MYSORE HIGH COURT

Laxman Sitaram Pai

Vs

State of Mysore

Criminal Revn. Petu. No. 355 of 1965

(B.M. Kalagate, J.)

02.02.1966

JUDGMENT

B.M. Kalagate, J.

1. First petitioner Laxman Sitaram Pai is the Manager and Second Petitioner Venkatesh Bhiku Pai is the Proprietor of the hotel known as 'Madhavashram' in house No. 3441. College Road, Belgaum. The two petitioners were the accused in C. C. No. 3752 of 1964 in the Court of the Judicial Magistrate, First Class, Belgium City, and the charge against them was that they have committed an offence punishable under section 16 (1) (a) (i) read with section 7 of the Prevention of Food Adulteration Act. 1954. The complaint was filed against the petitioners by the Belgium Borough Municipality by its Prosecutor Shri D. S. Sadre.

2. P. W. 1 Shri Umar is a Food Inspector of Belgium Municipality and it is the case of the prosecution that on 8-9-1964 the Food Inspector Mr. Umar went to the tea shop of the accused known as "Madhavashram' to take sample of milk at about 7 a.m. he found two vessels containing 15 seers of milk in one and 10 seers of milk in the other in the kitchen; the Inspector demanded 660 milliliters of cold milk from accused No. 1 and accused No. 1 sold the same and took 45 paise only as its price; the Food Inspector obtained a receipt for having paid 45 Paise from accused No. 1; he also took in writing from him that the milk purchased by him was buffalo milk; then, in accordance with the Rules framed under the Prevention of Food Adulteration Act, 1954, he gave due notice to accused No. 1 stating that he would send the sample of milk to the Public Analyst for analysis; he then divided the sample into three equal parts, took three empty, clean and dry bottles and filled them with those three parts of the sample; he also added formal into these bottles and then sealed, labeled and numbered the bottles giving the sample No. 351: the Inspector then sent the second bottle to the Public Analyst, Bangalore for analysis with a memorandum containing the specimen seal with which the bottles had been sealed; the result of analysis as certified by the Public Analyst showed that the sample sent is adulterated. It is on these facts that the two petitioners were prosecuted for the offences stated above.

3. The two accused in their defence stated that Madhavashram is a tea shop which sells only tea and coffee and milk is not sold to customers in the shop but is kept only for preparing tea and

coffee. They also denied that they received 45 paise from the Food Inspector P. W. 1 as the price of the milk. They contended that it was P. W. 1 himself who placed 45 paise on the table and obtained the receipt from them. Thus, they denied that they have committed the offences with which they have been charged.

4. The learned Magistrate found that the milk is not only stored in the hotel but it is sold in the shop. He further found that the two petitioners have sold the milk to P. W 1, the Food Inspector On these findings he found the accused guilty under section 16 (1) (a) (i) read with section 7 of the Prevention of Food Adulteration Act and sentenced each of them to pay a fine of ₹ 300 in default to suffer simple imprisonment for one month.

5. The petitioners preferred an appeal in the Court of the Sessions Judge, Belgium, against the said order of conviction and sentence. The learned Sessions Judge confirmed the order of conviction and sentence passed against the petitioners and dismissed the appeal and it is the correctness of the order of confirmation of conviction and sentence passed against them that is being challenged in this revision petition by Miss Anasuya, the learned counsel for the petitioners.

6. Before the learned Sessions Judge it was contended for the accused-petitioners that there was no proper authorisation to prosecute the petitioners. It was also contended that Ex. 17 which is a report of the Public Analyst has no evidentiary value since there has been no due compliance with rules 7 and 18 of the rules framed under the Prevention of Food Adulteration Act, 1954. The two other points urged before the learned Magistrate were also urged before the learned Sessions Judge. They are : that the milk was not stored for sale and in fact the sale to the Food Inspector is not a sale within the meaning of section 2 (xiii) of the Act. Thus, on these four contentions the petitioners challenge their conviction before the learned Sessions Judge. The learned Sessions Judge answered the contentions raised by the petitioners holding that the authorisation to prosecute is proper. He further held that there has been a due compliance of rules 7 and 18. He also found that though the milk was not stored for sale, yet the accused having sold the milk to the Food Inspector there has been a sale of the milk under the Act. He therefore, confirmed the conviction and sentence of the accused petitioners.

7. Now, in this Court Miss Anasuya, appearing for the petitioners has urged the same four points which were pressed before the learned Sessions Judge and I shall deal with them one by one.

