

(1965) 02 KL CK 0015

In the High Court Of Kerala

Case No : Criminal Revision Petition No. 125 of 1964

M.N. Adhikari and Another

APPELLANT

Vs

Food Inspector, Kunnamkulam Municipality and Another

RESPONDENT

Date of Decision : 19-02-1965

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 177, 351, 439
Prevention of Food Adulteration Act, 1954 — Section 16(1), 17

Citation : AIR 1965 Ker 295 : (1965) CriLJ 775 : (1965) KLJ 456

Hon'ble Judges : P. Govinda Menon, J

Bench : Single Bench

Advocate : V. Rama Shenoi, R. Raya Shenoi and V.B. Gunatra, for the Appellant;
V. Balakrishna Eradi, for No. 1 and State Prosecutor, for No. 2, for the Respondent

Final Decision : Allowed

Judgement

P. Govinda Menon, J.—The petitioners Sri M. N. Adhikari, Manager, M/s. Rashid Jamshed Sons & Co., Madurai and P. P. Pappachan, partner, P. V. Poulouse Sons, Kunnamkulam were found guilty and convicted by the Sub-Divisional Magistrate, Kunnamkulam for an offence u/s 18(1)(a)(i) read with Section 7 of the Prevention of Food Adulteration Act (hereinafter referred to as the Act). The first petitioner was sentenced to pay a fine of Rs. 1000/-, in default to suffer simple imprisonment for 8 months and the second petitioner was sentenced to pay a fine of Rs. 10 in default to undergo simple imprisonment for two weeks. Their appeal to the Sessions Judge of Trichur having proved unsuccessful they have come up in revision to this Court.

2. The facts that led up to the prosecution may be briefly stated : On 20-3-62 at about 6.30 p. m., P.W. 1 the Food Inspector of Kunnamkulam Municipality visited the shop of P. V. Poulouse Sons, General Merchants, Kunnamkulam and found sealed tins of T.T. Asafoetida stored and exposed for sale. He purchased, out of the stock, 6 sealed tins, paid the price to the second petitioner and obtained the receipt Ext. P. 1. Notice in form No. VI Ext. P. 2 was served on him intimating

that it was intended for analysis. It was then duly sampled and sealed and one part was given to the second petitioner and he has acknowledged the receipt of the sample in Ext. P. 3. One of the packets was sent to the Public Analyst-as sample No. 125 along with a memorandum in Form No. 7. Exhibit 7 is the mahazar prepared by the Food Inspector and it was attested by P. W. 2 and another witness, who were present at the time of purchase and sampling. After analysis the Public Analyst sent the certificate Ext. P. 5 stating that the alcoholic extract (with 90% alcohol) was only 7.3% and as it was substandard it must be deemed to be adulterated.

On receipt of the report of the Public Analyst the Food Inspector made a report to the Municipal Council and the council after perusing the report of the Food Inspector, the Analyst's report and the connected papers and being satisfied granted the necessary permission to the Food Inspector to launch the prosecution against (1) the firm Rashid Jamshed Sons and Co., and (2) against P. P. Pappachan the partner of P. V. Poullose Sons who had actually effected the sale. In pursuance of that authority the Food Inspector filed the complaint. The complaint, however, was Sled against (L) Rashid Jamshed Sons & Co., represented by its Manager M. N. Adhikari; and (2) P. V. Poullose Sons, General Merchants represented by its partner P. P. Pappachan.

The Food Inspector and the attesting witness to the mahazar were examined on the side of the prosecution. Questioned u/s 342, Cr. P. C., the first petitioner stated that he is not the manufacturer, but he is only the manager of the Madurai Branch of the Company. The second petitioner admitted the sale and stated that they had got the asafoetida from Rashid Jamshed Sons & Company that they had a letter of guarantee and that they were not guilty of the offence charged. On a consideration of the evidence led in the case the learned Sub-Divisional Magistrate convicted the first petitioner M. N. Adhikari to pay a fine of Rs. 1000/-, in default to undergo simple imprisonment for 6 months. Similarly the second petitioner Pappachan was found guilty and sentenced to pay a fine of Rs. 10/- or in default to undergo simple imprisonment for two weeks.

