Chittaranjan Das

Vs

The State of Orissa

Criminal Appeal No. 58 of 1970

(H. R.Khanna, A. Alagiriswami JJ)

18.09.1973

JUDGMENT

KHANNA, J. –

1. Chittaranjan Das appellant was convicted by Magistrate First Class Cuttack under Section 16(1)(a) of the Prevention of Food Adulteration Act, 1954 (Act 37 of 1954) (hereinafter referred to as the Act) and was sentenced to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs. 500 or in default to undergo rigorous imprisonment for a further period of six weeks. Appeal filed by the appellant was dismissed by the Additional Sessions Judge Cuttack. The appellant then went up in revision to the High Court but his revision petition too was dismissed by the Orissa High Court. The appellant thereafter filed the present appeal by special leave.

2. The case for the prosecution is that on July 17, 1965 Food Inspector Behera went to the stall of the accused in the old Secretariat Compound Cuttack and found potato chops being fried by an employee of the accused in groundnut oil in a frying pan. The Food inspector disclosed his identity to the accused and after giving the requisite notice, he purchased 375 gms of the groundnut oil in which the potato chops were being fried. After the oil was cooled, the Food Inspector divided it into three equal parts and poured each part of the oil in a clean bottle, The bottles were then sealed. One of the bottled was handed over to the accused. Another bottled was sent to a public analyst. The public analyst found on analysis the groundnut oil to be adulterated as it did not conform to the prescribed standard. The Superintendent of Police, Vigilance thereafter gave written consent for the prosecution of the accused. The accused was after that sent up for trial.

3. It may be stated that the date on which the sample of groundnut oil was purchased by the Food Inspector from the accused has been mentioned in the judgments of the trial magistrate as well as those of the Additional Sessions Judge and the High Court to be March 14, 1964. This date was wrong because on reference to the record of the trial Court, we find that the date on which the sample of the oil was purchased by the Food Inspector from the accused was July 17, 1965. This mistake in any event does not affect the merits of the case.

4. The plea of the accused at the trial was that the sample of the oil had been taken not from the frying pan but from a tin wherein he had kept burnt oil for the purpose of using it as fuel. The oil, according to the accused, was stored neither for being used for frying food articles. This pleas of the accused was found by the trial Court as well as by the learned Additional Sessions Judge to be false. In the High Court it was not disputed on behalf of the accused that the groundnut oil purchased by the Food Inspector had been taken out of the frying pan and that potato chops were being prepared with that oil. One of the contentions which was raised on behalf of the accused before the High

Court was that the sanction or consent given by the Superintendent of Police, Vigilance for the prosecution of the accused was not in conformity with Section 20 of the Act as the authority contemplated by that section must be in respect of each individual case and a general authority given to the Superintendent of Police to sanction prosecution was not legal. The High Court rejected this contention as also some other contentions which had been raised on behalf of the accused.

5. In appeal before us, Mr. Sikri has at the outset submitted that there was non-compliance with the provisions of Section 10(7) of the Act as the Food Inspector did not call one or more persons to be present at the time he purchased the sample of groundnut oil from he accused. In this respect we find that the judgment of the High Court shows that no such argument was advanced before the High Court. This argument involves questions of fact and as the accused appellant failed to agitate it before the High Court, we have not permitted that appellant to agitate it before us in this Court.

6. The main contention which has been advanced in appeal before us on behalf of the appellant is that there was no valid consent to the prosecution of the accused appellant in accordance with sub-section (1) of Section 20 of the Act and, as such, the prosecution of the appellant was not in accordance with law. To appreciate this contention it would be relevant to reproduce the material part of sub-section (1) of Section 20 of the Act, as it stood before its amendment by Act 49 of 1964. It was as under :

> "No prosecution for an offence under this Act shall be instituted except by or with the written consent of the State Government or a local authority or a person authorised in this behalf by the State Government or a local authority."

On December 16, 1964 a notification was issued by the Orissa Government authorising, inter alia, the Superintendent of Police Cuttack Vigilance Division to give written consent for instituting prosecutions for offences under the Act within the local limits of Cuttack Municipality. The notification reads as under :

> #
>
> "HEALTH DEPARTMENT NOTIFICATION
>
> The 16th December, 1964.
>
> ##
>
> No. 25485-H. - In exercise of the powers conferred by Sub-Section (1) of Section 20 of the Prevention of Food Adulteration Act, 1954 (37 of 1954), the State Government do hereby authorise the following officers of the Political and Services (Vigilance) Department to give written consent for instituting prosecutions for offences under the said Act, within the local limits specified against each in respect of cases detected by the Food Inspectors attached to the concerned Vigilance Divisions :
>
> #Name of Officer Local limits Cuttack Municipality(1) Superintendent of Police, Cuttack Vigilance Division.* * * * By order of the Governor C. VENKATARAMANI Joint Secretary to Government."##

The Prevention of Food Adulteration Act was amended by Act 49 of 1964 with effect from March

