
(1974) 01 AP CK 0002
In the Andhra Pradesh High Court

M.C.S. Reddy

APPELLANT

Vs

The State (Food Inspector) Cuddapah Municipality

RESPONDENT

Date of Decision : 18-01-1974

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 16, 197, 2, 7
Prevention of Food Adulteration (Extension To Kohima And Mokokchung Districts)
Repeal Act, 2002 — Section 2
Prevention of Food Adulteration Act, 1954 — Section 17

Citation : (1975) CriLJ 1015

Hon'ble Judges : Punneyya, J

Bench : Single Bench

Judgement

Punneyya, J.—This revision is filed against the order passed by the Judicial First Class Magistrate Cuddapah in C.C. No. 212 of 1973.

2. The Food Inspector filed the complaint against Sri M.C. S. Reddy Manager Integrated Milk Project. Milk Cooling Centre, Mvdukur. alleging that the two samples of milk taken on 28-7-1973 at about 4-30 a. m. from the milk supplied by the project was adulterated, as opined by the Public analyst and as such the accused committed an offence under Sections 16(a)(i) and 7 (i) read with Section 2(i)(a) and (1) of the Prevention of Food Adulteration Act (hereinafter referred to as "the Act").

3. The accused raised objection against the prosecution. He contended that since he is a Public servant, prosecution without obtaining sanction from State Government u/s 197. Criminal P. C. is bad and therefore prayed the Magistrate to pass an order to that effect and reject the complaint.

4. The learned Magistrate, taking into consideration the principles laid down by the Supreme Court in Baijnath Gupta and Others Vs. The State of Madhya Pradesh, and Chaturbhuj Vs. Bhojamal, rejected the objection, holding that there is a duty cast on the manager to supply milk as per the standard prescribed, that it could not be contended that adulteration was done by him while he was acting

or purporting to act in the discharge of his official duties and that as the act complained of against the accused was not directly concerned with his official duties, no sanction of the State Government is required u/s 197, Criminal P. C. to prosecute the accused.

5. Aggrieved with the said order of the Magistrate, the petitioner filed this revision.

6. The learned counsel for the petitioner contends that the petitioner is not directly concerned with the technical side of the organisation, that is. purchasing or standardising milk or maintenance of quality or milk despatches for sale etc.. that there are other officers to attend on these duties, that for the lapses committed by the other officers in not maintaining the requisite standards in the milk supplied by the project, he cannot be held responsible and that the petitioner cannot be prosecuted without sanction of the State Government u/s 197, Criminal P. C.

7. I do not think that the petitioner's case comes within the purview of Section 197, Criminal P. C. It is true that this section requires the sanction of the appropriate authority to be obtained before starting the prosecution. But it is not in respect of every offence committed by a public servant sanction for prosecution is necessary u/s 197. Criminal P. C. Sanction under this section is necessary only if the acts with which, the official is charged fall within the purview of his official duties and can be justified by him and done by virtue of his office. But if the act complained of constitutes an offence even if it was done by an official sanction of prosecution u/s 197. Criminal P. C. is not necessary.

8. In AIR 1939 43 (Federal Court) it was held that "The act which constitutes offence could never be the official duty of the public servant because an offence can never be the official duty of a public servant, that it is not enough if it is merely established that the person proceeded against is a public servant and; that it must further be established that the act complained of was an official act." In AIR 1948 128 (Privy Council) the Privy Council held that "a public servant can only be said to act or purport to act in the discharge of his official duty if his act is such as to lie within the scope of his official duty and that the test may well be whether the public servant if challenged, can reasonably claim that what he does, he does in virtue of his office," The Supreme Court in *Prabhakar V. Sinari Vs. Shanker Anant Verlekar*, held:?

The language of Section 197 clearly is that no Court can take cognisance of an offence alleged to have been committed by any person belonging to the categories mentioned in the section, when he is accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty. What has to be found out is whether the act and official duty were so inter-related that one could postulate reasonably that it was done by the accused in the performance of the official duty, though possibly in excess of the needs and requirements of the situation. It is not every offence committed by a

public servant which required sanction for prosecution u/s 197(1), Criminal P. C. nor even every act done by him while he was actually engaged in the performance of his official duty. But if the act complained of was directly concerned with his official duties, so that if questioned it could be claimed to have been done by virtue of the office, then sanction would be necessary and that would be so. irrespective of whether it was in fact a proper discharge of his duty or not.

9. Though the revision petitioner is a public servant, he cannot claim that the sale of the adulterated milk was made in discharge of his official duties. as the sale of adulterated milk is undoubtedly an offence under Sections 16(1)(a) and 7(i) read with Section 2(i)(a) and (1) of the Act. In other words the petitioner cannot claim that he is entitled to sell the adulterated milk in performance of his duties as manager of the milk project.

10. The petitioner, of course, claims that he is not responsible for the sale of the adulterated milk since some other officials are directly connected with the technical side of standardising milk or despatching milk for sale and they are responsible.

11. Admittedly he is the Manager and as such he is administrative head of the milk project, Mvdukur. As administrative head of the project. his bounden duty is to supply milk according to the standards prescribed under the provisions of the Act. When he fails to do so and supplies adulterated milk, he is deemed u/s 17 of the Prevention of Food Adulteration Act to have committed offence and hence sanction u/s 197, Criminal P, C. is not necessary for prosecuting him. Under the proviso to Section 17 of the Act. he is entitled to take the defence that the offence was committed without his knowledge and that there are other officers that are connected with that technical side of the organisation or that he exercised all the due diligence to prevent the commission of such offence and if he is able to succeed in his defence, the prosecution will fail. But for invoking the benefit u/s 197. Criminal P. C. he cannot take such a plea since, he, as the administrative head of the milk project, is liable for the supply of adulterated milk under the provisions of the Act.

12. The learned counsel for the petitioner relied upon the decisions in B.K. Varma Vs. Corporation of Madras, and Smt. Manibai and Another Vs. The State of Maharashtra, . Those decisions do not deal with cases u/s 197. Criminal P. C. In B.K. Varma Vs. Corporation of Madras, prosecution was launched against the superintendent of Coca Cola plant under Sections 16. 2 and 7 of the Act. It was held that there was nothing to show that the plant superintendent was a person responsible or in charge of or responsible to the manufacture or sale of coca cola and it was doubtful whether the revision petitioner was in charge of the firm in respect of the manufacture or sale of coca cola. But that was a private company while the milk project for which the petitioner is the manager in Government concern. The petitioner being administrative head, it cannot be said, at this juncture, that he was not responsible when his milk project was supplying

adulterated milk. Hence the decision does not apply to the petitioner's case. Even the decision of the Supreme Court in Smt. Manibai and Another Vs. The State of Maharashtra, cited by the petitioner's counsel does not help the petitioner as the appellant in that case was not in charge of, nor was conducting the business at the shop. But the case of the petitioner is different so far as his duties in supply of milk are concerned.

12-A. In view of the above discussion and findings, I find myself unable to accept the contentions raised by the learned counsel for the petitioner. I am, therefore, not able to hold that the order of the lower Court is improper or erroneous. The revision is accordingly dismissed.