
(1976) 02 GUJ CK 0008
In the Gujarat High Court

Manager, Rajkot Dist. Gopalak Co-operative, Milk Producers" Union APPELLANT

Vs

Rajkot Muni. Corporation and Others RESPONDENT

Date of Decision : 25-02-1976

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197, 197, 197(1)
Penal Code, 1860 (IPC) — Section 109, 477A
Prevention of Food Adulteration Act, 1954 — Section 16, 16, 7, 7

Citation : (1977) 18 GLR 177

Hon'ble Judges : C.V. Rane, J

Bench : Single Bench

Judgement

C.V. Rane, J.—This judgment will govern the disposal of criminal revision applications Nos. 42 to 46 of 1976 as they involve a common question of law.

2. The petitioner in each of these cases, was at the relevant point of time, the Manager, Rajkot District Gopalak Co-operative Milk Producers Union, Rajkot. The food inspector of Rajkot Municipality (now replaced by the Municipal Corporation) Rajkot, has filed five complaints against the petitioner and the other persons in the court of the Judicial Magistrate, First class at Rajkot alleging that they had committed offences punishable u/s 16 read with Section 7 of the Prevention of Food Adulteration Act, 1954, hereinafter referred to as the Act, by selling adulterated milk. The petitioner raised a preliminary objection in each of the aforesaid cases that as he was a public servant, the criminal Court could not take cognizance of the alleged offence in the absence of sanction of the State Government as contemplated by Section 197 of the Criminal Procedure Code, 1898. It was his case that, he was a State Government servant and his services were loaned to the Milk Producers' Union and that the alleged act was done by him while acting-or purporting to act in the discharge of his official duty. The learned Judicial Magistrate, First class, Rajkot rejected the above contention of the accused by his order dated 3rd January 1976. Being aggrieved b/ the above order, the accused in the above criminal cases has come in revision to this Court.

3. It is submitted by Mr. D.D. Vyas, learned Advocate for the petitioner that the petitioner was merely the Manager of the Milk Producers' Union and that whatever act is alleged to have been done by him was done while acting or purporting to act in the discharge of his official duty and hence, in the absence of any sanction u/s 197 of the Code, the Court cannot take any cognizance of the offence alleged to have been committed by the petitioner. Section 197(1) of the Criminal Procedure Code, which is relevant for our purpose reads as under:

197(1)-When any person who is a Judge within the meaning of Section 19 of the Indian Penal Code, or when any Magistrate, or when any public servant who is not removable from his office save by or with the sanction of a State Government or the Central Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no court shall take cognizance of such offence except with the previous sanction-

(a) in the case of a person employed in connection with the affairs of the Union, of the Central Government; and

(b) in the case of a person employed in connection with the affairs of a State, of the State Government.

It is submitted by the learned Public Prosecutor and Mr. P.M. Thakkar, learned Advocate for respondent No 1 that the act of selling adulterated milk can never be said to be an act done in the discharge of official duty this stage, it would be convenient to refer to the allegations made against the petitioner in each of the aforesaid five criminal cases. According to the complainant in the above cases, he had purchased certain quantity of milk at the milk centres run by the Milk Producers' Union of which the petitioner was the Manager. The above milk was found to be adulterated. Now to sell adulterated milk is an offence punishable u/s 16(1)(a)(i) read with Section 7 (i) of the Act. In order to appreciate the point raised by the petitioner in each of the aforesaid five cases, it is necessary to refer to Section 17 of the Act, and it reads as under:

17(1). Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to the company for the conduct of, the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provide 1 in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in Sub-section (1), where an offence under this Act has been committed by a company and it is provided that the offence has been committed with the consent or connivance of, or is attributable

to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. Explanation—For the purposes of this section

(a) "company" means any body corporate, and includes a firm or other association of individuals; and

(b) "director" in relation to a firm means a partner in the firm.

