

Food Inspector, Health Dept., U. T., Chandigarh

Vs

Krishna Dhaba

Criminal Appeal No. 165 of 1991

(R. M. Sahai, S. Mohan JJ)

24.01.1992

JUDGMENT

1. The only question that arises for consideration in these appeals directed against order of the High Court of Punjab and Haryana is if the High Court was justified in quashing complaint filed under S. 16(1)(a)(i) of the Prevention of Food Adulteration Act read with R. 20 of Prevention of Food Adulteration Rules pending in the Court of Chief Judicial Magistrate.

2. Reason for quashing the complaints were its filing by the Inspectors who it has been held. were not persons authorised in law. It was held in one case that the Chief Medical Officer having been authorised to file the complaint by a notification issued by the Chandigarh Administration he could not delegate his authority further in favour of the Inspector. In the other, the Court found that launching of prosecution and giving consent for launching prosecution were separate and independent functions. Since the notification issued by the Administration under S.20(1) of the Act authorised the Medical Officer Chandigarh to institute prosecution, only he could not give consent. Consequently the complaint filed with his consent was by a person not authorised under law and it could not be taken cognisance of.

3. Section 20(1) of the Prevention of Food Adulteration Act reads as under:

"20. Cognisance and trial of offences—

(1) No prosecution for an offence under this Act, not being an offence under S. 14 or S. 14A shall be instituted except by, or with the written consent of the Central Government or the State Government or a person authorised in this behalf by general or special order, by the Central Government or the State Government.

Provided that a prosecution for an offence under this Act may be instituted by a purchaser referred to in 5. 12, if he produces in Court a copy of the report of the public analyst along with the complaint." It came up for interpretation in A. K. Roy v. State of Panjab, AIR 1986 SC 2160. It was held (Para 10) :

"A careful analysis of the language of S. 20(1) of the Act clearly shows that it inhibits institution of prosecution for an offence under the Act except on fulfilment of one or the other of the two conditions. Either the prosecutions must be instituted by the Central Government or the State Government, or the prosecutions should be

instituted with the written consent of any of the four specified categories of authorities or persons. If either of these two conditions is satisfied, there would be sufficient authority for the institution of such a prosecution for an offence under the Act. The provision contained in S. 20(1) of the Act does not contemplate the institution of a prosecution by any person other than those designated. The terms of S. 20(1) do not envisage further delegation of powers by the person authorised, except that such prosecution may be instituted with the written consent of the Central Government or the State Government or the person authorised."

A complaint under S. 20 thus could be instituted apart from Central or State Government, by a person authorised in that behalf. Such a person who is authorised to institute complaint could, "give his written consent for the prosecution by the Food Inspector". A. K. Roy (supra). Chief Medical Officer, Chandigarh undisputedly, and as is clear from Notification No.52 10-UTF-4-67 946 issued on 29th April, 1967 by the Chandigarh Administration in exercise of powers conferred by sub-sec. (1) of S. 20 of the Act, was a person authorised to institute a complaint. Therefore he could give his consent as well for launching of prosecution. In doing so he was neither delegating his power nor acting contrary to S. 20. He was acting within the scope of authority as a person authorised to institute complaint under S.20(1) of the Act has been placed at par with other authorities designated in the sub-section for purposes of granting consent.

4. In the circumstances the appeals succeed and are allowed. The orders passed by the High Court quashing the complaint are set aside. The Chief Judicial Magistrate, Chandigarh is directed to proceed with the complaints in accordance with law. Appeal allowed.

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