
(1972) 08 DEL CK 0018

In the Delhi High Court

Case No : Criminal Revision Appeal No. 499 of 1971

Mohan Lal Gupta and Another

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 11-08-1972

Acts Referred:

Citation : (1972) RLR 131

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

Bench : Single Bench

Advocate : D.R. Sethi and D.C. Mathur, for the Appellant;

Judgement

M.R.A.Ansari

(1) 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 sample 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 the inspected 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 78 of the Act, he sent a portion of the sample for analysis 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 18 A 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 in 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 there upon filed a revision petition in the Court of Session, but the learned

Additional Session Judge who heard this revision petition, dismissed the same. Therefore, the petitioner has filed the present revision petition in this Court.

(2) Shri D.R. Sethi, the learned counsel for the petitioner, seeks to rely upon the provisions of section 495 Cr. P.C. in support of his contention that Shri Saxena the Drugs Inspector is disqualified from conducting the prosecution against the petitioner. Section 495 Cr. P.C. 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.

(3) 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 case 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. P.C. and he does not require the permission of the Magsstrate 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 49 S Cr. P.C. and that since he has taken part in the investigation of this case, he shall 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 no 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 (2) of the Punjab Excise Act, under which "every officer so empowered may within those limits exercise the the same powers in respect such investigation as an officer in charge of a police station may exercise in a cognisable case under the provisions of chapter Xiv of the Code of Criminal Procedure, 1898". On the other hand, certain officer appointed under some other statutes, though exeicising some of the powers of an officer of police, are not designated as such in the manner in which by section 46(2) of 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 Evidence Act. Therefore, the disqualification attached to an officer of police who has

investigated into the offence to conduct the prosecution in the same cannot be attached to a Drug Inspector under the Act. Therefore, there is no legal bar against Mr. Saxena conducting the prosecution in the case against the petitioner.

(4) 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 to the Drugs Inspectors 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 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, 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.