The explanation to Section 17 shows that a company means any body corporate and includes a firm or other association of individuals. The Milk Producers' Union in question can be said to be a company within the meaning of the above explanation to Section 17 of the Act. While providing in Sub-section (1) of Section 17 of the Act that every person who, at the time the offence was committed, was in charge of or responsible to the company for the conduct of the business of the company shall be deemed to be guilty of the offence under the Act committed by the company, it has been specifically provided in the proviso to Sub-section (1) of Section 17 that "nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence". It is easy to understand the reasons for providing the above safeguard to a person who, at the time the offence was committed was in charge of and was responsible to the company for the conduct of the business of the company, so far as the offence committed by the company was concerned. While deciding the question whether, the act in question was committed by the petitioner while acting or purporting to act in the discharge of his official duty, it is necessary to bear in mind the provisions of Section 17 of the Act which relate to the offences committed by a company and also to the safeguard that is provided to the person who at the relevant point of time was in charge of and was responsible to the company for the conduct of the business of the company.

4. It is submitted by Mr. Vyas that as a Manager of the Milk Producers' Union, the petitioner was expected to keep only general supervision in exercise of his official duty and that even if, it is assumed that, the milk in question was adulterated, the alleged offence should be held to have been committed by the petitioner in the discharge of his official duty and in that case, sanction u/s 197 of the Code will be necessary. In support of his above submission, he has relied on the decision of the Supreme Court in the case of Pukhraj Vs. State of Rajasthan and Another, . In the above case, the appellant had filed a complaint against the second respondent before the Additional Munsif Magistrate of Jodhpur city under Sections 323 and 504 of the Indian Penal Code. The second respondent was the Post Master General, Rajasthan and the appellant a clerk in the Head Post office at Jodhpur. The relevant part of the complaint as it appears from the report was as follows:

That the accused came on tour to Jodhpur on 25. 10. 1971. He arrived at the Head Post office, Jodhpur in connection with the inspection at 5, 45 p.m. The complainant reached to submit his representation to the accused for cancelling his transfer, when the accused just sat in his jeep and the complainant started narrating his story.

That the accused being enraged by this complaint, kicked him in his abdomen and abused him by saying "Gale, Goonda, Badmash, on one hand you are complaining and on the other hand you are requesting for the cancellation of transfer.

That the complainant became very much enraged over this incident but he suppressed his anger because of being responsible citizen and to avoid any further disturbance.

That after kicking and abusing the complainant the accused ran away in his jeep.

The second respondent filed an application u/s 197 of the Code of Criminal Procedure praying that the court should not take cognizance of the offence without the sanction of the Government as the acts alleged if at all done by the accused were done while discharging his duties as a public servant. The Munsiff Magistrate dismissed the application, but a single Judge of the Rajasthan High Court allowed the revision petition filed by the second respondent and set aside the order of the lower Court holding that the second respondent could not be prosecuted unless prior sanction of the Central Government had been obtained. The complainant appealed to the Supreme Court. Amongst other things, it is observed in the above case - "While the law is well settled the difficulty really arises in applying the law to the facts of any particular case". Mr. Vyas relies on the following observations of their Lordships in "the above case:

The section is not restricted only to cases of anything purported to-be done in good faith, for a person who ostensibly acts in execution of his duty; and till; purports so to act, although he may have a dishonest intention. Nor is it confined, to cases, where the act, which constitutes the offence, is the official duty of the official concerned. Such an interpretation would involve a contradiction in terms, because an offence can never be an official duty. The offence should have been committed when an act is done in the execution of duty or when an act purports to be done in the execution of duty. The test appears to be not that the offence is capable of being committed only by a public servant and not by anyone else, but that it is" committed by a public servant in an act done or purporting to be done in the execution of his duty. The section cannot be confined to only such acts as are done by if a public servant directly in pursuance of his public office, though in excess of the duty or under a mistaken belief as to the existence of such duty. Nor need the act constituting the offence be so inseparably connected with the official duty as to " form part and parcel of the same transaction. What is necessary is that the offence must be in respect of an act done or purported to be done in the discharge of an official duty. It does

not apply to acts done purely in a private capacity by a public servant. Expressions such as the "capacity in which the act is performed", "cloak of office", and "professed exercise of office" may not always be appropriate to describe or delimit the scope of the section. An act merely because it was done negligently does not cease to be done or purporting to be done in execution of a duty.

So far as the facts of the above case were concerned the Supreme Court held that-

applying this test it is difficult to say that the acts complained of i.e. of kicking the complainant and of abusing him, could be said to have been done in the course of performance of the 2nd respondent's duty. At this stage all that we are concerned with is whether on the facts alleged in the complaint it could be said that what the 2nd respondent is alleged to have done could be said to be in purported exercise of his duty. Very clearly it is not.