8. The first contention that there has been no proper authorization to prosecute the accused-petitioners is based on the provisions of section 20 (1) of the Act which provides that

> "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;
> x x x x x x x"

The prosecution in this case has been launched by the Belgium Borough Municipality by its Prosecutor Shri D. S. Sadre. The Belgium Borough Municipality is a local authority. The question is, whether the Prosecutor Mr. D. S. Sadre had a written authority from the Belgium Borough Municipality. It is contended by the learned counsel that the authorization in this case is

a general authorization by a resolution passed by the Municipality in its ordinary general meeting held on 8th November 1955. The said resolution is to the following effect :

> "Chief Officer's report dated 8th September 1955 recommending to authorise Sri D. S. Sadre, Municipal Prosecutor, to institute prosecutions under the Prevention of Food Adulteration Act passed by the Central Government

Proposed by Sri V. S. Virupaxi and seconded by Sri H. A. Dharwadkar and Sri D. S. Sadre, Municipal Prosecutor, be authorised to institute prosecutions under the Prevention of Food Adulteration Act, made by the Central Government. The proposal was put to vote and was declared carried Nem-con."

9. It is clear from this resolution that Mr. D. S. Sadre has been authorised to institute prosecutions for the offences under the Prevention of Food Adulteration Act, 1954. It is no doubt that this is the authorisation which was general in nature given to Mr. D. S. Sadre to institute prosecutions under the Act. But, according to the learned Counsel this authorisation is not enough. What is necessary is that there should be a special authority in each case to prosecute the accused and there being no special or specific authority authorising Mr. D. S. Sadre. to prosecute the accused, the prosecution in this case is without proper authorisation and, therefore, bad in law. But, this Court has held in similar circumstances in the case reported in *State of Mysore v. Danjaya*[1], that:

> " Reading section 16 of the General Clauses Act, 1897, with section 20 (1) of the Prevention of Food Adulteration Act, 1954, it is clear that 'the person to be authorized' under section 20 (1) could be a person who is authorized by virtue of his designation or the office that he holds. Where the Municipal Council authorized all Food Inspectors of the Municipality to institute prosecutions, it is held that the authorization was valid '.

10. In this case, the Belgaum Borough Municipal Council has authorized its Food Inspector Mr. B. D. Umar to institute prosecutions under section 20 (1) of the Prevention of Food Adulteration Act, and in view of the decision, it must be held that the authorization given to Mr. D. S. Sadre to institute prosecutions under section 20 (1) of the Act is a valid authorization and therefore, the present prosecution is by a person who has been duly authorized. That being so, the contention that the prosecution is bad in law must fail.

11. The next contention is as to whether there has been a sale of the milk which was found to be adulterated by the accused, to the Food Inspector. As I stated, the charge against the accused is under section 16 (1) (a) (i) read with section 7 of the Act. Sub-Clause (i) to Clause (a) of sub-section (1) of section 16 provides that :

[1]1963 (1) Mys LJ, 312 : AIR 1963 Mys 157

> "(1) If any person –
> (a) whether by himself or any person on his behalf imports into India or manufactures for sale, or stores, sells or distributes, any article of food in contravention of any of the provisions of this Act or of any rule made thereunder, he shall in addition to the penalty to

which he may be liable under the provisions of section 6, be punishable-
(i) for the first offence, with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees, or with both. "

Section 7 (i) provides that :

" No person shall himself or by any person on his behalf manufacture for sale, or store, sell or distribute-
(i) any adulterated food;
x x x x x x "

12. Thus, reading this section with section 16, it is contended on behalf of the prosecution that the accused have committed an offence of having sold the milk which is found to be adulterated. The learned Magistrate found that the accused have stored the milk for sale and they have sold it, whereas, the learned Sessions Judge has found that the accused have not stored the milk for sale, but they have sold the milk to the Food Inspector.

13. Now, there has been some controversy in this case as to whether when a proprietor of a tea or coffee shop stores the milk which may be adulterated for the purpose of mixing it with tea or coffee, such storing by itself would be an offence. The learned Sessions Judge has found that in such circumstances the storing of the milk by the proprietor of the tea shop is not a storing of milk for the purpose of selling. This finding of the learned Sessions Judge has been challenged by the learned Government Pleader. It is contended by him that the storing of the milk which is found to be adulterated under section 7 read with section 16 of the Act would be an offence and the learned Sessions Judge was not right in holding that the storing of the milk by the proprietor of the tea or coffee shop is not a storing of the milk for the purpose of sale. According to him, that finding cannot be supported. However, it is contended that even accepting that finding as true, still there has been a sale of the adulterated milk to the Food Inspector P. W. 1 and therefore, such a sale would amount to an offence under section 16 (1) (a) (i) read with section 7 of the Prevention of Food Adulteration Act.

