

Municipal Corporation of Delhi

Vs

Jagdish Lal and Another

Criminal Appeal No. 8 of 1966

(J. C. Shah, S. M. Sikri, V. Ramaswami I JJ)

27.05.1969

JUDGMENT

RAMASWAMI, J. -

1. On August, 29, 1960 Shri Sham Sunder Mathur, Municipal Prosecutor of the Delhi Municipal Corporation, filed a complaint in the court of Magistrate First Class against the respondent, Jagdishlal, under Section 7, read with Section 16 of the Prevention of Food Adulteration Act, 1954 (37 of 1954). In the said complaint Shri Sham Sunder Mathur said that he was competent to file the complaint under Section 20 of the aforesaid Act, in accordance with a resolution passed by the Corporation in its meeting held on December 23, 1958. By his order, dated April 30, 1962 the learned Magistrate acquitted the respondent. The Delhi Municipal Corporation made an application to the High Court asking for special leave under Section 417 of the Code of Criminal Procedure to appeal against the order of acquittal. The application was granted on September 3, 1962. When the appeal came up for hearing a preliminary objection was raised on behalf of the respondent that the only person competent to file the appeal was the complainant, Shri Sham Sunder Mathur. But the leave application was not filed by him and, therefore, the Municipal Corporation was not competent to prosecute the appeal. It was contended that only the complainant was competent to present an application for special leave under Section 417(3) of the Code of Criminal Procedure. As the complainant in this case was Shri Sham Sunder Mathur the appeal could not be filed by the Delhi Municipal Corporation. The High Court upheld the preliminary objection of the respondent and dismissed the appeal by its order, dated April 29, 1965. This appeal is brought by special leave on behalf of the Delhi Municipal Corporation against the judgment of the High Court, dated April 29, 1965 in Cr. A. No. 163-D of 1962.

2. Section 20 of the Prevention of Food Adulteration Act, 1954 states :

"(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.

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Section 417, sub-sections (1), (2) and (3) of the Code of Criminal Procedure after its amendment by Act 26 of 1955 provide

"(1) Subject to the provisions of sub-section (5), the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court.

(2) If such an order of acquittal is passed in any case in which the offence has been investigated by the Delhi Special Police Establishment constituted under the Delhi Police Establishment Act, 1946 (XXXV of 1946), the Central Government may also direct the Public Prosecutor to present an appeal to the High Court from the order of acquittal.

(3) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.

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3. The principal question to be determined is whether the complaint, dated August 29, 1960 was instituted by the Delhi Municipal Corporation. It is argued on behalf of the respondent that the complaint petition was not made and signed by the person competent under the Delhi Municipal Corporation Act, 1957 to exercise powers of the Corporation in the matter of institution of legal proceedings. In our opinion there is substance in this contention. The only provision under the Delhi Municipal Corporation Act, 1965 which confers power to institute legal proceedings is Section 476(1)(h) which states :

"(1) The Commissioner may -

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(h) institute and prosecute any suit or other legal proceedings, or with the approval of Standing Committee withdraw from or compromise any suit or any claim for any sum not exceeding five hundred rupees which has been instituted or made in the name of the Corporation or of the Commissioner;

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It is clear that the phrase "other legal proceedings", includes the power to institute a complaint before a Magistrate and hence it is the Commissioner alone who could exercise the power as there is no other provision in the Act, which confers such power on anyone else. This view is supported by the decision of this Court in Ballavdas Agarwala v. J. C. Chakravarty,((1962) (3) SCR 739) in which it was pointed out that a complaint under The Calcutta Municipal Act, 1923 as applied to the Municipality of Howrah, would only be filed by the authorities mentioned therein and not by an ordinary citizen. Section 537 of that Act provided that the Commissioners may institute, defend or withdraw from legal proceedings under the Act; under Section 12 the Commissioners can delegate their functions to the Chairman, and the Chairman may in his turn delegate the same to the Vice-Chairman or to any municipal officer. It was observed in that case that the machinery provided in the Act must be followed in enforcing its provisions, and it was against the tenor and scheme of the

Act to hold that Section 537 was merely enabling in nature. The principle invoked in that case was that adopted by the Privy Council in *Nazir Ahmad v. King Emperor* (63 IA 372 at 38.) viz. : that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. It was, therefore, held that if a legal proceeding was instituted under the Municipal Act in question, it must be done in accordance with the provisions of the Act and not otherwise.

