
(1957) 04 CAL CK 0012
In the Calcutta High Court

Administrator, Howrah Municipality

APPELLANT

Vs

Byron and Co. (Manager, D.D. Buhariwalla)

RESPONDENT

Date of Decision : 17-04-1957

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 12, 14, 16, 2, 20

Citation : (1957) 04 CAL CK 0012

Hon'ble Judges : Sen, J

Bench : Single Bench

Judgement

Sen, J.—These three appeals are directed against an order of acquittal of the accused respondent, Messrs. Byron & Co., in three cases u/s 16(1)(a) read with Section 7(v) of the Prevention of Food Adulteration Act (37 of 1954) which is a Central Act. The cases were started on applications for summons filed by a Food Inspector of the Howrah Municipality, Haripada Dutta. The charge in each case, as stated in the application for summons, was storing and selling and manufacturing of aerated water which was adulterated. According to the evidence of Haripada Dutta, he purchased for the purpose of analysis samples of Ice Cream Soda, manufactured and stored for sale by the respondent Company, on 13th March, 1956, and he took samples of Lemonade, manufactured and stored for sale by the same Company, on 10th April, 1956, and on the same date he also took Samples of Ice Cream Soda, manufactured and stored for sale by the same Company. These samples were sent for analysis to the Public Analyst, and the Public Analyst found Saccharin in each of the samples, but except for Sacchrin the other ingredients were up to the standard in the samples of aerated water. The Public Analyst stated that Sacchrin was allowed, but it was necessary where Sacchrin was used, that there should be labels stating this pasted on the bottles. According to the prosecution there was no label on any of the bottles from which the samples were taken by the food inspector on 13th March, 1956, and 10th April, 1956, indicating that Sacchrin had been used as a constituent of the aerated water. Accordingly the prosecution case was that the respondent Company had committed offences on three occasions u/s 16(1)(a) read with

Section 7(v) of the Prevention of Food Adulteration Act.

2. The learned Magistrate, First Class, Howrah, who tried the cases jointly, referred to Rule 47 of the Act which provides that the addition of Saccharin has to be mentioned in the label, but he observed that Part VII of the Rules relating to the packing and labelling of foods had come into force on 1st October, 1956, and, therefore, at the time when the samples were seized the Rule requiring that the label should mention Sacchrin, if used as ingredient, had not come into force, and therefore, the prosecutions were premature. The learned Magistrate also observed that the Manager of the despondent Company did not have the knowledge of the Rule requiring labels to be affixed mentioning Saccharin where Saccharin was used, and while ignorance of law might be no excuse in respect of offences under the permanent laws, like the Indian Penal Code, ignorance of the Rules might be considered as an excuse in the present case. The learned Magistrate also passed strictures on the Municipality for failing to issue new licenses to the respondent Company under the Prevention of Food Adulteration Act. In view of the findings made by the learned Magistrate, he acquitted the accused in the three cases. Against that decision the Howrah Municipality, represented by the Administrator, has filed these three appeals.

3. Mr. Bholanath Roy appearing for the Municipality has challenged the findings of the learned Magistrate as erroneous. I must concede that the observations made by the learned Magistrate regarding the default of the Municipality in issuing licenses under the new Act are irrelevant, because the issue or non-issue of the licenses under the new Act with promptitude has nothing to do with the present cases. As regards the observations of the learned Magistrate that the prosecution was premature as Part VII of the Rules had not come into force until 1st October, 1956, Mr. Roy has pointed out that Rule 47 occurs in Part VIII and not in Part VII and that the Rules other than the Rules in parts VI and VII came into force from 24th September, 1955, and that the learned Magistrate is, therefore, wrong in holding that the prosecutions are premature.

