

(1961) 08 MAD CK 0014
In the Madras High Court

Madurai City Co-operative Milk Supply Union	APPELLANT
Vs	
Food Inspector	RESPONDENT

Date of Decision : 22-08-1961

Acts Referred:

Citation : (1962) CriLJ 166

Hon'ble Judges : Veeraswami, J

Bench : Single Bench

Judgement

Veeraswami, J.—This revision is directed against the order Of the learned Sessions Judge, Madurai dismissing the appeal against the

conviction of the petitioners of an offence u/s 7 read with Section 18 of the Prevention of Food Adulteration Act, 1954.

This being a third offence of the kind committed by the first petitioner, Madurai City Co-operative Milk Supply Union, it was sentenced to any a

fine of Rs. 3000, the minimum prescribed by the proviso to Sub-section (1)(a) (iii) of Section 18, The second petitioner, who was the secretary of

the first petitioner, was directed to pay a fine of Rs. 30. Both the courts below have found that the sample of cow's milk boiled and cooled,

purchased from the first petitioner, through its salesman Uthaman, on the morning of 2-2.2.1959 from the quantity in a sealed can, and meant for

the Maternity home, maintained by the municipality, was adulterated with added water of 11 per cent.

The Public Analyst for Madurai Municipality certified the adulteration to be 14 per cent; but the Director, Central Food Laboratory at Calcutta

reported that the milk was adulterated with 11 per cent of added water. Sub-section (3) of Section 13 provided that the certificate of the Director

of Central Food Laboratory shall supersede the report given by the Public Analyst under Sub-section (1) and by Sub-section (5) the certificate is

final and conclusive evidence of the facts stated therein.

2. The main attack against the conviction is that the food inspector, who laid the complaint, had no valid authority or consent required by Section

20 as a condition to the institution of the prosecution. The Food Inspector in his evidence stated that he was authorised to institute the complaint by

a notification in C.O.M.S. No. 1861 Health dated 6.6.1958 published in the Fort St. George Gazette part 1-A page, 350 dated 20.8.1958. This

notification reads:

In exercise of the power 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 authorises the Food Inspectors appointed under the said Act to institute prosecutions for offences under the Act.

3. Section 9 of the Act authorises the State Government to appoint by notification, persons having the prescribed qualifications to be Food

Inspectors for the purposes of the Act, and they shall exercise their powers within such local areas as that Government may assign to them. It is not

disputed that the Food Inspector had been duly appointed as such. But the argument is that the Government notification above extracted being a

general authorisation of all Food Inspectors without reference a particular prosecution, it is not in consonance with the requirements of ½ Section

20 of the Act. It is contended that what the section contemplate if a specific authorisation in respect of a particular prosecution and not an omnibus

delegation. Section 20(1) reads,

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.

The sub-section has a proviso which need not be set out for the purpose of this case.

The object of Sub-section (1) obviously is to avoid indiscriminate prosecution without scrutiny in each case of particular facts and circumstances

justifying penal action under the Act. The section, therefore, requires certain conditions to be complied with before a court can take cognizance of

a prosecution under the Act. It states that the prosecution may be instituted (1)

by the State Government, (2) local authority, (3) a person authorised by the State Government and (4) a person authorised by the local authority. In addition, the section also provides that a prosecution may be instituted with the written consent of any of the four categories of authorities aforesaid. When the section speaks institution of prosecution with the written consent of any of those authorities, it plainly means that the consent should be specifically related to a particular offence with reference to which it is intended to institute a prosecution. If the authority that institutes a prosecution is the State Government or local authority, in that case no written consent is of course required.

But the argument is that if the person instituting a prosecution is one authorised by the State Government or a local authority, the authorisation should be specific in relation to a particular case and not in general terms applicable to all prosecutions, as and when they may arise. This construction by Sri Mohan Kumaramangalan appearing for the petitioners is based on the words ""in this behalf"" in Sub-section (1). He contends that the words import an intention that ""the State Government or a local authority"" before it authorises a person should apply its mind to the fact of the particular prosecution and not leave it to the person authorised to decide whether a particular prosecution should be laid. According to the learned Counsel. in this ""behalf"" has reference to ""no prosecution...shall be instituted except...that is to say, to the particular institution of a certain prosecution in view. It is further contended that this construction is reinforced by the fact that the written consent contemplated by the sub-section is undoubtedly related to each particular prosecution.

