KERALA HIGH COURT

Haji K.K. Moidu

Vs

Food Inspector

(T.C. Raghavan, J.)

17.02.1961

ORDER

T.C. Raghavan, J.

1. A short but interesting question of law regarding the validity of a prosecution under Section 16(1) of the Prevention of Food Adulteration Act, 1954 (Central Act 37 of 1954) and the scope and effect of a notification issued by the Government of Madras under Section 20(1) of the same Act before the States Reorganisation Act comes up to adjudication in these cases. The fact, of the cases are not in dispute and they lie within a narrow compass.

2. The petitioners in Cri. R.P. Nos. 194 and 348 of 1958 are dealers in tea. In the former case the two accused persons bad been prosecuted under Section 16 (1)(a)(i) of the Act for selling adulterated tea and the 1st accused had been convicted and sentenced to pay a She of Rs. 250 and the 2nd accused to pay a line of Rs. 400; in appeal the conviction and sentence had been confirmed and the 2nd accused has filed the revision petition. In the other case namely, Cri R.P. No. 348 of 1958, the two accused persons had been convicted under the same section and the 1st accused had been sentenced to pay a fine of Rs. 400 and the 2nd accused to pay a fine of Rs. 600. The appeal by them to the learned District Judge of Kozhikode having been dismissed both the accused persons have filed the revision petition. Cri. R.P. Nos. 347 and 396 of 1958, arise out of the same case, viz., C.C. No. 69 of 1958 TO the file of the Court of the Additional First Class Magistrate, Kozhikode. The two accused persons in the case had been prosecuted under Section 16(1)(a)(i) and Section 16 (1)(a)(ii) respectively of the Act for "jointly" selling adulterated ghee. The trial Court convicted the 1st accused under Section 16(1)(a)(i) and sentenced him to pay a fine of Rs. 600/-. The same Court convicted the 2nd accused under Section 16 (1)(a)(ii) and sentenced him toundergo rigorous imprisonment for 8 months and to pay a fine of Rs. 600/-. Both the accused persons appealed to the lower appellate Court which set aside the conviction and1 sentence and remanded the case to the trial Court for retrial; for, according to the lower appellate court, there were serious irregularities in the procedure adopted by the trial Court which bad vitiated the trial The accused Persons have filed Cri. R.P. No. 347 of 1958 contending that

the lower appellate should have acquitted them. On the other hand, the complainant, namely the Food Inspector Kozhikode Municipality, has filed Cri. R.P. No. 396 of 1958 seeking to reverse the order of remand of the lower appellate court 2nd to restore the convictions and sBntences passed by the trial court.

3. The main question that arises for consideration in all these case is one regarding the sufficiency of the authorisation for prosecution contemplated by Section 20(1) of the Prevention of Food Adulteration Act. In Cri. R.P. Nos. 347 and 396 of 1958 the correctness of the order of remand is also questioned.

4. These cases arise from the erstwhile Malabar District, which wag part of the Madras State prior to the formation of the Kerala State On 1st November, 1956. The Government of Madras on 20th June, 1956, published G. O. Ms. No. 1861 (Health) in the Fort St. George Gazette, which reads as follows: In exercise of the powers conferred by Sub-section (1) of Section 20 of the Prevention of Food Adulteration Act, 1954 (Central Act, 37 of 1954) the Governor of Madras hereby authorised this Food Inspectors appointed under the said Act to institute prosecutions for offence, under the Act, It is not disputed that there was another notification by the Government of Madras under Section 9 of the Act appointing Food Inspectors for the purpose of the Act. It is not also disputed that by these two notifications the Food Inspector and the Municipal Health Officer of the Kozhikode Municipality was properly appointed and authorised to commence prosecutions for offences under the Act till the formation of the Kerala State. After the reorganisation, of States the Government of Kerala publisher a notification in the Kerala Gazette dated 19th February, 1957, under Section 9 of the Act, The said notification I would extract below: In exercise of the powers conferred by Section 9 of the prevention of Food Adulteration Act, 1954, (Central Act, 87 of 1954) and in supersession of all previous notifications on the subject, the Government of Kerala hereby appoint as Food Inspectors for the purpose of the Act the undernoted officers:

X X X X

(c) In the case of a Municipality not having a Health Officer the Sanitary Inspector or "Food Inspector" appointed by the Municipality.

5. The contention that is now urged before me is that, since there is no notification by the Government of Kerala under Section 20 of the Act authorising the Food Inspectors to commence prosecution the present prosecutions are void and illegal. To put it differently, the argument is that the notification of the Government of Madras published in the Fort St. George Gazette dated 20th Juno, 1956, does not enure or survive after the reorganisation of States and therefore (here is no proper authority in the Food Inspectors as contemplated by Section 20(1) to commence prosecutions, I shall now examine this contention. Under Section 116 of the States Reorganisation Act 1956. every person, who immediately before the appointed day, i.e. 1st