4. The Rules under the Prevention of Food Adulteration Act were published in the Gazette of India on 24th September, 1955. By sub-rule (3) of Rule 1, Rules other than those contained in Part VI and Part VII, were to come into force from the date of their publication in the Gazette of India and the Rules contained in Part VI and Part VII were to come into force on the first day of March, 1956. By a subsequent Notification S. R. O. 1202, of 19th May, 1956, published in the Calcutta Gazette of 19th July, 1956, Rule 1 was amended and the following sub-rule (3) was substituted for the original sub-rule (3):

(3) The Rules other than those contained, in Part III Appendix "B" Item A-12 Margarine, Part VI and Part VII shall come into force on the date of their publication in the Official Gazette, the rules contained in Part III Appendix "B" Item A-12 Margarine, shall come into force on the first day of June 1956 and the rules contained in Parts VI and VII shall come into force on the first day of October 1956.

Mr. Purnendu Sekhar Bose appearing for the respondent Company has urged that since this Notification of 19th May, 1956, provided that the Rules other than the Rules relating to Margarine and the Rules in Part VI and Part VII were to come into force from the date of the publication in the Official Gazette, it must be held that the Rules came into force on or after 19th May, 1956, the date of the amending Notification, and not on 24th September, 1955, which is the date when the Rules were originally published in the Gazette of India.

5. This contention of Mr. Bose, however, cannot be accepted, because by Notification S. R. O. 1202 of 19th May, 1956, the Government merely amended existing sub-rule (3) of Rule 1, and so the amended Rule must be deemed to have been in existence from the original making and publication of the Rules. Accordingly I must agree with Mr. Roy in holding that Rule 47 came into force on 24th September, 1955, and not on 1st October, 1956.

6. Mr. Bose has advanced a further argument in this connection that R. 47 relates to the contents of the label, and Part VII of the Rules also relates to the packing and labelling of containers of food, including aerated water, and as Rule 47 relates to labelling, it must be read with Part VII and must be deemed to have come into force when Part VII came into force. Since Rule 47 clearly occurs in Part VIII this contention cannot be accepted. The other provisions relating to the labelling of containers came into force on 1st October, 1956, but this particular provision contained in Rule 47 about Saccharin being declared on the label must be deemed to have come into force on 24th September, 1955. I, therefore, agree with Mr. Roy that the learned Magistrate was wrong in holding that Rule 47 came into force on 1st October, 1956, and that the prosecution was premature.

7. It must also be held that the learned Magistrate was wrong in his observation that ignorance of the Rules on the part of the respondent Company might be accepted as an excuse. Ignorance of law, whether it is ignorance of the provisions of the permanent laws like those contained in the Indian Penal Code, or whether it is of any statutory rules, is no excuse, but in the case of breach of statutory rules, the ignorance of the Rules concerned may be accepted on the first occasion as a ground for mitigation of the sentence.

8. Thus the grounds on which the learned Magistrate passed his order of acquittal are found to be unsustainable, and Mr. Roy has, therefore, urged that the respondent Company should be convicted of the offence charged, Mr. Roy has also advanced the argument that the learned Magistrate was wrong in writing one judgment in respect of the three cases. He has urged that since there were three cases, the learned Magistrate ought to have written separate judgments as required by the law, and for this contravention of the law, the judgment of the learned Magistrate is not sustainable. As to this point, I must observe that the three cases were tried jointly, apparently with the consent of the prosecution, and one set of evidence was given in the cases. Three offences of the same nature committed in the course of twelve months might be charged and tried together in view of the provisions of the Code of Criminal Procedure. In

this case the learned Magistrate practically tried three charges at one trial, and, therefore, it was quite correct and proper on his part to write one judgment only. This, therefore, is no ground for setting aside the order of acquittal.

9. It is true that the reasons given by the learned Judge for his order of acquittal were wrong, but there are other points urged by Mr. Bose for supporting the order of acquittal.

