

(1967) 04 KL CK 0009
In the High Court Of Kerala

Abdulla Haji and Another

APPELLANT

Vs

Food Inspector, Muliya Panchayath

RESPONDENT

Date of Decision : 06-04-1967

Acts Referred:

Arms Act, 1959 — Section 19, 29

Drugs and Cosmetics Act, 1940 — Section 18, 27

Evidence Act, 1872 — Section 57, 67

Prevention of Food Adulteration Act, 1954 — Section 10, 11, 12, 16, 2

Citation : (1967) CriLJ 1719

Hon'ble Judges : M.U. Isaac, J

Bench : Single Bench

Judgement

M.U. Isaac, J.—The Petitioners are accused Nos. 1 and 2 respectively in C. C. No. 172 of 1965 on the file of the Sub-Divisional Magistrate, Hosdrug. They were convicted by the learned Magistrate for the offence u/s 16(1)(a) read with Section 7 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the Act) and Rule 44-A of the Rules made thereunder; and each of them was sentenced to undergo simple imprisonment for six months and to pay a fine of Rs. 1,000. They filed an appeal in the Sessions Court of Tellicherry as Cri. Appeal No. 93 of 1965. Their conviction and sentence were confirmed by the learned Sessions Judge. The petitioners have therefore, come in revision before this Court,

2. Petitioner No. 1 is a dealer in provision articles within the Muliya Panchayat. Second petitioner is a salesman in the provision shop. On 8.5.1965 at 10.45 A. M , P. W. 1 the Food Inspector of the Panchayat inspected the provision shop of the first petitioner; and P. W. 1 found lacdhal otherwise known as Kesari dhal exposed for sale in the said shop. The first petitioner was not then present in the shop and the second petitioner was in charge of the game. P. W. 1 purchased from the second petitioner 750 grama of the Kesari dhal out of the stock exposed for sale in the said shop for the purpose of the same being analysed by a public analyst. Exb. p. 1 dated 31.5.1965 is a notice given by P.W. 1 to the second

petitioner in the prescribed form stating that he had purchased the said Kesari dhal for the above purpose. P. W. 1 paid the price of Rs. 0.90 for the said article; and Ext. P. 2 of even date is the receipt passed by the second petitioner acknowledging payment of the price. P. W. 1 took action as required by Section 11 of the Act, and forwarded a part of the Kesari dhal for analysis to the Public Analyst at Trivandrum. Ext. P. 8 dated 31-5-1965 is the office copy of a letter forwarding the sample for analysis. P. W. 1 also prepared a mahazar regarding the purchase of the article from the second petitioner and the action taken by him at the spot. Ext. P. 4 is the said mahazar. Ext. P. 5 dated 22-7-1965 is the report of the Public Analyst; and it states that as a result of the examination conducted by him he was of the opinion that the sample consisted of lac dhal otherwise known as Kasari dhal. On the basis of this report, P.W. 1 filed a complaint against the petitioners charging them of the offences for which they have been convicted by the courts below.

3. The petitioners' learned Counsel contended in the first instance that no reliance can be placed on the action taken by P.W. 1, as the evidence in the case shows that he did not comply with the requirements of Section 10(7) of the Act, which is mandatory in character. The learned Counsel submitted that the prosecution examined two witnesses, PW. 2 and PW. 3, as persons stated to have been present at the time PW.1 purchased the sample from the second petitioner, and that their evidence shows that P.W. 1 did not act in compliance with Section 10(7) of the Act. This is a contention which was advanced in both the courts below; but it was not accepted. PWS. 2(sic) and 3 are attesting witnesses to Exts. P. 1, p. 2 and P. 4; and they show that these witnesses were present at the shop of the petitioners at the time PW. 1 purchased the Kesari dhal from the second petitioner, and thereafter until PW. 1 completed the action requisite to be taken u/s 10 of the Act. PW. 1 gives evidence to this effect. Under these circumstances the courts below held that the sample was taken by PW. 1 in compliance with the requirements of the statute. The objection taken by the petitioner's learned Counsel to this finding has therefore no merit.

4. The next contention advanced by the petitioner's learned Counsel is that it has not been established in this case that PW. 1 is a Food Inspector appointed for the Muliya Panchayat, and that the action taken by PW. 1 under the Act is therefore invalid. The learned Counsel relied on Section 9(1) of the Act relating to appointment of Food Inspectors and Section 2(vii) of the Act which defines "Local area". Section 9(1) of the Act reads as follows:

9(1) The Central Government or the State Government may, by notification in the Official Gazette, appoint each person as it thinks fit, having the prescribed qualifications to be Food Inspectors for such local area as may be aligned to them by the Central Government or the State Government, as the case may be:

Provided that no person who has any financial interest in the manufacture, import or sale of any article of food shall be appointed to be a food inspector under this section.

