

# ANDHRA PRADESH HIGH COURT

Public Prosecutor

Vs.

S. Thatha Rao

Criminal Appeals Nos. 628, 620, 626 and 627 of 1964. in C.C. Nos. 243, 239, 264 and 253 of 1963

(Mohammed Mirza, J.)

08.07.1966

## JUDGMENT

### **Mohammed Mirza, J.**

1. The State has Filed this appeal against an order passed by the Munsif Magistrate Visakhapatnam acquitting the respondent from the charges under Sections 7 and 16(1) read with Section 2(1)(a) and (1) and rule 44(B) of the Prevention of Food Adulteration Act 1954.
2. The short facts are that the Municipal Health Officer and Sanitary Inspector, Visakhapatnam Municipality filed a complaint alleging that on 19-8 1963 at about 6-30 a.m. accused was carrying milk in a brass vessel for sale. P.W. 2 the Food Inspector wanted to purchase the milk and requested some persons to assist as mediators but none agreed to act. In the meantime P.W. 1 who was also a Sanitary Inspector at the time came that side and in his presence P.W. 2 purchased the sample of milk from the respondent after paying him 75 paise and obtained a receipt under Ex P-2. Then according to the usual procedure, he divided the milk into three equal parts and put them in three bottles and then sealed them. One was given to the accused, one was sent to the Public Analyst and one was retained by him. The Maistry of the Municipality who was along with the Food Inspector also signed on the statement Ex. P-3 that was taken from the accused. The Public Analyst under his report Ex. P-4 reported that the sample of milk sent to him contained 27 per cent of added water and therefore was adulterated. Thereafter P.W. 2 filed a complaint, which has given rise to the case.
3. Besides, P.W. 2, P.W. 1 the Sanitary Inspector was also examined to prove the case of the prosecution P.W. 3 is another Food Inspector, Visakhapatnam Municipality, who filed the complaint and he has stated in the course of evidence that he has been authorized by the Municipality to institute prosecutions under the Food Adulteration Act. P.W. 2 had handed over to him the relevant record on the basis of which he filed the complaint.
4. After the examination of these witnesses the accused was questioned by the Court under Section 342, Criminal Procedure Code, and he set up a plea that he purchased cow milk for his

own personal use and P.W. 1 took that milk. He further stated that he had not sold the milk to P.W. 2. It was his further case that his thumb impression was obtained on a white paper and neither any bottle nor any money was given to him. He examined one witness in his defense also who stated that the accused does not sell milk.

5. The learned Magistrate has acquitted the accused on the following grounds: firstly that there was no independent mediators and therefore it cannot be said that there was compliance with the provisions of Section 10(7) of the said Act. (2) The Food Inspector failed to produce his diary which he has to maintain under Section 9(c) of the said Act. (3) Absence of any evidence to show what quantity of formalin was added to the milk for its preservation. (4) Absence of any evidence to show how long the sample sent to the Analyst was kept by him till it was analyzed. Lastly, that there was no separate order sanctioning the prosecution of the accused in the case.

6. I will take up first the last point discussed by the learned Magistrate for holding that the prosecution was bad for sanction. The learned Public Prosecutor has urged before me on the authority of *Madurai City Co-operative Milk Supply v. Food Inspector Madurai Municipality*<sup>1</sup>, and *State of Mysore v. Danjaya*<sup>2</sup>, that the general authority by notification authorizing all Food Inspectors to launch proceeding under the Act, is enough to enable such persons to launch a prosecution and no specific sanction in each case and against each person is necessary. The first of these cases is of Madras High Court. The same question had come up before the Madras High Court and the learned Judge after discussing a number of authorities was of the view that the general authority to prosecute is sufficient for the purpose of Sub-Section (1) of Section 20 of the Prevention of Food Adulteration Act. Similarly, in the other case a Division Bench of the Mysore High Court held that the general authorization in the form of a resolution of the Municipal Council was sufficient. In this case reference was also made to a Full Bench case of Allahabad High Court in *M.J. Powel v. Municipal Board of Mussoorie*<sup>3</sup>, in which the learned Judges when dealing with a similar provision contained in Section 69 of Act XV of 1883, held that "A Court shall not take cognizance of an offence punishable under this Act, except on the complaint of the Municipal Board, or of some person authorized by the Board in this behalf and further observed that the object of the legislature was to relieve the Municipal Board of the necessity of itself dealing with each individual case of prosecution for a municipal offence, and to enable it to assign that particular function to some other person or persons.

