the purposes of determining whether the concurrent finding of fact reached by the learned Magistrate and the learned Additional Sessions Judge was correct. But even so, the High Court reviewed the evidence presumably for the purpose of satisfying itself that there was evidence in support of the finding of fact reached by the two subordinate courts and that the finding of fact was not unreasonable or perverse.

25. The mere fact that the petitioner himself or through his brother was applying for Health Trade Licence for running a restaurant at house No.1450, East Jyoti Nagar, Loni Road, Shahdara, Delhi-110093 in the year 2008 and 2010 further proved that the licence placed on record bearing No. HTLCOGN0400030 having validity period of 31.03.2011 is fake. More so, when as per practice, MCD issues licence only for a period of one year.

26. In view of the foregoing discussion, I find that the conclusions arrived at by learned Trial Court and the Appellant Court are based on documentary evidence that petitioner was running a restaurant at house No.1450, East Jyoti Nagar, Loni Road, Shahdara, Delhi-110093 without having any valid Health Trade Licence issued by the MCD. The impugned orders are affirmed.

28. The revision petitions are hereby dismissed. All pending applications are also dismissed.

29. TCR of both the cases be sent alongwith copy of the order. PRATIBHA RANI,
J February 20, 2013/st

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com