Section 2(vii) of the Act reads as follows:

"Local area" means any area whether urban or rural declared by the Central Government or the State Government by notification in the Official Gazette, to be local area for the purposes of this Act.

The submission made on behalf of the petitioners is that the above provisions show that the Central Government or the State Government must notify the Local areas for the purposes of this Act, and then it must appoint such persons as it thinks fit having prescribed qualifications to be Food Inspectors for such Local areas as may be assigned to them. That means, two notifications are necessary, viz.,

- (1) a notification declaring Local areas; and
- (2) a notification appointing food inspectors in such local areas.

I think that this submission is correct. The learned State Prosecutor has not been able to place before me any notification declaring the Muliya Panchayat as a Local area for the purposes of the Act. He referred me to a notification No. 6300i/D2/63/ai/n dated 27th July 1964 of the Government of Kerala Health and Labour (D) Department published in Part I of the Kerala Gazette No. 33 dated 18th August 1964. This was issued in exercise of the powers conferred by Section 9 of the Act, and it appoints some officers to be food inspectors within their local jurisdiction for the purposes of the Act. Items 4 and 5 deal with Panchayats; and accordingly in the case of a panchayat having a Food Inspector he will be the Food Inspector for the purposes of the Act. This is not a notification referred to in either of the courts below. I do not think that, in the absence of a notification declaring the Local area as defined by Section 2(vii) of the Act, the aforesaid notification appointing food inspectors by itself would meet the objection raised by the petitioners' learned Counsel. However, I do not want to pronounce on this point, in view of the conclusion that I take on the next contention that was raised on behalf of the petitioners, and also in view of the fact that I am not certain whether there may not be some notification issued by the State Government declaring the Muliya panchayat as a Local area.

5. The petitioners' learned Counsel then con-tended that the complaint instituted by PW. 1 is bad, as there is no evidence in the case that P.W. 1 is a person competent to institute such a complaint u/s 20(1) of the Act. Section 20(1) of the Act reads as follows:

20. Cognizance and Trial of Offence : -(1) No prosecution for an offence under this Act shall be instituted except by, or with the 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:

Provided that a prosecution for an offence under this Act may be instituted by a purchaser referred to in Section 12, if he produces in Court a copy of the report

of the Public Analyst along with the complaint.

According to the prosecution, P. w. 1 is a person authorised by the State Government to institute a prosecution under the above Section; and it relies on Notification No. 39559/59/HL (B), 4 dated 7th September 1959 published in the Kerala, Gazette dated 29th September 1959 in Part I page 2039. This Notification reads as follows:

In exercise of the powers conferred by the Sub-section (1) of Section 20 of the Prevention of Food Adulteration Act, 1954 (Central Act 37 of 1954) and in super-session of all previous notifications on the subject the Government of Kerala hereby authorise the Food Inspectors appointed under the said Act to institute prosecutions for offences under the Act.

The learned Counsel for the petitioner objected to the availability of the above notification to contain this prosecution on two grounds : (1) this notifications has not been produced in court and marked as evidence; and therefore, the prosecution is not entitled to rely on it; and (2) The Muliya Panchayat was itself constituted in 1964 and the aforesaid notification cannot apply to the Food Inspector of a panchayat which did not then exist. These contentions may now be Considered.

6. The petitioners" learned Counsel relied on the decisions in Pyli v. State of Kerala 1966 KLT 102, Ghandrasekharan v. State 1966 KLT 638 and Criminal Appeal No. 283 of 1965 (Ker) in support of his contention that the notification cannot be looked into, in so far as it has not been produced and proved in the case. On the other hand, the learned State Prosecutor contended that this notification does not require to be produced as evidence; but the court is bound to take judicial notice of the same u/s 57 of the Evidence Act. Reliance was placed on Clauses (1) and (7) of Section 57 which read as follows:

57. Facts of which Court must take judicial notice : - The Court shall take judicial notice of the following facts : (1) all laws in force in the territory of India;

* * * *

7. the accession to office, names, titles, functions and signatures of the persons filling for the time being any public office in any State, if the fact of their appointment to such office is notified in any official Gazette;

In 1966 Ker. L.T. 102 the accused was prosecuted u/s 27 of the Kerala Forest Act 1961 for trespassing into Reserved Forest. Section 19 of the Kerala Forest Act provides that when land is declared as a Reserved Forest in accordance with the provisions contained in this Act, the Government may publish a notification in the Gazette specifying the limits of the forests which it is intended to reserve, and declaring the same to be reserved from a date to be fixed by such a notification, and that from the date so fixed the forest shall be deemed to be a Reserved

Forest. The accused contended that in so far as it has not been established by the prosecution by producing any notification that the land, into which he was alleged to have trespassed, is a Reserved land, the prosecution must fail. A Division Bench of this Court in the above case accepted the said contention, and acquitted the accused. This decision was followed by a learned single Judge of this Court in 1966 KLT 638. That was a case where the accused was prosecuted for selling rice above the maximum price fixed by the State under the Essential Commodities Act, 1955. The prosecution did not produce the notification fixing the maximum price; and the learned single Judge accepted the accused's contention that the prosecution cannot succeed in the absence of evidence regarding the maximum price fixed by the notification.