10. The first point urged is that the food inspector on whose report the cases were filed in the Court of the Magistrate is not a food inspector authorised under the provisions of the Prevention of Food Adulteration Act. Mr. Bose has referred to Section 9 relating to food inspectors, which provides that subject to the provisions of Section 14, the State Government may by notification in the Official Gazette appoint persons in such number as it thinks fit, having the prescribed qualifications to be food inspectors for the purposes of this Act, and they shall exercise their powers within such local areas as that Government may assign to them. Section 14 relates to the appointment by the Central Government of food inspector in railway premises and other premises like harbours and airports. In the present case I am concerned with Section 9 and the Rules framed under the Act relating to the qualification of food inspectors to be appointed by the State Government. Rule 8 is the relevant Rule which provides that a person shall not be qualified for appointment as food inspector unless he is a medical officer in charge of the health administration of a local area, or is a graduate in medicine or a licentiate in medicine or is holder of qualification in sanitary science registerable as an additional qualification by the State Medical Council provided that for a period of four years from the date on which the Act takes effect, persons whose qualifications, training and experience are regarded by the State Government as affording, subject to such further training, if any, as may be considered necessary a reasonable guarantee of adequate knowledge and competence may be appointed as food inspectors. Mr. Bose has urged that there is nothing to show that Haripada Dutta who acted as food inspector with- in the jurisdiction of the Howrah Municipality and submitted reports for prosecution was so appointed by the State Government under the provisions of Section 9 and Rule 8 of the Act. It is true that the relevant notification was not produced, because the point was not raised before the learned Magistrate. Mr. Roy has produced the relevant notification, viz., PH 4342/2A-24/55 of the 8th October 1955, published in the Calcutta Gazette of the 13th August 1955. By that notification the Government of West Bengal appointed a large number of food inspectors u/s 9 and Rule 8, and Haripada Dutta is one of the food inspectors appointed for the purpose of the Act for the area of the Howrah Municipality. Accordingly this point raised by Mr. Bose has no foundation.

11. Another point has been raised by Mr. Bose, viz., that the cognisance of the offence was not taken legally, because u/s 20(1) of the Prevention of Food Adulteration Act, no prosecution for an offence under the Act shall be instituted except by, or with the written consent of the State Government or a local

authority or person authorised in this behalf by 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 with the complaint. The proviso relates to a prosecution by a private purchaser, but in that case there must be a regular complaint of which cognisance has to be taken after the examination of the complainant. It is not contended by Mr. Roy that Haripada Dutta acted as a private purchaser in this case, and he has conceded that the proviso does not apply. Accordingly I am concerned with Sub-section (1) of Section 20 of the Act, and the question is whether the prosecution was instituted with the consent of the State Government or the local authority or a person authorised by either of them.

12. Food Inspector Haripada Dutta produced an authorisation by Sri H. N. Ray, a person appointed u/s 554 of the Bengal Municipal Act, 1932, to exercise and perform the powers and duties of the Chairman and Commissioners of the Howrah Municipality. This authorisation is dated the 27th January 1956, and by this authorisation Sri Ray delegated his powers and functions u/s 20 of the Prevention of Food Adulteration Act of 1954 to and in favour of the Health Officer of the Howrah Municipality.

13. In the present case the prosecution report or application for summons was prepared and signed by Haripada Dutta, but this was filed through the Health Officer of the Howrah Municipality, and there is an endorsement of the Health Officer on the prosecution report, "Prosecute". It has been urged by Mr. Roy that the prosecution was instituted with the consent of a person authorised by the local authority in this behalf, viz., the Health Officer who was authorised by the Administrator who was exercising and performing the powers and duties of the Chairman and Commissioner of the Howrah Municipality.

14. The question, however, arises whether an Administrator u/s 554 of the Bengal Municipal Act is a local authority within the meaning of the Prevention of Food Adulteration Act, and whether he is entitled to authorise any person in respect of powers and duties u/s 20 of the Act. Section 20 only refers to the State Government or a local authority, or a person authorised in this behalf either by the State Government or a local authority. In this case there was no complaint by or with the written consent of the State Government, or by or with the written consent of a person authorised by the State Government in respect of institution of such cases. There was only the consent of the Health Officer supposed to be authorised by the local authority acting through the Administrator. The Administrator, however, does not come within the definition of local authority as contained in Section 2(viii) of the Act. A local authority is defined, in the case of a local area which is a municipality, as the municipal board or municipal corporation. So in the case of Howrah the local authority must be municipal commissioners of Howrah. There is nothing in the Prevention of Food Adulteration Act showing that the Administrator, when the municipality is

superseded, comes within the term "local authority" as defined in the Act.