In the present cases, according to the prosecution, the milk that was distributed or supplied by the Milk Producers' Union to the distributing centres and sold at those centres was found to have been adulterated. It is not the case of the prosecution that the milk which was found to have been adulterated was personally supplied or sold by the petitioner. On the basis of the above facts, it is argued by the learned Advocate for the petitioners that the act of supplying milk to the milk centres can be said to have been done by the petitioner in the discharge of his official duty as the Manager of the dairy in question. It is submitted by Mr. P. M Thakkar that, only the act of distributing, supplying or selling milk of prescribed standard can be said to have been done in the discharge of official duty and that the act of supplying, distributing or selling adulterated milk can never be said to have been done in the discharge of official duty. I have already pointed out that, according to Section 16(1)(a) read with Section 7(1) of the Act, to sell or distribute adulterated milk is an offence under the Act. As pointed out by their Lordships of the Supreme Court in the case of Pukhraj (supra) while the law is well settled, the difficulty really arises in applying law to the facts of any particular case" and these cases before me provide an instance when such a difficulty is felt. In the present cases, it cannot be disputed that, the act of supplying or distributing milk to the milk centres or that of selling milk at those centres is an act done in the discharge of official duty. It should, however, be remembered that, the petitioner was expected to distribute supply or sell milk according to the prescribed standard and not adulterated milk. This would mean that though the act of distributing or supplying or selling milk according to the prescribed standard is an act done in the discharge of duty, the act of selling, supplying or distributing adulterated milk cannot be treated as the act done in the discharge of official duty. Though the line which distinguishes his act done in the discharge of official duty from the one which cannot be said to have been done in the discharge of his official duty is thin, it is real and substantial in view of the peculiar provisions of the Act. In this

connection, it may be pointed out that, in order to constitute an offence u/s 16(1) (a) read with Section 7 of the Act, it is no", the necessary ingredient of the offence that, the accused should have knowledge that a particular article of food that was manufactured for sale or stored, sold or distributed as the case may be, was adulterated. The offence does not involve any question of intention or mens rea or knowledge and it is the very act of manufacturing for sale or of selling etc. an adulterated article of food that is made penal under the Act. The above observations apply even to the offences by companies as specified in Section 17 of the Act. It appears that it is because of the above peculiar nature or ingredients of the offence that, a specific provision has been made in the proviso to Section 17 of the Act which relates to offences by companies as to the defences which can be taken by a person who, at the time the offence was committed, was in charge of and was responsible to the company for the conduct of its business. It would, therefore, be open to the accused to prove his innocence by showing that his case is covered by the proviso to Section 17(1) of the Act. In view of the provisions of Section 17(1) of the Act and the peculiar nature of the offence as stated above, the circumstance that the accused, at the relevant point of time, was acting only as the Manager of the dairy and that he had nothing to do with the actual distribution or sale of adulterated milk, need not be taken into consideration for the purpose of deciding the question whether any sanction u/s 197 of the Code is necessary in these cases.

5. According to Section 7 of the Act,

No person shall himself, or by any person on his behalf manufacture for sale, or store, sell or distribute-

(i) any adulterated food;

(ii) any misbranded food;

(iii) any article of food for the sale of which a licence is prescribed, except in accordance with the conditions of the licence;

(iv) any article of food the sale of which is for the time being prohibited by the Food (Health) authority in the interest of public health; or

(v) any article of food in contravention of any other provisions of this Act or of any rule made thereunder.

