
(1972) 08 DEL CK 0021

In the Delhi High Court

Mohan Lal Gupta and Another

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 11-08-1972

Acts Referred:

Citation : (1973) CriLJ 953

Hon'ble Judges : M.R.A Ansari, J

Bench : Single Bench

Judgement

M.R.A. Ansari, J.—The question that arises for consideration in this case is whether a Drugs Inspector who investigated into an offence and who also filed the complaint under the Drugs and Cosmetics Act 1940 (hereinafter referred to as the Act) can be permitted to conduct the prosecution in the case.

2. The petitioner herein is a proprietor of a firm of licensed drugs. Shri "G, P. Saxena is a Drugs Inspector appointed u/s 21 of the Act. u/s 22 of the Act, he has got the power within the local limits of the area for which he is appointed to inspect any premises wherein any drug or cosmetic is being manufactured and to take samples of any drug or cosmetic which is being manufactured or sold or stocked or exhibited for sale or is being distributed. In exercise of these powers, Shri G. P. Saxena inspected the business premises of the petitioner on 11-7-1968 and purchased a sample of Tedral Tablets purporting to have been manufactured by M/s. Martin and Harris (Pvt.) Ltd. After following the procedure prescribed u/s 23 of the Act, he sent a portion of the sample for analysis (to the analyst) and the latter after testing the sample reported that the sample was misbranded. Therefore, a complaint was filed by Mr. Saxena against the petitioner for an offence which is punishable under Sections 27 and 28 read with Sections 18 (a) (ii) and 18A of the Act. When the Inspector wanted to conduct the prosecution himself, an application was filed on behalf of the petitioner raising an objection that Shri Saxena Inspector who had investigated into the case and also filed the complaint should not be permitted to conduct the prosecution. This application was dismissed by the learned Magistrate by his order dated 21-8-1970. The

petitioner thereupon filed a revision petition in the Court of Session, but the learned Additional Sessions Judge who heard this revision petition, dismissed the same. Therefore, the petitioner has filed the present revision petition in this Court.

3. Shri D. R. Sethi, the learned Counsel for the petitioner, seeks to rely upon the provisions of Section 495, Cr.PC in support of his contention that Shri Saxena the Drugs Inspector, is disqualified from conducting the prosecution against the petitioner. The relevant provisions of Section 495. Cr.PC are sub-sections (1) and (4). Sub-section (1) reads as follows:

Any Magistrate inquiring into or trying any case may permit the prosecution to be conducted by any person other than an officer of police below a rank to be prescribed by the State Government in this behalf but no person, other than the Advocate General, Standing Counsel, Government Solicitor, Public Prosecutor or other officer generally or specially empowered by the State Government in this behalf, shall be entitled to do so without such permission.

Sub-section (4) reads as follows:

An officer of police shall not be permitted to conduct the prosecution if he has taken any part in the investigation into the offence with respect to which the accused is being prosecuted.

The import of these two sub-sections is that

(i) as a rule, the permission of a Magistrate is necessary for a person to conduct the prosecution in any particular case and without such permission, no person has the right to conduct the prosecution in any case;

(ii) but an Advocate General. Standing Counsel. Government Solicitor, Public Prosecutor or other officer generally or specially empowered by the Central Government or the State Government in this behalf do not require the permission of the Magistrate to conduct the prosecution and are entitled as of right to conduct the prosecution in any case;

(iii) In case of police officers, the State Government prescribes the rank of the officer who is authorised to conduct the prosecution. In the case of such officers, they do not require the permission of the Magistrate to conduct the prosecution;

(iv) In the case of police officers below the rank prescribed by the State Government, the Magistrate may permit the prosecution to be conducted by him.

(v) but whether the police officer is of the rank prescribed by the State Government or whether he is below that rank, he shall not be permitted by the Magistrate to conduct the prosecution in any case in which he has taken any part in the investigation of the case.

4. Section 495. Cr.PC embodies a very salutary principle that a person who has taken part in the investigation will be interested in obtaining the conviction of the

accused and will, Therefore, not conduct the prosecution in a fair manner and Therefore, such person should not be permitted to conduct the prosecution.

5. The learned Counsel appearing for the respondent has brought to my notice a notification of the Delhi Administration dated February 10, 1966 by which all Drugs Inspectors in Delhi appointed under the Act are specifically empowered to conduct the prosecution in cases relating to offences under the Act. Therefore, Mr, Saxena, Drugs Inspector, is a person generally empowered by the State Government to conduct prosecution in cases under the Act. He will, Therefore, come within the scope of Sub-section (1) of Section 495, Cr.PC and he does not require the permission of the Magistrate to conduct the prosecution in this case. The learned Counsel for the petitioner, however, contends that Mr. Saxena must be deemed to be an officer of the police within the meaning of Sub-section (4) of Section 495. Cr.PC and that since he has taken part in the investigation of this case, he should not be permitted to conduct the prosecution of the case notwithstanding the notification of the State Government referred to above. In support of this contention, the learned Counsel has referred to the various provisions of the Act under which the Drugs Inspector is invested with powers similar to those conferred on an officer of the police.

For one thing. I am not prepared to accept this contention that a Drugs Inspector is invested with powers similar to those conferred on an officer of the police. Even assuming for a moment that the powers enjoyed by a Drugs Inspector are similar to those enjoyed by an officer of the police, it does not follow that a Drugs Inspector is an officer of the police. Under some laws. a person who is not an officer of police is for the purpose of that particular law deemed to be an officer of police. Reference may be made to Section 46 (21) of the Punjab Excise Act, 1914 under which "every officer so empowered may within those limits exercise the same powers in respect of such investigation as an officer in charge of a police station may exercise in a cognizable case under the provisions of Chapter XIV of the Code Criminal Procedure, 1898". On the other hand certain officers appointed under some other statutes, though exercising some of the powers of an officer of police, are not designated as such in the manner in which they are designated by Section 46 (2) of the Punjab Excise Act. A customs officer appointed under the Sea Customs Act exercises powers which are similar to the powers exercised by an officer of police. But it was held by the Supreme Court in the The State of Punjab Vs. Barkat Ram, that the customs officer was not an officer of police within the meaning of Section 25 of the Evidence Act. Therefore, the disqualification attached to an officer of police who has investigated into the offence to conduct the prosecution in the same case cannot be attached to a Drugs Inspector under the Act. Therefore, there is no legal bar against Mr. Saxena conducting the prosecution in the case against the petitioner.

6. Although the objection of the petitioner has to be overruled on legal grounds, there can be no doubt that it is desirable to apply the salutary principle of not permitting the investigating officer to conduct the prosecution under the Act also.

A Drugs Inspector may conduct the prosecution but not in cases in which he has taken part in the investigation. , I cannot envisage any practical difficulty in adopting this course. It is certainly not a healthy practice to allow a Drugs Inspector who has himself conducted the search, seized an article, examined witnesses and filed the complaint to also conduct the prosecution in the same case. Since he himself will have to be examined as a witness in that case and also to examine other witnesses in the case, it is desirable that some other Drugs Inspector should be asked to conduct the prosecution in the case. It is to be hoped that the Delhi Administration will give the matter the necessary consideration and issue necessary instruction in this regard. A copy of this judgment will be sent to the Delhi Administration.

7. In the result, the revision petition is dismissed.