November, 1956, is holding or discharging the duties of any pos' or office in connection with the affairs of an existing State in any area, which on that day falls within another new Part-A State, shall continue to hold the same post or office in the other new Part-A State, in which such area is included on that day and shall be deemed as from that day to have been duly appointed to such post or office by the Government of such State. Therefore, the Food Inspectors appointed by the Government of Madras prior to 1st November 1958, shall by virtue of tills section, be deemed, as from that day, to have been duly appointed to such posts by the Government of Kerala.
As a matter of fact, in the present case, there is a notification of the Government of Kerala, dated 19th February, 1957, appointing Food Inspectors for the purpose of the Act. Therefore, even otherwise than by virtue of Section 116 of the States Re-organisation Act, the Food Inspector of the Bozhikodo Municipality, the complainant in these cases, is a properly appointed person under Section 9 pf the Food Adulteration Act by virtue of the aforesaid notification of the Government of Kerala. The only further question is whether, in the absence of a notification by the Government of Kerala under Section 20 of the Act authorizing the Food Inspector to commence prosecutions, the present prosecutions are illegal and void-Under Section 119 of the States Re-organisation Act the territorial changes and formation of new States shall not be deemed to have effected any change in the territories, to which any law in forces immediately before the appointed day extends or applies and territorial references in any such law to an existing State shall, until otherwise provided by a competent authority, be construed as meaning tile territories within that State immediately before the appointed day. So that the notification of the Government of Madras dated 20th June, 1956, shall continue to extend or apply to the erstwhile Malabar District even after the formation, of the Kerala State if the notification fact within 'the term "law" appearing in Section 119 of the State, Reorganisation Act. The term "law" is defined under Section 2(h) of the States Re-organisation Act thus: law includes any enactment, ordinance, regulation order, bye-law, rule, scheme, notification or other instrument having the force of law in the whole or in any pars of the territory of India. Therefore, if the notification of the Government the Madras can be construed as a "notification having the force of law In any part of the territory of India", then it has to be held that the said notification ensures or is in existence until it is replaced Or modified by the Government of Kerala.

6. It is advantageous to remind oneself occasionally of some of the basis principles and I would therefore make no apology for extracting the definition of "law" given by Salmond in his book on Jurisprudence. The learned author defines "law" thus: Law is the body of principles recognised and applied by the State in the aministration of justice." If the notification of the Government of Madras was one having the force of law being the body of principles applied or enforceable by court in the administration of justice, then it follows that the notification is still in force by virtue of Section 119 of the States Re-organisation Act. (Judged by this standard and construed thus, I have no hesitation in holding that the aforesaid notifications has the force of law immediately prior to the re-organisation of States and such notifications, having the force of law on the appointed day, are continued with respect to the particular territories by virtue of Section 119 of the Stales Re-organisation Act. For this view there is support in a decision of the Mysore

High Court in *Chanabasappa Shivappa v. Gurupadappa Murigappa*[1] In that case a particular territory which formed part of the Bombay State and to which Section 23 of the Bombay District Municipal Act applied prior to November, 1956, was included in the present Mysore State. The Bombay Government issued a notification under the Bombay District Municipal Act authorising the Assistant Judges in tile Bombay State to hold enquiries into section cases referred to them for determination by the District Judges. After the re-organisation of State no separate notification was issued by the Mysore Government in this regard. Subsequent to the formation of the Mysore State an election dispute arose in that territory and the same was referred to en Assistant Judge by the District Judges Before the Assistant Judge and subsequently before the Mysore High Court objection was taken to the jurisdiction of the Assistant Judge to conduct the enquiry. The High Court held that the notification issued by the Government of Bombay under the District Municipal Act authorising the Assistant fudges to conduct enquiries was a notification having the force of law coming within Section 2(h) of the States Re-organisation Act. I respectfully agree with this view expressed by the Division Bench of the Mysore High Court The result is that this objection fails and is rejected.

7. The other objection that is raised in two of the eases before me is regarding the order of remand by the learned Sessions Judge. In C.C. No. 69 of 1958 the charge against the 2nd accused was that he "jointly" with the 1st accused sold adulterated ghee and thereby committed an offence under Section 16(1)(a)(ii) of the Food Adulteration Act. Section 16 (1)(a)(ii) deals with a second offence of the type contemplated by Section (1)(a) Therefore the learned Sessions Judge was right in observing that the charge under Section 16(1)(a)(ii) should not have been mentioned in the origin in charge; the procedure being that the charge of a previous conviction should have been framed only after the accused had been found guilty and convicted of the main offence charged against him. But it is contended on behalf of the Municipality that the 2nd accused is punishable under Section 17 of the Act the argument being that the offence had been committed by a firm and the 2nd; accused was a partner of that firm. It is difficult to accept this contention because the charges does not refer to Section 17 of the Act, and unless a proper indication as to the offence with which the 2nd accused was charged wag given in the charge, he could not be expected to put up a proper defence. Further the charge does not in any why disclose-that the offence wag committed by a firm and the 2nd accused was charge-sheeted as a partner of the-firm. Therefore, as far as the 2nd accuse is concerned whether the charge is construed as one under Section 16(1)(a)(ii) or as one under Section 17, in either case the charge is defective. As the charge stands it is not possible to construe it as one under Section 17. The evidence in the case being that the 2nd accused was not present at the time of the sale, the offence under Section 16 (1)(a)(ii) is not made out either. I these circumstances the learned Session Judge very certainly right in setting aside the conviction and sentence of the 2nd accused At the same time I do not think that there is any sufficient ground for setting aside the conviction and sentence of the 1st accused, the only objection to his conviction being against the notification of the Government of Madras.

8. As a result of the foregoing discussion, I come to the conclusion that CrI. R.P. Nos. 194 and 348 of 1958 are liable to be dismissed and they are dismissed. Coming to Cri. R.P. Nos. 347 and 399 of 1958, I am of Opinion that there are no grounds for setting aside the conviction and sentence of the 1st accused. Therefore I allow Cri. R.P. No396 of 1958 partly and restore the conviction and sentence of the 1st accused passed by the trial Court. At the same time I do not think, considering the time of about 3 years that elapsed since the commencement of the prosecution and to view of the fact that the charge against the 2nd accused was in his individual capacity and not at a partner of the firm that the interests of justice demand a retrial in this case It follows that Or R.P. No. 34 of 1958 is partly allowed and the 2nd accused is acquitted.

Cases Referred.

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