While deciding the question of sanction, it would be necessary to take into consideration true above provisions of Section 7 of the Act and it would also be relevant to consider, as to in what way, the case of a person not being a public servant is different from that of a public servant each of whom at the time the offence was committed, was in charge of and was responsible to the company for the conduct of the business of the company. It is needless to add that, Section 197 of the Criminal Procedure Code has been enacted with a view to protecting public servants from frivolous complaints made while they are doing their duty as public servants. Looking to the provisions of Section 17 of the Act, it is quite

conceivable that a person who at the time the offence was committed was in charge of or was responsible to the company for the conduct of the business of the company, irrespective of the fact whether he was a public servant or not, is harassed by some one or the other by starting a prosecution on the basis of frivolous or false allegations as to an offence under the Act. Under these circumstances, a question arises as to in what way, the case of a person who is a public servant can be distinguished from that of a person who is not a public servant while deciding the question of affording protection against frivolous prosecutions for the alleged offences by the companies referred to in Section 17 of the Act. Looking to the peculiar nature and ingredients of the offences punishable u/s 86 read with Section 7 and 17 of the Act as stated above it is to be considered as to on what basis it would be justifiable to say that, a public servant needs a greater protection than a person who is not a public servant so far as the prosecution for the aforesaid offences under the Act is concerned. While deciding the question of sanction u/s 197 of the Criminal Procedure Code, it is necessary to take into consideration the above aspects, and ingredients of the offences under the Act.

6. As observed above, Section 17(1) of the Act clearly indicates the defences available to a person who at the time the offence was committed was in charge of or was responsible to the company for the conduct of the business of the company. Now, according to Section 197 of the Code, the question of obtaining sanction would arise only in case, a Judge or Magistrate or a public servant of the category as stated in the section "is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty." I have already pointed out that for the purpose of proving the aforesaid offences under the Act it is not necessary to prove mens rea and as soon as it is found that, any person has manufactured for sale or sold or distributed any adulterated food, he will be charged with the offences, under the Act. In view of the above peculiar characteristics of the offences under the Act, it is difficult to hold that, while performing the above acts which per se constitute offences under the Act, he was acting or purporting to act in the discharge of his official duty. If the above position is borne in mind, there is no scope for saying that the act of distributing or supplying adulterated milk to the centres or that of selling such milk at the milk centres was committed by the petitioner while acting or purporting to act in the discharge of his official duty.

7. The learned Advocate for the petitioner, however, relying on the decision in the case of *Bajnath Gupta and Others Vs. The State of Madhya Pradesh*, , argues that, it is the part of the petitioner's official duty to sell milk at the milk centres and consequently the above act of selling adulterated milk by some one or the other at the milk centres should be construed to have been done in the discharge of his official duty. In the above case, one of the questions to be decided was whether the conviction of the appellant u/s 477-A of the I.P. Code was illegal on the ground that no sanction was given by the State Government u/s 197 of the Code of Criminal Procedure for his prosecution for the offence. The Supreme

Court, relying on the decision of the Federal Court in the case of AIR 1939 43 (Federal Court) , took the view that for the purpose of prosecution for the offence u/s 477-A read with Section 109 of the I.P. Code, sanction of the State Government was necessary. As regards the offence u/s 409 of the I.P. Code, it has been held that no such sanction was necessary. The relevant observations of the point are:

With regard to the ether charge u/s 477-A/109 of the Indian Penal Code, the legal position is different and, in our opinion, the sanction of the State Govt, is necessary for the prosecution of the appellant on this charge because it was committed within the scope of official duties though in dereliction of them.

In the case of Dr. Hori Ram Singh (supra), a similar view has been taken. The reasoning of Sulaiman J., on the point is:

But an offence u/s 477-A, I.P.C. is committed if an officer or servant or anyone employed or acting in such capacity, wilfully and with intent to defraud falsifies any book or account. Thus, where it is his duty to maintain a record or a register, and in maintaining that register he makes some entries which are false to his knowledge, he is certainly purporting to act, though not actually acting, in the execution of his duty, because he is making certain entries in the register, knowing them to be false. He is ostensibly professing to be discharging his official duty in maintaining the register, which he is bound to maintain correctly. In making the entries he pretends or purports to act in the execution of his duty, but in point of fact he is acting in direct dereliction of it. It has been argued by the Advocate General of the Punjab that Section 270(1) refers only to the commission of an act and not to omission. This may not be accurate but even quite apart from this, the falsification of-accounts is by no means a mere omission. It is true that some entries are alleged to have been omitted in order to conceal the criminal breach of trust. If an omission were due merely to an honest mistake, it would certainly remain a mere omission, but where the omission of certain items is intentional so that a false balance may be shown and the real surplus may not be disclosed, it is a positive act of falsifying accounts. There is a falsification of the total just as much as that of particular entries that have been omitted. In my opinion the consent of the Governor was necessary for the charge u/s 477-A, though not for that u/s 409, I.P.C.

