Babu Lal Hargovindas

Vs

The State of Gujarat

Criminal Appeal No. 133 of 1969

(G. K. Mitter, K. S. Hegde, P. Jagmohan Reddy JJ)

18.03.1971

JUDGMENT

REDDY, J. -

1. The appellant Babu Lal Hargovindas carries on business of selling milk in the City of Ahmedabad. On December 2, 1965, at about 8 a.m. the Food Inspector Mangulal C. Mehta visited the appellant's shop, disclosed his identity and intimated to him that he was purchasing the milk for analysis. Thereafter 700 ml. milk which was being sold as cow's milk was purchased from him. It was divided into 3 parts and poured into three bottles in each of which he added sixteen drops of formalin as preservative. The bottles were then corked, sealed and wrapped and signatures of the Panch one Adambhai Rasulbhai were taken on the seals and wrappers. Of the three bottles that were then sealed one was given to the appellant, one was kept by the Food Inspector to be produced in the Court as required by the provision of Food Adulteration Act, 1954 (hereinafter referred to as 'the Act') and the third one was handed over that very day at 11.30 a.m. to the Chemist Laxmansingh Vaghela who being authorised by the Public Analyst Dr. Vyas analysed it. The analysis of the sample by Vaghela revealed that the milk was adulterated as it contained total non-fat solids of 7.4% instead of 8.5% which was the minimum prescribed. After the receipt of the report of the Public Analyst the Food Inspector filed a complaint on April 6, 1966 with the written consent of the Medical Officer of Health of the Ahmedabad Municipal Corporation. After examining the Food Inspector Mehta, the Chemist Vaghela and the Panch Adambhai Rasulbhai, the City Magistrate, 6th Court, Ahmedabad convicted the appellant under Section 16(1)(a)(i), read with Section 7 of the Act for selling adulterated milk and sentenced him to undergo rigorous imprisonment for one month and a fine of Rs. 1,000/-, in default to undergo a further period of 3 months rigorous imprisonment. Against this conviction and sentence the appellant appealed to the High Court of Gujarat which confirmed the conviction. This Appeal against that judgment is by certificate under Article 134(1)(c) of the Constitution of India.

2. It is contended before us : Firstly that the requirements of Section 10(7) of the Act have not been complied with under this provision when the Food Inspector takes any action as specified in sub-sections 1(a), 2, 4 or 6 he shall called one or more more persons to be present at the time such action is taken and take his or their signatures. The Panch witness however did not support the case of the complainant that he was either present at the time when the sample was obtained from the appellant or that his signatures were taken when the bottles were said to have been sealed. In these circumstances, it is submitted, the conviction cannot be sustained. Secondly the appellant was not afforded an opportunity to send the sample of the milk left with him to the Director of Central Food Laboratory for a certificate inasmuch as the complaint itself was lodged after a lapse of over 4 months from the date of taking the samples. In these circumstances the milk could not have been

preserved for the appellant to have taken the opportunity afforded to him by sub-section (2) of Section 13 by sending it to the Director, Central Food Laboratory for a certificate. Thirdly the Food Inspector who filed this complaint was not competent to file it because the Medical Officer of Health who gave written consent to file it was not validly authorised as required under Section 20(1) of the Act inasmuch as under the relevant provisions of the Bombay Provincial Municipal Corporation Act LIX of 1949 (hereinafter referred to as the 'Corporation Act') as applied to the State of Gujarat it was the Municipal Commissioner and not the Municipal Corporation that should have authorised the giving of written consent to prosecute. Fourthly even if the Medical Officer of Health can be said to be validly authorised by resolution of the Municipal Corporation, dated October, 17, 1955 the complaint is not in accordance with that resolution since the resolution authorised the filling of the complaint in the name of the Municipal Corporation but the complaint filed does not disclose that it is filed on behalf of the Corporation. Lastly Rule 7(2) of the Prevention of Food Adulteration Rules (hereinafter called the 'Rules') which permits the Public Analyst to cause the sample to be analysed is ultra vires because it is beyond the scope of Section 23(e) of the Adulteration Act. Most of these contentions were urged before the learned Single Judge of the Gujarat High Court who in a lengthy Judgment held them to be untenable. In our view also the submissions of the learned advocate for the appellant are without force and must be rejected.