In Cri. Appeal No. 283 of 1965 (Ker), the accused was prosecuted for not taking out a licence for installing and working motor in a building within the limits of a panchayat, Section 96 of the Kerala panchayat Act provided that a panchayat may; with the previous approval of the Director, notify that no place in the panchayat area shall be used for any of the purposes specified in the rules made in this behalf without a licence issued by the executive authority, and except in accordance with the conditions specified in such licence. The accused contended that the prosecution has not produced any notification showing the places which shall not be used without taking a licence for installation and working of a motor. The prosecution produced such a notification before the appellate court, and contended that the court was bound to take judicial notice of the said notification u/s 67 of the Evidence Act. A Division Bench of this Court in the above case accepted the accused's contention holding that the notification did not come within the purview of Section 57, and that the prosecution cannot succeed in the absence of evidence that the place, where the accused installed and worked the motor, was a place which was prohibited to be used for such a purpose without a licence.

7. In my opinion, the proposition laid down in the above decisions is not applicable to the case before me. They were all cases in which the prosecution failed to establish one of the facts which it had to establish to make out the offence charged against the accused; and in all these cases the said fact could be proved only by production of the relevant notification. It may also be noticed that the notifications concerned in those cases did not fall within any of the clauses of Section 57 of the Evidence Act. In this connection, reference may be made to the decision of the Supreme Court in Salekh Chand and Another Vs. The State of Uttar Pradesh, . That was a case where the accused was convicted for selling cement at a price above the maximum price notified under the Essential Supplies (Temporary Powers) Act, 1948. Upholding the contention that the conviction cannot be sustained, as the prosecution had not proved the maximum price notified under the above Act, by producing the relevant notification, the Supreme Court said:

In order to ascertain whether the price of Rs. 9/14 per bag was beyond the

controlled fate of cement, there ought to have been on the record legal evidence as to what was the controlled price of a bag of cement fixed u/s 6 or Section 7 of the U. P. Cement Control Order of 1953. Since there is no legal proof to that effect, it is clear that it has not been established on the evidence, as it stands that the sale of cement by the appellants was beyond the controlled price of cement fixed according to law.

* * * *

As there is no legal proof of what was the controlled price of cement on the date of the sale of the cement by the appellants, they could not be convicted of the offence with which they had been charged.

8. The question that arises for consideration in this case is whether the complainant has been authorised by the State Government u/s 20(1) of the Act to institute a prosecution for an offence "under the Act by any order issued under the said Section. This is not a fact to be established for making out the charge against the accused. The question whether the complainant is authorised to institute the prosecution against the accused has no relevancy on the issue whether the accused is guilty of the charge or not. In my opinion, this is a matter which directly comes within Clause (7) of Section 57 of the Evidence Act. The fact that a Food Inspector of a panchayat is authorised by the State Government u/s 20(1) of the Act to institute a prosecution for an offence under the Act is one relating to the "functions...of persons filling for the time being any public office in any State" within the meaning of Clause (7) of Section 57 of the Evidence Act; and this clause provides that the Court shall take judicial notice of such a fact, if the appointment of the person to the office is notified in the Official Gazette.

Reference may, in this connection, be made to a Division Bench decision of the High Court of Patna in *Ramlagan Singh Vs. State of Bihar*, . In that case the petitioner was convicted u/s 27 of the Drugs Act, 1940 for contravention of certain provisions of Section 18 of the said Act. It was contended before the High Court that the conviction was vitiated; because a prosecution could be instituted for the above offence only by an Inspector of Drugs, and there was no evidence in the case that the complainant was a duly appointed Inspector. Repelling this contention the Court stated as follows:

Under this sub-section, (Sub-section (7) of Section 57 of the Evidence Act) judicial notice has to be taken of the office occupied by a particular individual, if the fact of his appointment is notified in the official Gazette. Such notice can be taken if a Gazette is produced for inspection of the Court at the time of the argument in the original, appellate or revisional Court, just as the law can be perused at any stage under Sub-section (1). It is obviously unnecessary for the prosecution to put a copy of the relevant notification on the record of the case as an exhibit.

