

The Corporation of Calcutta

Vs

Md. Omer Ali and Another

Criminal Appeal No. 260 of 1971

(P.N. Bhagwati, Syed M. Fazal Ali JJ)

20.08.1976

JUDGMENT

BHAGWATI, J. -

1. This appeal by certificate is directed against a judgment of the High Court of Calcutta confirming an order passing by the Presidency Magistrate holding that a complaint under Section 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the Act) by the Food Inspector of the Corporation of Calcutta against the respondents was not competent and discharging the respondents. The facts giving rise to the appeal are few and may be briefly stated as follows.

2. The respondents are proprietors of a grocery shop situate in the city of Calcutta. The Food Inspector took samples of turmeric power sold by the respondents in accordance with the procedure prescribed by the rules made under the Act and sent one of the samples to the Public Analyst for analysis. It was found, as a result of the analysis, that the sample was heavily adulterated and was not fit for human consumption. The Food Inspector on these facts, filed a complaint against the respondents in the court of the Presidency Magistrate after obtaining the written consent of the Health Office which was endorsed at the foot of the complaint. The complaint was made in the name of the Corporation of Calcutta through the Food Inspector. The complaint charged the respondents with the offence of adulteration punishable under Section 16(1)(a)(i) read with Section 7 of the Act. It appears that the trial proceeded for some time before the learned Presidency Magistrate, but before it came to an end, a preliminary objection was raised on behalf of the respondents that the complaint was not filed by the proper authority as required by Section 20 (1) of the Act and was hence not maintainable. The ground on which the preliminary objection was based was that under Section 20(1) a complaint could be filed only by the Central Government or the State Government or a local authority or a person authorised in that behalf by general or special order by the Central Government or the State Government or a local authority, while in the present case, the complaint was filed by the Food Inspector who was not a person authorised by the Central Government or the State Government or the Corporation of Calcutta and there was accordingly non-compliance with the mandatory requirement of Section 20(1). The prosecution relied on a resolution passed by the Corporation of Calcutta on December 23, 1966, by which an earlier resolution dated December 23, 1955, authorising the Health Officer to institute a prosecution under the Act was modified and it was provided that

no prosecution for an offence under the Prevention of Food Adulteration Act, 1954 and the rules framed thereunder shall be instituted except with the written consent of the Health Officer who is authorised in this behalf by the Corporation, a local authority, under Section 20(1) of the said Act.

It was contended on behalf of the prosecution that since the complaint was filed by the Food Inspector with the written consent of the Health Office, who was authorised in that behalf by the Corporation of Calcutta under Section 20(1), the complaint was in conformity with the requirement of Section 20(1) and was hence maintainable. The learned Presidency Magistrate, however, rejected this contention of the prosecution and taking the view that what Section 20(1) required was that the complaint must be filed by one of the four categories of persons there mentioned, namely, the Central Government or the State Government or a local authority or a person authorised in that behalf, held that since the present complaint was filed by the Central Government or the State Government or the Corporation of Calcutta, the complaint could not be said to be properly filed and the court was not competent to take cognizance of the offence on such complaint and in this view the learned Presidency Magistrate discharged the respondents. The Corporation of Calcutta preferred a criminal revision application against this order to the High Court of Calcutta but a single Judge of the High Court who heard the criminal revision application agreed with the view taken by the learned Presidency Magistrate and confirmed the order of discharge passed by him. The Corporation of Calcutta thereupon obtained a certificate for leave to appeal to this Court under Article 134(1)(c) of the Constitution and hence the present appeal before us.

3. The sole question which arises for determination before us is whether the complaint filed by the Food Inspector on behalf of the Corporation of Calcutta was in conformity with the requirement of Section 20(1) of the Act. Section 20(1) reads as follows :

No prosecution for an offence under this Act shall be instituted except by or with 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.

It is clear on a plain reading of the language of Section 20(1) that it inhibits institution of prosecution for an offence under the Act except on fulfillment of one or the other of two conditions. Either the prosecution must be instituted by the Central Government or the State Government or a local authority or a person authorised in this behalf by the Central Government or the State Government or a local authority or the prosecution should be instituted with the written consent of any one of these four specified categories of authorities or individuals. If either of these two conditions is satisfied, it would be sufficient authority for the institution of a prosecution. Now in the present case, the complaint was filed by the Food Inspector and there can be a doubt that so far as the first condition is concerned, it was not fulfilled since the Food Inspector was admittedly not a person authorised to institute a prosecution by the Corporation of Calcutta. But that would not be sufficient to invalidate the complaint, because the complaint would be valid even if the second condition is satisfied. Here the complaint was filed by the Food Inspector with the written consent of the Health Officer and the Health Office was admittedly a person authorised to give written consent by the Corporation of Calcutta. The complaint was, therefore, filed with the written consent of "a person authorised in this behalf by a local authority" and the requirement of the second condition was clearly satisfied. There was, in the circumstances, no breach of the requirement of Section 20(1) in the filing of the complaint by the Food Inspector with the written consent of the Health Officer and the prosecution was properly instituted.

4. This view which we are taking is fully supported by a decision of this Court in the State of Bombay v. Parshottam Kanaiyalal ((1961) 1 SCR 458 : AIR 1961 SC 1 (1961) 1 CRI LJ 170). What happened in this case was that a complaint was filed against the respondent by the Food Inspector for selling adulterated milk after obtaining the consent in writing of the Chief Officer of the Baroda

Municipality who was authorised by the Baroda Municipality to give written consent under Section 20(1) of the Act. The respondent contended that the written consent was of no avail since it did not mention the name of the person in whose favour it was given and the Food Inspector was, therefore, not entitled to file the complaint on the basis of such written consent. This objection raised on behalf of the respondent was negated and it was held by this Court that where a prosecution is launched on the basis of a written consent granted by the competent person or authority, it is not necessary to name the complainant in the written consent. The competent authority or person has to give his written consent to a specified prosecution and it is not necessary that the name of the complainant should be mentioned in the written consent. In fact, any person can file a complaint for an offence under the Act on the basis of written consent given by the competent authority or person, because, while giving the written consent, the competent authority or person has to apply his mind not to the question as to who should be authorised to file the complaint, but to the desirability and propriety of filing a particular prosecution and once that is done and the written consent is given, the requirement of Section 23 (1) is satisfied and thereafter any person can file such prosecution. This decision clearly shows that it is not necessary that even after written consent is given by the competent authority or person, the prosecution must still be launched by any one of the four categories of authorities or persons specified in Section 20(1). The two conditions specified in Section 20(1) are, as already pointed out above, in the alternative and if either of them is satisfied, it is sufficient compliance with the requirement of the section.

5. Since in the present case the Health Officer was authorised by the Corporation of Calcutta to give written consent to the institution of prosecution for any offence under the Act and the complaint of the Food Inspector was filed after obtaining the written consent of Health Officer, it was in conformity with the mandatory requirement of Section 20(1) and the learned Presidency Magistrate as well as the High Court were in error in taking the view that it was not properly filed.

6. We, therefore, set aside the orders passed by the learned Presidency Magistrate as well as the High Court, restore the complaint and direct the learned Presidency Magistrate to proceed with the complaint on the basis that it was properly filed under Section 20(1) of the Act.

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