1, 1965. One of the amendments made by the amending Act was in Section 20 of the Act. As a result of amendment, the material part of sub-section (1) of Section 20 reads as under :

> "Section 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 :"

The contention which has been raised on behalf of the appellant is that while it is permissible under Section 20 of the Act, as it stands after the amendment made by Act 49 of 1964, to issue a general notification authorising a person to give written consent under the above provision of law, such a course was not permissible under Section 20, as it stood before the above amendment. It was, according to the learned counsel, essential under Section 20, as it stood before the amendment, that the authority should be in respect of some specified individual offence. As notification dated December 16, 1964 was issued before Act 37, 1954 was amended by Act 49 of 1964 and as the said notification gave consent for instituting prosecutions for offences under the Act committed within the local limits of Cuttack Municipality, the said notification, it is urged, was not in accordance with law.

7. As against the above, Mr. Chatterjee on behalf of the State has argued that there is no infirmity in the notification, dated December 16, 1964 and such a notification could have been validly issued under Section 20 of the Act, as it stood before the amendment. In our opinion, there is force in the submission of Mr. Chatterjee.

8. It would appear from what has been stated above that the short question which arises for consideration is whether it is permissible for the State Government or local authority under Section 20, as it stood before the amendment, to give a general authority to a person to give consent to the institution of prosecutions for offences under the Act without mentioning a specified individual offence. We have reproduced above Section 20, as it stood before the amendment, and we find nothing in its language which makes it imperative to specify a particular offence in the order authorising a person to give consent to the institution of prosecution. The words "in this behalf" in the above provision, to which our attention has been invited, indicate that the authority conferred by the State Government or local authority upon a person should relate to the giving of written consent for institution of prosecutions for offences under the Act. It is difficult to spell out an inference from those words that the authority conferred upon a person under the above provision cannot be a general authority in respect of offences under the Act but must relate to some specified individual offence. If the interpretation sought to be placed upon the words "in this behalf" on behalf of the appellant were to be accepted, in such an event no general authority can be conferred even under subsection (1) of Section 20, as amended by Act 49 of 1964 because even the amended section contains those words. The words "by general or special order" in the amended section in that event would become meaningless and lose all significance. It is, indeed, not disputed that under the amended section a general authority can be conferred upon a person for giving consent to the institution of prosecutions for offences under the Act. The words "in this behalf" in sub-section (1) of the Section 20, as it existed before the amendment, as well as after the amendment must obviously carry the same meaning. If these words in the amended section do not postulate that the authority conferred by the State Government or local authority should have reference to a specified individual offence committed by a particular accused, we fail to understand as to how those words as used in the section before the amendment would carry a different connotation.

9. Perusal of sub-section (1) of Section 20 of the Act, as it existed before the amendment, shows that the Legislature had twofold object in enacting this provision. One object was to prevent institution of prosecutions for offences under the Act unless written consent to the institution of such prosecutions was given by the State Government or a local authority or a person authorised in this behalf by the State Government or a local authority. The other object was to relieve the State Government or local authority of the necessity of applying its mind and dealing with each individual case of prosecution under the Act. Provision was accordingly made to enable the State Government or local authority to assign the function of giving written consent to some other person. In case the authority conferred by the State Government or local authority could not be general but had to relate to an individual offence, the very purpose of the latter part of sub-section (1) of Section 20 would be defeated, for the would in such an event become necessary for the State Government or local authority first to authorise a person to give written consent in respect of an individual case of prosecution and thereafter for the person authorised to pass another order for giving the written consent. The result would be that what could be done in one step by the State Government or local authority by straightaway giving its written consent would have to be done in two steps. It is difficult to accede to the contention that the above provision instead of simplifying the matter was intended to make it needlessly more cumbersome.

10. The change made in Section 20 by Act 49 of 1964 has now put the thing beyond any pale of controversy. Even without the change made in the section, the authority conferred by the State Government or local authority upon a person for giving the consent contemplated by the section, in our opinion, could be of general nature and it was not essential that the order authorising the person should have mentioned specified individual offences. The amendment made in this section had the effect of making more clear what was already contemplated by the section.

12. The Madras High Court in the case of Corporation of Madras v. Arumugham, (AIR 1966 Mad 194 : (1965) 2 Mad LJ 403 : 1966 Cri LJ 668) he Mysore High Court in the case of Laxman Sitaram Pai and Another v. The State of Mysore, (AIR 1967 Mys 33 : (1966) 1 Mys LJ 569 : 1967 Cri LJ 382) and the Andhra Pradesh High Court in the case of Public Prosecutor v. Thatha Rao and Others, (AIR 1968 AP 17 : (1967) 1 Andh WR 206 : 1968 Cri LJ 20) have all taken the view that a general authorisation to launch prosecutions under the Act is sufficient. For the reasons stated above, we agree with the view taken in the above three cases.

11. We see no cogent ground to interfere with the sentence. The appeal fails and is dismissed.

</html