3. It may be observed that Section 10(7) of the Act originally required that the Food Inspector, when he takes action either under the provisions of sub-sections (1), (2), (4) or (6), to call as far as possible not less than two persons to be present at the time when such action is taken and take their signatures but that provision was amended by Act 49 of 1964 and instead it was provided that the Food Inspector shall call one or more persons as the time when such action is taken and take his or their signatures. It appears that the person who witnessed the taking and sealing of the sample did not support the Food Inspector's version that the signatures of this Panch witness were taken on the receipt Ex. 5 and on the label and wrappers of the bottles at the time when the samples were obtained.

4. The witness Rasulbhai who was serving in a mill and also sits in the cycle shop of his brother which is adjoining to the milk shop of the appellant, after he returns from his duty stated that on the date in question at about 8 a.m. he was called by the Food Inspector as a Panch witness and that he signed on the two bottles of milk and wrappers also. When he was confronted with the signature on Ex. 5 he said that he had signed it without reading it. The Food Inspector on the other hand asserted that he had in the presence of Panch witness corked, sealed, labelled and wrapped the bottles which were signed by the Panch twice on each of the bottles one on the label and the other on the wrapper and thereafter the accused had passed a receipt to that effect which was attested by the Panch witness in the presence of the accused. The Trying Magistrate was not prepared to take the word of the Panch witness that he had signed Ex. 5 without reading it or without seeing the accused signing the same and preferred the evidence of the Food Inspector. Before the High Court none of the contentions raised before the Trial Magistrate namely that inasmuch as the Panch witness did not support the prosecution that all the requirements of Section 10(7) of the Act were not complied with or that the paper slips bearing signature of the Panch ought to have been affixed on the bottles and in the absence of such paper seals there could have been tampering of the seals before they were analysed, though raised were not pressed having regard to a decision of that Court in Manka Hari v. State of Gujarat. (8 GLR 588.)

5. The learned advocate for the appellant contends that though these points were not pressed before the Gujarat High Court has is free to urge it before us. In the first place we do not think that having regard to the findings based on an appreciation of evidence of the Panch witness and the Food

Inspector that the milk was bottled and sealed, signed and attested by the Panch witness in the presence of the accused as spoken to by the Food Inspector can be challenged before us as those are findings of facts. In the second place there is nothing to indicate that the provisions of sub-section (7) of Section 10 have not been complied with. Even otherwise in our view no question of the trial being vitiated for non-compliance of these provisions can arise. It is not a rule of law that the evidence of the Food Inspector cannot be accepted without corroboration. He is not an accomplice nor is it similar to the one as in the case of wills where the law makes it imperative to examine as attesting witness under Section 68 of the Evidence Act to prove the execution of the will. The evidence of the Food Inspector alone if believed can be relied on for proving that the samples were taken as required by law. At the most Courts of fact may find it difficult in any particular case to rely on the testimony of the Food Inspector alone though we do not say that this result generally follows. The circumstances of each case will determine the extent of the weight to be given to the evidence of the Food Inspector and what in the opinion of the Court is the value of his testimony. The provisions of Section 10(7) are akin to those under Section 103 of the Criminal Procedure Code when the premises of a citizen are searched by the Police. These provisions are enacted to safeguard against any possible allegations of excesses or resort to unfair means either by the Police Officers or by the Food Inspectors under the Act. This being the object it is in the interests of the prosecuting authorities concerned to comply with the provisions of the Act, the non-compliance of which may in some cases result in their testimony being rejected. While this is so we are not to be understood as in any way minimising the need to comply with the aforesaid salutary provisions. In this case however there is no justification in the allegation that the provisions have not been complied with because the Panch witness had been called and his signatures taken which he admits. In these circumstances the Courts were justified on the evidence of the Food Inspector that he had complied with the requirements and that the samples were seized in the presence of the Panch witness whose signatures were taken in the presence of the accused.

6. There is also in our view on justification for holding that the accused had no opportunity for sending the sample in his custody to the Director, Central Food Laboratory under Section 13(2) because he made no application to the Court for sending it. It does not avail him at this stage to say that over four months had elapsed from the time the samples were taken to the time when the complaint was filed and consequently the sample had deteriorated and could not be analysed. The decision of this Court in Municipal Corporation of Delhi v. Ghisa Ram, (1967 (2) SCR 116 : AIR 1967 SC 970 : (1967) 2 SCJ 423.) has no application to the facts of this case. In that case the sample of the vendor had in fact been sent to the Director of the Central Food Laboratory on his application but the Director had reported that the sample had become highly decomposed and could not be analysed. It is also evident from that case that the Food Inspector had not taken the precaution of adding the preservative. It appears from page 120 of the report that the elementary precaution of adding preservative to the sample which was given to the Respondent should necessarily have been taken by the Food Inspector, that if such precaution had been taken, the sample with the respondent would have been available for analysis by the Director of the Central Food Inspector Laboratory and since the valluable right given to the vendor by Section 13(2) could not be availed of, the conviction was bad. No such defence is available to the appellant in this case because not only is there evidence that the preservative formalin was added but the appellant had not even made an application to send the sample to the Director of Central Food Laboratory.