14. It is contended on behalf of the petitioners-accused by Miss Anasuya that the sale in this case being an involuntary sale, the finding that, there has been a sale cannot be accepted as correct with the definition of section 2 (xiii) of the Act. In support of that contention she has relied upon some decisions. Now, the question whether the sale to the Food Inspector which is a forced sale is a sale within the meaning of Section 2 (xiii) of the Act, has been concluded by the recent decision of the Supreme Court reported in AIR 1966 SC 128. It has been observed by their Lordships in that case;

" The Act gives a special definition of 'sale' in section 2 (xiii) which specifically includes within its ambit a sale for analysis. A sale for analysis must be regarded as sale even if the transaction contains an element of compulsion. "

Therefore, it must be held that there has been a 'sale' within the meaning of section 2 (xiii) of the Act and accordingly that finding of the learned Sessions Judge has got to be confirmed.

15. It has been then contended for the petitioners that Ex 17 which is a report of the Public Analyst made under Rule 7 (3) of the Rules framed under the Act has no evidentiary value since the same is made in violation of the Rules 7 and 18 of the Rules framed under the Act. Rule 7 states the duties of public analyst on receipt of a package containing a sample for analysis from a Food Inspector or any other person. Sub-Rule (1) provides that :

> " On receipt of a package containing a sample for analysis from a food inspector or or any other person the public analyst or an officer authorized by him shall compare the seals on the container and the outer cover with specimen impression received separately and shall note the condition of the seals thereon."

16. We are not concerned with sub-rule (2). Then Sub-rule (3) provides that :

> " After the analysis has been completed he shall forthwith supply to the person concerned a report in Form III of the result of such analysis. "

Rule 18 is to the following effect :

> "Memorandum and Impression of seal to be sent separately.-A copy of the memorandum and a specimen impression of the seal used to seal the packet shall be sent to the public analyst separately by registered post or delivered to him or to any person authorized by him. "

What is contended first in relation to rule 7 is that, there is no due compliance with sub-rule (1) of Rule 7 since the Public Analyst has not noted the condition of the seals on the container and the outer cover after comparison with specimen impression of the seal received separately. Exhibit 17 is the report by the public analyst in printed Form No. III under Rule 7 (3) of the rules. It is stated therein by the Public Analyst that he has received on 11th September 1964, from the Food Inspector a sample of buffalo's milk No. 351 for analysis "properly sealed and fastened, and that I found the seal intact and unbroken."

17. The question is, whether this certificate by the Public Analyst satisfies the requirement of rule 7 (1). It is contended for the petitioners that there are no words to suggest or show in this Exhibit 17 that the Public Analyst has either compared the seals on the container and the outer cover with the seal of the specimen impression received separately by him. It is true that such words are not to be found in Ex. 17, but we do find that there has been a mention of the condition of the seal on the sample sent by the Food Inspector. It is contended by the learned Government pleader that what is obligatory on the Public Analyst is to state the condition of the seal thereon and it is not necessary for him to state or note that he has compared it and thereafter made a note of the condition of the seal. In my opinion, it would have been much better for the Public Analyst to note the condition of the seal thereon in his own handwriting to show that he was satisfied as to the condition of seal after comparison of the specimen seal sent to him separately. But the contents of the printed form which has been prescribed under rule 7 (3) under the rules seem to satisfy the requirement of both sub-rules (1) and (3) of rule 7 of the Act. The contents of the form seem to be in two parts. The first part would satisfy the requirement of sub-rule (1), whereas the

second part of the form is intended to give the result of the analysis, as required under sub-rule (3) of Rule 7 after the analysis has been completed. Thus it would be seen that the Form No. III prescribed under Rule 7 (3) is in due compliance with sub-rules (1) and (3) of Rule 7 and therefore, the contention that there has been no due compliance with Rule 7 cannot be accepted in view of the certificate Ext. 17, issued in Form III which satisfies the requirement of sub-rules (1) and (3) of Rule 7 of the Rules.