4. But the question presented for determination in the present appeal is somewhat different. Under Section 20 of Act 37 of 1954 the prosecution for the offence may be instituted either (a) by the Central Government or the State Government or a local authority or (b) a person authorised in that behalf by general or special order by the Central Government or the State Government or a local authority. Section 2(vii) of Act 137 of 1954 defines a "local authority" to mean "in the case of a local area which is a municipality, the municipal board or municipal corporation". A complaint under Section 20 of the Act may, therefore, be instituted either by the Municipal Corporation or by a person authorised in its behalf by general or special order by the Municipal Corporation. The Resolution of the Delhi Municipal Corporation, dated December 23, 1958 reads as follows :

"SUBJECT : Authorising the Municipal Prosecutor and the Assistant Municipal Prosecutor to launch Prosecutions under Section 20 of the Prevention of Food Adulteration Act, 1954.

The area under the jurisdiction of the Delhi Municipal Corporation has been declared a 'local area' under Section 2(vii) of the Prevention of Food Adulteration Act vide Chief Commissioner's Notification No. F. 32 (30)/58-M and PH (i), dated 13th June, 1958 published in the Delhi Gazette (Part IV) dated 26th June, 1958 and consequently the Municipal Corporation of Delhi is the Local Authority for that area within the meaning of Section 2(vii) of the said Act.

Section 20 of the Prevention of Food Adulteration Act, 1954 contemplates the appointment of persons who shall be authorised to institute prosecutions under this Act by the Local Authority concerned.

Shri Sham Sunder Mathur, M.A., LL.B., Municipal Prosecutor and Shri Bankey Behari Tawkley, Assistant Municipal Prosecutor were authorised by the erstwhile, Delhi Municipal Committee under the above section."

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"Shri Vijay Kumar Malhotra moved the following resolution which was seconded by Shri Prem Sagar Gupta :

Resolved that the recommendations of the Commissioner vide letter No. 139/Legal/58, dated 1st December, 1958 regarding authorising the Municipal Prosecutor and the Assistant Municipal Prosecutor to launch prosecutions under Section 20 of the Prevention of Food Adulteration Act, 1954 be approved.

The resolution was carried."

In the present case Shri Sham. Sunder Mathur, Municipal Prosecutor, filed the complaint under Section 20 of Act 37 of 1954 under the authority given to him by the resolution of the Municipal Corporation. Since the Municipal Corporation, Delhi is a local authority within the meaning of

Section 20 of Act 37 of 1954 and since it conferred authority on the Municipal Prosecutor the complaint was properly' filed by Sham Sunder Mathur. The question is whether the Delhi Municipal Corporation or Shri Mathur was the complainant within the meaning of Section 417(3) of the Code of Criminal Procedure. It was argued on behalf of the respondent that the complainant was Shri Sham Sunder Mathur, the Municipal Prosecutor and the Delhi Municipal Corporation was not competent to make an application for special leave under Section 417(3), Cr. P.C. We are unable to accept this argument as correct. It is true that Shri Sham Sunder Mathur filed the complaint petition on August 29, 1960. But in filing the complaint Shri Mathur was not acting on his own personal behalf but was acting as an agent authorised by the Delhi Municipal Corporation to file the complaint. It must, therefore, be deemed in the contemplation, of law that the Delhi Municipal Corporation was the complainant in the case. The maxim qui per alium facit per seipsum facere videtur (he who does an act through another is deemed in law to do it himself) illustrates the general doctrine on which the law relating to the rights and liabilities of principal and agent depends. We are, therefore, of opinion that Shri Mathur was only acting in a representative capacity and that the Delhi Municipal Corporation was the complainant within the meaning of Section 417(3) of the Code of Criminal Procedure and the petition for special leave and the appeal petition were properly instituted by the Delhi Municipal Corporation. For these reasons we allow the appeal, set aside the judgment of the High Court dated April 9, 1965 and direct that the appeal should be remanded to the High Court for being heard afresh and disposed of according to law.

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