7. The competence of the Food Inspector of file the complaint has been challenged on the ground that the Medical Officer of Health who gave his written consent for filing it was not validly authorised by the Municipal Commissioner and that in any case the complaint is not accordance with the resolution of the Municipal Corporation (hereinafter referred to as the 'Corporation') which

authorised the filing of it in its name and not in the name of the Food Inspector. It appears the resolution of the Corporation of October 17, 1955 is in Gujarati but before the High Court the advocates of the parties seem to have broadly agreed on the following translation :

> "Municipal Corporation Resolution No. 639 of 1955-56 A. D. Shri Ramniklal Inamdar proposed seconded by Shri Shantilal Manilal that, in pursuance of the recommendation of the Standing Committee Resolution No. 1124, dated October 13, 1955, the Medical Officer of Health is authorised to accord written consent for filing complaints for the Municipal Corporation in accordance with Section 20 of the Prevention of Food Adulteration Act, 1954 (Central Act). On votes being taken, the proposal was carried."

8. It was however pointed out by the lawyer of the Corporation that the transaction should read slightly differently to replace that part, after the words "the Standing Committee resolution No. 1124, dated October 13, 1955" by the words "the authority of the Municipal Corporation to give written consent to file complaints under Section 20 of the Prevention of Food Adulteration Act is given to the Medical Officer". In whatever manner the resolution may be read it is clear that what it purports to do is to authorise the Medical Officer of Health pursuant to the powers vested in the Corporation as a local authority under Section 20(1) of the Act to have his written consent. The provisions of Section 20(1) are as follows :

> "20(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."

9. On a reading of the above provision it is manifest that a prosecution can be instituted either by the local authority or by a person authorised by it in that behalf by general or special order. The resolution therefore was in accord with the power vested by Section 20(1) of the Act by which the Corporation authorised the Medical Officer of Health to institute a prosecution. It is however stated that under the Corporation Act it is the Municipal Commissioner who is the authority empowered to act for the Corporation and authorise any person to institute prosecution under the Act, and since the Medical Officer of Health was not so authorised by the Commissioner, the prosecution against the appellant is invalid. This contention is based on the provisions of Sections 67 and 68 of the Corporation Act under which it is claimed that it is the Commissioner who is empowered to exercise the functions of the Corporation, as such it is his authorisation that is required to satisfy the conditions prescribed in section 20(1) of the Act for the institution of a prosecution under that Act. We do not however read the provisions of the Corporation Act referred to as pressed upon us. It is undisputed that under sub-section (2) of Section 67 the Municipal Government rests in the Corporation unless of course there is any express provision which provides otherwise. There is no doubt that the Corporation Act specifically prescribes the respective functions of the several Municipal authorities as constituted under Section 4 but it nowhere relegates the Corporation to a subordinate position or makes it subservient to the Commissioner. In Section 67(3) upon which reliance is placed, the duties and powers of the Commissioner are made expressly subject to the approval and sanction of the Corporation as also subject to all other restrictions, limitations and conditions imposed by the Corporation Act or any other Act for the time being in force. The duties and powers of the Commissioner, be it noted, are in respect of the carrying out of the provisions of the Corporation Act and of any other Act for the time being in force which imposes any duty or confers any power on the Corporation. This sub-section is dealing with the exercise of the executive

power by the Commissioner which is subject to limitations.

On no interpretation is it possible to hold that the Municipal administration vests solely in the Commission or that any function to be discharged by the Corporation can only be discharged by the Commissioner and no one else. The scheme of the Corporation Act leaves no doubt that there are many instances where Corporation alone has to discharge the functions such as the appointment of certain officers under Sections 45, 53 and 58 or the discharging by it of the obligatory and discretionary duties under Sections 63 to 66.

10. Section 68(1) empowers the Commissioner to perform of exercise any powers, duties and functions conferred or imposed upon or vested in the Corporation by any other law for the time being in force subject to the provisions of such law and to such restrictions, limitations and conditions as the Corporation may impose.