3. In the calendar and judgment of the learned Magistrate and the learned Sessions Judge produced before me the first accused is shown as M. N. Adhikari and the second accused is shown as P. P. Pappachan. They have each been individually convicted and sentenced to pay a fine and in default ordered to suffer imprisonment. Wherefrom the Courts below got the idea that the petitioners were the accused, I am unable to see. There was, in fact, no complaint against M. N. Adhikari or Pappachan personally. The complaint was only against the respective companies. u/s 17 of the Act when an offence under the 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, But in such a case it would be open to the officers of the company

who are prosecuted to show that the offence was committed without their knowledge or that they had exercised all due diligence to prevent the commission of the offence.

In the complaint what was alleged against Rashid Jamshed Sons & Co. is that they had manufactured and sold asafoetida to P. V. Poulouse Sons. Nothing has been alleged against the first petitioner and he was not included as an accused. No evidence was led to show that it was the first petitioner who actually manufactured or sold asafoetida to P. V. Poulouse Sons. The manufacturers are the company and the company was the person who was actually prosecuted. If the first petitioner had been personally prosecuted it would have been open to him to prove that the adulteration, if any, was committed without his knowledge.

4. Again the allegation against the company was that they sold asafoetida to Poulouse Sons. The packets were sent to Kunnamkulam through the T. V. S. Lorry from Madurai. There is no case that the sale was effected within the jurisdiction of the Sub-Divisional Magistrate, Kunnamkulam or even within any place in the Kerala State and no evidence was led to that effect. On the other hand the invoice Ext. D. 5 clearly shows that the sale was effected at Madurai. There is also no shred of evidence to indicate that Poulouse Sons were either the servants or the agents of Rashid Jamshed Sons & Co. There is no suggestion that the sale effected by Poulouse Sons to the Food Inspector was for and on behalf of the company at Madurai. It was, in fact, an independent sale effected by Poulouse Sons to the Food Inspector.

5. Section 177 of the Code of Criminal Procedure provides that every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed. Therefore, the competency of a forum to take cognizance of or to inquire into or try an offence as defined by Section 4 of the Code is determined by the place where the offence is committed. Offences are in their nature local and the jurisdiction of the criminal Courts is also local. A Magistrate within whose jurisdiction an offence is committed is authorised under the Code to take cognizance of and to try the accused. A Magistrate has no power to try an accused for an offence committed wholly outside the limits of his jurisdiction. Before a person can be tried and convicted it is for the prosecution to establish that the Court which takes cognizance of and tries him has territorial jurisdiction. It is surprising that both the Courts below have omitted to notice this important circumstance. For all these reasons the conviction of the first petitioner cannot stand and has to be set aside. In the view that I take, it is unnecessary to consider the other points argued by the learned counsel regarding the certificate of the Public Analyst and the validity of the written consent granted u/s 20 of the Act.

6. Now coming to the second petitioner as stated already no complaint has been filed against him also. The complaint was only against Poulouse Sons. It is true that the evidence shows that it was Pappachan who was actually present in the shop and sold the article to the Food Inspector. He could, there-fore, have been

properly charged for the offence-under Section 16 read with Section 7 of the Act. The Municipal Council gave written consent to the filing of the complaint against him, but for reasons not known no complaint was in fact filed against him. The complaint was filed against the company only.

7. Learned counsel for the Municipality, however, argued that even though formally the second petitioner was not made an accused in the complaint e was questioned about the sale, he admitted the sale, his only "defence was one of having a warranty which cannot legally stand and he is not, in any way, prejudiced by the failure to show him as an accused in the complaint, especially when sanction-was accorded to prosecute him. Learned counsel referred me to Section 351, Cr. P. C. It is true that u/s 351 a Magistrate who has already taken cognizance of a case on a complaint or police report can join as a co-accused in the case any person attending the Court who seems to be implicated in the offence-under trial. Rut that procedure has not been followed by the trial Magistrate who alone is authorised to do so. There can be no doubt that the Magistrate, in this case, did not proceed u/s 351. He does not himself purport to act under that section and there is-no reason why I should ascribe to him the intention, of proceeding under the special procedure of Section 351 unless there are clear indications that he did so. No notice of such action being pursued has been given, to the second petitioner. It is too late in revision now, to contend that even though the second petitioner was not shown as an accused in the complaint the Magistrate did act u/s 351 and can find the second petitioner guilty and convict him and sentence him. The conviction of the second petitioner has also to be set aside. I must, however, point out that the sentence that had been awarded to the second petitioner was grossly inadequate.

In the result, the revision petition is allowed and the conviction and sentence passed on both the petitioners are set aside. Fine, if paid, would be refunded.