15. Mr. Roy has urged that during the period of supersession, the Administrator appointed u/s 554 of the Bengal Municipal Act is to exercise and perform the powers and duties of the Chairman and Commissioners of the Howrah Municipality, and, therefore, authorisation by the Administrator is equivalent to authorisation by the local authority, i.e., the municipal commissioners, and since the Administrator authorised the Health Officer who gave consent to the prosecution, the requirements of Section 20 of the Prevention of Food Adulteration Act are satisfied.

16. u/s 554 of the Bengal Municipal Act, as it stood in the Act of 1932, when an order of supersession has been passed, the powers and duties which may under the provisions of this Act (Bengal Municipal Act) or any rule or bye-law made thereunder be exercised and performed by the Chairman and by the Commissioners, whether at a meeting or otherwise, shall, during the period of supersession be exercised by such person as the State Government may direct, i.e., shall be exercised and performed by the Administrator. In its original form this section did not authorise the Administrator to exercise the powers which might be exercised by the Chairman and the Municipal Commissioners under any other Act than the Bengal Municipal Act.

17. Mr. Roy has, however, referred to the Bengal Municipal (Second Amendment) Act being West Bengal Act XXI of 1954. By that Act Sub-section (I)(b) of Section 554 of the Bengal Municipal Act has been amended and the words "or any other Act or any Ordinance or any Regulation or any Rule, Bye-law, Order, Notification, or Subsidiary Legislation made under the provisions of this Act or such other Act or such Ordinance or such Regulation" have been substituted for the words "or any Rule or Bye-law made thereunder". This amendment came into force on the 22nd September 1954. From that date, it has been urged, the Administrator can exercise not only all the powers and duties of the Municipal Commissioners and Chairman under this Municipal Act and the bye-laws made thereunder, but also all the powers and duties of the Municipal Commissioners and Chairman under any other Act. Accordingly, it has been contended that the Administrator can exercise the powers of the local authority u/s 20 of the Prevention of Food Adulteration Act. The difficulty, is however, that the term "local authority" in the Act must be given the meaning assigned to it u/s 2(vii) of the same Act, and it does not appear to me that the definition of local authority as contained in Section 2(viii) can be deemed to have been extended by the amendment of Section 554 by the West Bengal Act XXI of 1954. It is to be pointed out that the West Bengal Act XI of 1954 did not receive the assent of the President, and therefore, it cannot be held to amend or extend the definition of local authority as contained in the "Prevention of Food Adulteration Act.

18. Mr. Roy has also referred to Section 51 of the Bengal Municipal Act by which the Chairman of the Municipality could exercise all the powers vested in the Commissioners not only by the Municipal Act but also by any other law. The

Bengal Municipal Act of 1932 in its original form received the sanction of the Governor-General under Sub-section (3) of Section 80-A of the Government of India Act, and therefore, it can rightly be interpreted that reference to any other law in Section 51 includes also Central laws. It has been urged by Mr. Roy that the Administrator appointed u/s 554 of the Municipal Act has to perform all the functions and duties of the Chairman under the Act, and may also exercise the powers and duties of the Chairman under the Central laws. But to this contention the reply is that Section 554 as it originally stood did not authorise the Administrator to perform the powers and duties of the Chairman under other laws, but only permitted him to perform the powers and duties under the Bengal Municipal Act itself, and the expansion of the powers of the Administrator by the West Bengal Act XXI of 1954 not having received the assent of the President, it cannot be said that the powers of the Chairman under the Central laws can yet be exercised by the Administrator. I am, therefore, of opinion that there was legal defect in the institution of these cases, and though not for the reasons given by the learned Magistrate, the prosecutions are bound to fail.

19. Accordingly, these appeals are dismissed.