11. A combined reading of these two provisions clearly indicates that the Commissioner cannot exercise these functions without any fetters as if he is the Corporation. The Corporation is the controlling authority and can restrict limit or impose conditions on the Commissioner in the exercise of any of the powers envisaged in either under Section 67(3) or under Section 68(1). There is no gainsaying that the Commissioner can function under Section 68(1) subject to the control of the Corporation as also subject to the provisions of the law under which the powers are conferred. The power to restrict limit or impose conditions being vested in the Corporation, it has the final voice in determining whether the Commissioner or any other person will discharge those functions envisaged therein. That apart Section 20(1) of the Act itself places no restrictions on the Corporation to circumscribe the powers of the Commissioner. It therefore follows that if a discretion is vested in the Corporation either to give its written consent in which case the Commissioner could subject to such limitation as may be empowered by the Corporation under Section 68(1) exercise the function or to authorise any other person by general or special order to give his written consent to institute prosecution under the Act. The Corporation in either view is not fettered to empower the Medical Officer of Health to give his written consent in appropriate cases to institute prosecutions under the Act, which in fact what he did.

12. All that the Medical Officer of Health is required to do is to give his written consent to institute the prosecution. There is no validity in the contention that the complaint should be in the name of the Corporation. As pointed out by this Court in the State of Bombay v. Parshottam Kanaiyalal (1961 (1) SCR 458 : AIR 1961 SC 1 : 1961 SCJ 226.) Section 20(1) does not in terms prescribe that the complainant shall be named in the written consent. It merely provides that the complaint should be filed either by a named or specified authority, or with the written consent of such authority. While the 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, is reasonable, the further implication that the complainant must be named in the written consent or that the name of the Municipal Corporation should appear in the complaint, has no basis. In our view, therefore, there is no defect in the procedure followed while lodging the complaint against the appellant.

13. Lastly, it was faintly urged that Rule 7(2) of the Rules is ultra vires the Act. It is contended that this Rule gives scope for the Public Analyst to cause the samples to be analysed by persons under him, viz., the Chemical Examiner, instead of himself analysing them, which is contrary to the express mandate of sub-section (1) of Section 13 and is beyond the scope of Section 23(1) (e) of the Act. This provision, according to the learned advocate, requires the Public Analyst to analyse the

sample of any article of food submitted to him for analysis, while the rule gives scope to him to cause it to be analysed by others which is beyond the scope of Section 23(1)(e). It is apparent from a reading of Section 13(1) that what it requires is that the report by the Public Analyst shall be in the prescribed form and that the same should be delivered to the Food Inspector. There is nothing to warrant the submission that the Public Analyst should himself analyse the samples. Sub-rule (3) of Rule 7 is in conformity with this provision when it requires the Public Analyst, after the analysis has been completed, to send to the person concerned two copies of the report of such analysis in Form III within a period of sixty days of the receipt of the sample. All that the Public Analyst is required under sub-rule (1) of Rule 7 on receipt of a package containing a sample for analysis from a Food Inspector or any other person is to compare the seals on the container and the outer cover with specimen impression received separately and shall note the condition of the seals thereon, or authorise some one else to do it. We can find no inconsistency between the provisions of Rule 7, and those of Section 13(1) as to hold that the Rule is in excess of what it prescribed by the Section, nor in there any justification for holding that the rule is beyond the scope of the rule-making power under Section 23(1)(e), which empowers the Central Government, after consultation with the Committee to define the qualifications, powers and duties of the Food Inspectors and Public Analysts. Rule 7 does no more than prescribe the duties of the Public Analyst, in which will fall the duty to have the samples analysed. The qualifications of the Public Analyst are, however, prescribed in Rule 6, which shows that he is a person duly qualified, so that he is competent to have the samples analysed in his laboratory by qualified subordinates and under his supervision, which is what is implied in the requirement that he should give a report in the form prescribed. Rule & 7(2) does not preclude the Public Analyst from himself analysing the samples, as indeed a perusal of Form III, would show that he certifies as follows : "I further certify that I have/have caused to be analysed the aforementioned sample, and declare the result of the analysis to be as follows" :

> Whether the Public Analyst analyses the sample himself or cause it to be analysed, there is no doubt that he had to subscribe to a declaration in respect of the result of the analysis and has further to give his opinion thereon which can only be done, if at some stage or other he takes part in the analysis assistance of his subordinates.

14. In the light of the views expressed by us on the several contentions raised before us, the appeal fails and is accordingly dismissed.

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