7. In the said Act, in my view, the same situation arises. Food Inspectors of the Municipality are expected to go round within their jurisdiction to see that the articles of food which are kept for sale are unadulterated and in their daily rounds they may book several offences and therefore to relieve the Municipal Council of the necessity of passing resolution every time an offence has been brought to their notice, they have been authorized to delegate this power to a person to institute prosecutions. There is no dispute about the fact that the local authority is the Municipality of Visakhapatnam and the local authority was empowered to authorize any person in this behalf.

8. The learned Counsel for the respondent has contended before me that the sanction for prosecution is not a mechanical act. The person sanctioning must apply his mind to the

<sup>1</sup>1962 Mad LJ (Cri) 424 : (1962 (1) Cri LJ 166)

<sup>3</sup>(1900) ILR 22 All 123 (FB)

<sup>2</sup>1963 Mad LJ (Cri) 347 : (AIR 1963 Mys157)

facts of the case and then give the sanction, and therefore the authorization must be by the

authority concerned with respect to a specific complaint He has further relied on *K.G. Anjaneyalu v. Puri Municipality*<sup>4</sup>, to support the argument that the words "in this behalf" which appear in the section require that the authorization of the person to initiate prosecution must be with special reference to a particular case under the said Act that should be placed before the Municipality. But I do not agree with the view of the Orissa High Court on the construction given by it. I may again refer to the Full Bench case of the Allahabad (No. 3 supra) mentioned above, in which "authorized in this behalf" was construed :

"The Government Advocate has pointed out what would be the result of restricting it in the manner suggested. In some of the larger Municipalities constituted under this Act he said - and I think with truth - that the section would be utterly unworkable if so restricted. In a large community with multiplicity of local business and where offences against bye-laws of greater or less importance are of constant occurrence, it is impossible that the Municipal Board should meet and deliberate and pass resolutions in every case before any complaint could be instituted. The meetings of the Board are subject to regulations as regards convening, notices to be sent to the members, and as to quorum, and so presuppose a machinery which often means considerable delay, and which could not possibly be applied as a preliminary to each and every prosecution for a municipal offence. That is precisely the consideration which induced the legislature to enact the concluding words of Section 69. I can see no a priori improbability, no considerations of public policy which would make it unlikely that the Legislature should entrust to a Municipal Board power to confer on other persons not only a specific authority to file a particular complaint, but a general authority to prosecute for municipal offences, including authority to determine whether a prosecution is desirable".

Therefore in my view the restricted meaning cannot be given to the words "in this be half". Besides this, the ruling of Orissa High Court is not applicable to the facts of the present case. It appears that the Municipality of Puri had passed a resolution authorising the Chairman to file and conduct all sorts of litigations on behalf of Municipality; but this resolution was passed much prior to the coming in force of the Food Adulteration Act. Therefore in my view the Orissa High Court correctly observed, that the resolution did not authorise the Municipal Chairman to file any complaint under the Food Adulteration Act. Similarly the other case cited by the learned Counsel in *State of Bombay (now Gujarat) v. Parshottam Kanhaiyalal*<sup>5</sup>, is wholly beside the point. This does not decide the question whether a general authority to prosecute is valid or invalid. Therefore, agreeing with the view expressed by the Madras and Mysore High Courts, I think that a general authorization to launch prosecution under the Food Adulteration Act is sufficient. Therefore the Food Inspector in this particular case was competent to file the complaint and no separate sanction for prosecution is necessary for each case.

9. The other grounds given by the learned Magistrate for acquitting the accused appear to me to be unsound. It has been observed by this Court in a number of cases that the

<sup>4</sup> AIR 1963 Ori 158

<sup>5</sup> AIR 1961 SC 1

provisions of Section 10(7) of the Prevention of Food Adulteration Act are not mandatory. But it does not mean that the Inspectors are given a free hand to by-pass the provisions of this section.