I respectfully agree with the above observations. A similar view has been taken by a Division Bench of the Allahabad High Court in *Dhanpat Vs. State*, regarding

the non-production of an order of sanction required u/s 29 of the Arms Act to prosecute a person u/s 19(f) of the said Act. The learned Judges held that it was sufficient that the order of sanction was produced before the Court, and that the Court was bound to take judicial notice of the same u/s 57(7) of the Evidence Act, without any formal proof of the said order. I am, therefore, of the opinion that the contention of the petitioners' learned Counsel that the notification u/s 20(1) of the Act cannot be acted upon by the Court, without the said notification being produced in Court and proved just like any other fact, cannot succeed.

9. The next point for consideration is whether P.W. 1 the Food Inspector of Muliya Panchayat, who has instituted this prosecution, comes within the purview of the notification which I have extracted in paragraph 5 above. As stated already, this notification was issued in 1959, and the Muliya Panchayat has come into existence only in 1964. The notification states that "The Government of Kerala hereby authorise the Food Inspectors appointed under the said Act to institute prosecutions for offences under the Act." The notification has been issued in exercise of a delegated power under the Act. It is not, however, necessary for me to consider the question whether such a power is capable of being exercised in favour of persona not in existence at the time of exercise of the power. *Prima facie*, it appears to me that it is not permissible. In my view the language of the notification is very clear; and it has exercised the power only in favour of "Food Inspectors appointed under the said Act," and not also in favour of Food Inspectors to be appointed in the future under the Act. I am therefore, unable to accept the contention of the learned State Prosecutor that this notification entitles P.W. 1 to institute a prosecution u/s 20 of the Act.

10. In support of his contention that the above notification applies also to the Food Inspectors to be appointed after the issue of the notification, the learned State Prosecutor relied on the decision of the Court of appeal in *Pole-Carew v. Oraddock (Survey or of Taxes)* 1920-3 KB 109. In this case a ferry was established under a statute, which among other things, provided that the persons who established the ferry and their respective heirs and assigns

shall not be rated or assessed for or towards the payment of any tax, rate, or assessment whatsoever, parliamentary or parochial, for or in respect of the said ferry or the tolas, rates or duties payable in respect thereof and the boats, vessels or lauding places thereto belonging.

This statute was of the year 1790, and the question arose whether the exemption thus granted applied to a liability to be taxed to Income Tax under the Income Tax Act, 1918. The Court of appeal held following the decision of the House of Lords in *Associated Newspapers v. City of London Corporation* 1916-2 AC 429 that the exemption granted by the statute of 1790 applied to all future taxes. This case related only to the interpretation of the statutory provision which exempted the ferry from tax liability; and Their Lordships said that according to the natural construction of the words employed in the section, they would include future taxes. I do not think that the wording employed in the

notification under consideration is similar in any respect to the statutory provision with which the Court of appeal was concerned in the above case and that the said notification can be construed as applying also to Food Inspectors of local authorities to be constituted in the future.

11. The learned State Prosecutor also relied on a decision of the Court of Exchequer Chamber in *Graves v. Ashford* (1867) 2 C P 410. This was an action for an alleged infringement of the plaintiff's copy right. The infringement was said to have taken place by means of photography, which at that time was a modern invention. It was contended by the defendant that the protection which the plaintiff claimed under the statute would not extend to photography. After quoting relevant statutory provision, Kelly, C. B. stated as follows:

It is as if the Legislature had contemplated that there might be some other higher to undiscovered mode of copying works of art which they were unable at the time to describe in apt words, and therefore resort was had to the large and comprehensive words "or otherwise or in any other manner." It is obvious that the Legislature could not, in providing for the protection of works of art, describe a piracy by means of a process not then within the knowledge of mankind. But it by no means follows that when words large enough to embrace it are used, the prohibition should not as well as the protection, be extended to a subsequently discovered mode of reproducing and multiplying copies.

12. The above observation shows that the question which arose for determination in that case was whether an infringement of a copyright by means of photography fell within the ambit of the language used in a statutory provision enacted for giving protection against infringement of copyright. This decision "does not render any assistance in deciding the question whether the authorisation made by the notification concerned in this case was only in favour of Food Inspectors holding the said office at the time of issuing the notification, or whether the said authorisation applied also to Food Inspectors of local authorities, which did not exist then, but may be constituted thereafter. This is essentially a matter for construction of the notification; and in my opinion it is clear from the language employed in the notification that the authorisation given there-under was only in favour of existing Food Inspectors.

13. In the result, the petitioners succeed in their contention that the Food Inspector, who instituted the prosecution against them, was not, a person authorised in this behalf u/s 20(1) of the Act. This revision petition is, therefore, allowed. I acquit the petitioners of the offences charged against them, set aside the sentences passed by the courts below, and direct that the fines imposed on the petitioners, if already recovered, be refunded to them.