18. Then, as to the contention that there has been no due compliance with Rule 18 by the Food Inspector, it is to be noted that what is required under Rule 18 is that a copy of the memorandum and a specimen impression of the seal used to seal the packet shall be sent to the Public Analyst separately by registered post or delivered to him or to any person authorized by him. Miss Anasuya states that there is nothing in the evidence of the Food Inspector that he has sent separately a copy of the memorandum and a specimen impression of the seal used to seal the packet. This is what has been stated by P. W. 1, the Food Inspector, relating to the compliance with rule 18 in his deposition :

> "I sent the second bottle to the Public Analyst, Bangalore, for analysis with a memorandum containing the specimen seal with which the bottles had been sealed."

Miss Anasuya therefore, contends that P. W. 1 does not say that he has sent a copy of the memorandum and a specimen impression of the seal separately to the public analyst. It is true that, he has not stated that he has sent them separately. But it is contended by the Government pleader that when the Food Inspector says that he has sent the second bottle with a memorandum containing a specimen seal with which the bottles had been sealed, it must mean that he has sent them separately. He further, points out that this part of the statement of the Food Inspector has not been challenged in his cross-examination to suggest that he has not sent them separately. Though, he states that the word 'separately' has not been used by the Food Inspector yet when he says that he has sent the bottles with a memorandum containing a specimen seal, it must mean that he has sent them separately. It is to be noted that this contention that there has been no due compliance with Rules 7 and 18 of the Rules was not raised before the learned Magistrate and, therefore, there is no finding by him. The learned Sessions Judge has found that there has been a due compliance with Rule 18. In my opinion, the statement made by the Food Inspector that he has sent the bottle with a memorandum containing the specimen seal to the Public Analyst should be taken to mean that he has sent them separately and, it so, it is clear that there has been a due compliance with Rule 18 of the Rules framed under the Act.

19. However, in support of her contention, Miss Anasuya relies on the decision reported *in State of Gujarat v. Shantaben*[2]*, that Ext. 17*, the report, has no evidentiary value since it is not in due compliance with Rules 7 and 18 of the Act. What has been stated in that decision is that Rules 7 and 18 are framed in order to prevent the possibility of tampering with the sample before it reaches the Public Analyst. There is nothing on record to show that these rules have been complied with, either by the Food Inspector or the Public Analyst. The report of the Public Analyst merely shows that the seals were intact and unbroken. But it does not show that the seals on the container were compared with the specimen seal sent by post to the Public Analyst. Unless this is done, the Court cannot be sure that the sample which has reached the Analyst was not tampered with on the way and Rules 7 and 18 are framed in order to prevent such a

possibility. As this has not been done, we cannot say that the report of the Public Analyst refers to the samples of the milk.

20. Miss Anasuya, therefore, urges that since in similar circumstances the Gujarat High Court has taken the view that there was no due compliance with Rules 7 and 18, this Court should accept that view and hold that there has been no due compliance with Rules 7 and 18 in this case. But, as I stated earlier, the contents of Form III under Rule 7 (3) satisfy the reqirements of both sub-rules (1) and (3) of R. 7 and, therefore Ext. 17 which is in Form III cannot be ruled out of consideration as having no evidentiary value, as it is in due compliance with Rules 7 and 18 of the Rules.

21. Thus, all the contentions urged for the petitioners by their learned counsel challenging the correctness of the conviction and sentence passed against her clients fail. The finding that the milk sold is adulterated has not been challenged. In the result, therefore, I hold that, the accused-petitioners have committed an offence punishable under section 16 (1) (a) (i) read with section 7 of the Act, and confirm their conviction.

22. As to sentence, it is urged by Miss. Anasuya that the offence is highly technical and that the sentence of fine of ₹ 300 imposed on each of the accused is excessive and that the ends of justice would be met if a nominal fine is imposed. In my opinion, the fine imposed on the petitioners is excessive. In somewhat similar circumstances, in the decision reported *in Municipal Board, Faizabad v. Lalchand Surajmal*[3], though the accused were found guilty of the offence under section 7 read with section 16 of the Prevention of Food Adulteration Act, 1954, yet the sentence imposed on them was only a fine of ₹ 5. It is, therefore, urged by Miss. Anasuya that the ends of justice would he met if the fine in this case is reduced to ₹ 5. In the circumstances of this case, I am inclined to accept her contention and accordingly reduce the fine imposed on the petitioners to ₹ 5 each. The excess fine, if any, paid by the petitioners, will be

[2]1964 (2) Cri LJ 32 : AIR 1964 Guj 136
[3] AIR 1964 All 199

refunded to them.

23. Except for the reduction in the sentence of fine, this criminal revision petition is dismissed.

Revision petition dismissed.