The reasoning of Varadachariar, J. on the point is:

The learned Judges have dealt with both the charges i.e. the one u/s 409 and the other u/s 477-A as on the same footing, it however seems to me necessary to draw a distinction, for the present purpose, between the charge u/s 409 and the charge u/s 477-A. Though a reference to the capacity of the accused as a public servant is involved both in the charge u/s 409 and;; in the charge u/s 477-A. there is an important difference between the two cases, when one comes to deal with the act complained of. In the first, the official capacity is material only in connection with the "entrustment" and does not necessarily enter into the later

act of misappropriation or conversion, which is the act complained of. In the charge u/s 477-A, the official capacity is involved in the very act complained of as amounting to a crime, because the gravamen of the charge is that the accused acted fraudulently in the discharge of his official duty, The consent of the Governor would thus be prima facie necessary for the institution of proceedings against the appellant u/s 477-A. The learned advocate General of the Punjab sought to found an argument on the fact that the appellant is in the present case charged not with an act, in the sense of making a fraudulent entry in the course of his official duty, but with an omission to make an entry which it was his duty to make. I do not think that anything can be made to turn on this distinction. Apart from the principle that, for the purposes of the criminal law, acts and illegal omissions stand very much on the same footing, the conduct of the appellant in maintaining the accounts which it was his duty to keep, has to be dealt with as a whole and the particular omission cannot of itself be treated as an offence except as a step in the appellant's conduct in relation to the maintenance of the register which it was his duty correctly to maintain.

8. It is submitted by Mr. Vyas that if the sanction was necessary for prosecution for the offence under sec- 477-A of the Code, there is no reason why it should be held that no such sanction was necessary for prosecution for offence under the Act. Mr. P.M. Thakkar for respondent No. 1 has submitted that, the main reason why sanction for prosecution for the offence u/s 477-A of the I.P. Code was thought necessary was that, that offence involved the element of intention as stated in the section; whereas for the offence under the Act, the question of intention was wholly irrelevant and hence, it was not necessary to obtain any sanction u/s 197 of the Criminal Procedure Code for prosecution for an offence under the Act. I find considerable force in the above submission of Mr. Thakkar. In this connection, I may refer to the following observation in the case of Hori Ram Singh (supra):

But an offence u/s 477-A, I.P.C. is committed if an officer or servant or anyone employed or acting in such capacity, wilfully and with intent to defraud falsifies any book or account. Thus, where it is his duty to maintain a record or a register, and in maintaining that register he makes some entries which are false to his knowledge, he is certainly purporting to act, though not actually acting in the execution of his duty, because he is making certain entries in the register, kind-wing them to be false.

The above observations clearly show that, in view of the peculiar ingredients of the offence u/s 477-A of the I.P. Code, it would be open to the culprit to say that he was maintaining the accounts or the register which are alleged to have been falsified in the discharge of his official duty. No such plea can be advanced by a person who is charged with the aforesaid offences under the Act. In view of the fact that, as soon as an adulterated food is manufactured, sold or distributed the relevant offence under the Act is complete irrespective of the fact whether he had done so intentionally or otherwise or whether the food was adulterated to

the knowledge of the person concerned. This shows that it is possible to draw a line between the act of manufacturing, selling or distributing food which is not adulterated and the act of manufacturing selling or distributing food which is adulterated. In view of the ingredients of the offence u/s 477-A of the I.P. Code, it is not possible to draw any such line. Considering all these circumstances, I feel that it would be rather difficult to apply the ratio in the case of Hori Ram Singh (supra) to these cases before me. Thus according to me, no sanction is necessary for prosecuting the petitioner for the offence in question under the Act. A similar view has been taken by the Andhra Pradesh and Delhi High Courts in the cases of M.C.S. Reddy v. The State 1975 CLJ 1015 and Shri S.S. Dhanba v. The Municipal Corporation of Delhi and Ors., 1975 Prevention of Food Adulteration Cases, 308, respectively. I am, therefore, of the view that the learned Magistrate was quite justified in rejecting the contention raised by the petitioner.

9. In the result, the applications are dismissed.