Each case should be judged on its own merits. If it appears from the evidence that the Food Inspector has made an earnest attempt to comply with the provisions of this section, but failed to secure the service of any independent person, in that case no serious notice of non-compliance of the section would be taken. In this particular case the Inspector P.W. 2 has stated on oath that he made an attempt to secure the services of some persons to act as mediators but none was willing. There is nothing on record to show that he is not speaking the truth. Therefore the absence of independent mediators which has so much influenced the Magistrate in rejecting the evidence of the Inspector P.W. 1 is in my view without any weight.

10. Rule 9(c) of the Rules made under the Prevention of Food Adulteration Act reads as follows :

"It shall be the duty of the Inspector -

(c) to maintain a record of all steps and action taken by him and the performance of his duties including taking of samples and seizure of stocks and to send copies of such record to the Health Officer or the food authority as directed in this behalf."

The learned Magistrate in my view has given a wrong construction to this Rule. It is not incumbent on the Inspector to produce his diary before the Court. The rule simply says that the Inspector who maintains a diary shall submit copies of such record to the Health Officer or the Food Authority. Nowhere it has been stated that it should be necessary for the Food Inspector to produce copies of his diary before the Court. But the circumstances may occur where the Court may think that the production of the diary is necessary for a just decision of the case and in that situation it will be perfectly legitimate for the Court to ask the Food Inspector to produce his diary. In the present case it does not appear to me that the learned Magistrate felt that the perusal of the diary for a decision of this case was necessary Therefore this reason by the Magistrate also is not satisfactory.

11. One other reason given by the Magistrate for acquittal is that there was no evidence as to any proper preservative being put in the sample bottle which was sent to the analyst. This in my view is wholly wrong. P.W. 1 has stated in his evidence that eight drops of formalin were added to each of the bottle in which the sample of milk was put. P.W. 2 of course does not speak of any specific quantity of formalin being added to the milk but he has stated that formalin was added. This evidence was sufficient to hold that the preservative was added to the milk. Further if it is examined in the light of the report of the Public Analyst in Ex. P 4 where it has been stated that no decomposition had taken place of the article that would interfere in the analysis, makes it clear that the sample that was received by the Analyst had not deteriorated and was suitable for purposes of analysis. It is not necessary in the face of the report of the Public Analyst to establish what time was taken to analyze the article. In my view the learned Magistrate has taken a completely erroneous view of the evidence before him and he also fell into an error and the question of sanction was also decided by him wrongly. Therefore, I set aside the order of acquittal and find that the prosecution has proved the charges that were brought against the respondent. It was the case of the prosecution that the respondent was convicted for an offence under the Food Adulteration Act previously but the learned Magistrate while framing a charge did not mention the previous conviction in the charge. Therefore I cannot take the previous conviction into consideration while passing the sentence.

12. In the result the accused is convicted for the offence for which he was charged and sentenced to pay a fine of Rs. 100 and in default to undergo two months' simple imprisonment. The appeal is accordingly allowed.

Criminal Appeal No. 620 of 1964 :

13. With regard to the point of sanction on which the accused was acquitted, I have held in Crl. Appeal No. 628/64, that a general authorisation to prosecute can be validly delegated to any person and therefore, the application of law by the Magistrate is not correct.

14. In the result the accused is convicted for the offence for which he was charged and sentenced to pay a fine of Rs. 25 and in default to undergo one month's simple imprisonment.

15. The appeal is accordingly allowed. Criminal Appeal No. 626 of 1964 :

16. With regard to the point of sanction of which the accused was acquitted, I have held in Criminal Appeal No. 628/64 that a general authority to prosecute can be validly delegated to any person and therefore the application of law by the Magistrate is not correct. In the result I allow the appeal and convict the respondent for the offence for which he was charged and sentence him to pay a fine of Rs. 25 and in default to undergo one month's simple imprisonment. Criminal Appeal No. 627/64:

17. In this appeal also the accused was acquitted on the point of sanction. I have held in Criminal Appeal No. 628 of 1964 that a general authority to prosecute can be validly delegated to any person and therefore the application of law by the Magistrate is not correct. In the result this appeal is allowed and the accused is convicted for the offence for which he was charged and sentenced to pay a fine of Rs. 25 and in default to undergo one month's simple imprisonment.

Appeals allowed and accused convicted.