I am unable to agree with the construction contended for. The words ""in this behalf"" do not bear, in the context, the meaning attributed to them. In my view, they mean no more than the authority vested in the State Government or a local authority is for the purpose of enabling the person to institute a prosecution. The intention appears to be to provide for a delegation by the State Government or a local authority of its power to institute prosecutions under the Act. To construe the section in the way the learned Counsel has asked me to do, would defeat the very purpose of this provision for delegation of the power to institute a prosecution. Once authorised to institute a prosecution, the authority so vested in the person is

of the same quality and Virtue as the power of the State Government or a local authority to institute a prosecution. This is contrast with a case

oī½ a person enabled to institute a prosecution with the written consent of any of the parties enumerated by the sub-section. In any opinion,

therefore, the food Inspector in this case was competent to lay the complaint.

4. But: Sri Mohan Kumaramangalam called my attention to City Corporation of Trivandrum Vs. V.P.N. Arunachalam Reddiar and Another, as

placing a contrary construction upon Sub-section (1) of Section 20. There the complainant a food inspector, was given a general authority by the

commissioner of the Corporation of Trivandrum to prosecute persons found to have committed offences under the Act. The learned Judges in that

case held that it had not been satisfactorily proved that the Commissioner of the Corporation has been authorised by the State Government or the

local authority to issue the necessary sanction for prosecuting offences under the Act and that in the absence of such proof the sanction to the food

inspector could not be accepted as a proper and valid authority as required by Section 20. That was sufficient to hold the prosecution to be

invalid. But the court went further and observed:

Even apart from this defect about the sanction evidenced by Ex. P. 4, there is yet another serious defect, about Ex. P. 4. The authority purported

to be conferred by Ex. P. 4 is couched in vague and general terms. Under Ex. P. 4, the commissioner has merely stated that the food inspector P.

W. 1 is authorised to prosecute all offenders under the Prevention of Food Adulteration Act before the Corporation First Class Magistrate. The

sanction required by Section 20 is not an empty formality. The sanction must show that the authority giving the sanction had applied his mind to the

alleged commission of an offence by the accused person and was satisfied that the accused has to be prosecuted for the said offence.

Necessarily it follows that the sanction must be for the prosecution of specified individuals and for specific offences. These conditions are not

satisfied by Ex. P. 4 which makes no reference to any specified individuals to be prosecuted or to any specific offence for which the prosecution

has to be launched. The conferring of an authority or the giving of sanction in such vague and general terms is not what is required u/s 20.

5. I do not understand these observations as having been made with regard to

authority of a person authorised by a local authority to prosecute or with reference to a question as to whether such authority delegated by a local authority can really be couched in general terms enabling the institution of not merely a particular prosecution but all prosecutions. The learned judges were only concerned to point out that the commissioner who purported to authorise the food inspector was not himself proved to have authority to authorise the food inspector. Apparently what the Court had in mind was the requirement with reference to the words "with the written consent of. If the court intended to lay down that even in cases of an authority, delegated by a local authority, such delegation can only be in respect of a particular prosecution of specified individuals and for a specific offence. With respect to the learned judges, I am unable to subscribe to such a construction of Sub-section (1) of Section 20. This provision has been construed by their Lordships of the Supreme Court in *The State of Bombay Vs. Parshottam Kanaiyalal*, and they observed, In the case of these four categories, the authority or person filing the complaint has itself or himself to consider the reasonableness and propriety of the prosecution and be satisfied that the prosecution is not frivolous and is called for.

6. This observation and the general tenor of the construction placed by the Supreme Court on the provision appear, in my opinion, to support the view I have taken of the scope and the intendment of Sub-section (1) of Section 20.

7. There is one other matter which requires notice before leaving this case. The trial magistrate seems to have clubbed together the charge for the commission of the offence of selling adulterated milk and the charge that the first accused was liable for enhanced punishment u/s 16(1)(a)(iii) of the Act. This procedure is quite irregular. In such a case, with respect, I agree with the observations of the learned Judges in *City Corporation of Trivandrum Vs. V.P.N. Arunachalam Reddiar and Another*, that the proper procedure would have been to frame charges against the first accused for the main offence in the first instance and then charge him as an old offender after he has been found guilty of the offence of the main offence changed against him. I am, however not satisfied that in the instant case the defect has in any way prejudiced the first accused for the trial. The

conviction and sentences of fine are confirmed and the criminal revision case is dismissed.