

(1984) 02 GAU CK 0008
In the Gauhati High Court
Case No : Criminal Revision No. 275 of 1981

Nirendra Nath Sarkar

APPELLANT

Vs

The State of Assam and Others

RESPONDENT

Date of Decision : 21-02-1984

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197, 197(1), 197(4), 401, 482
Prevention of Food Adulteration Act, 1954 — Section 14, 14(3), 14A, 16, 16(I)
Railway Establishment Code — Rule 105, 106
Railways Act, 1989 — Section 53, 55, 55(1), 55(2), 55(3)
Sales of Goods Act, 1930 — Section 4(1)

Citation : (1984) 1 GLR 510

Hon'ble Judges : K.N. Saikia, J

Bench : Single Bench

Advocate : A.R. Baroosh and M.K. Sarma, for the Appellant; T.C. Khetri, R.K. Bhatra and C.K. De, Public Prosecutor, for the Respondent

Judgement

K.N. Saikia, J.—The Petitioner in this criminal revision u/s 482 read with Section 401 Code of Criminal Procedure impugns the order of the Chief Judicial Magistrate, Tezpur rejecting his application for his discharge or dropping, against him, the prosecution under the Prevention of Food Adulteration Act.

2. On the basis of an offence report dated 9.6.80 filed by the Area Food Inspector, Durrung, Tezpur the Petitioner along with two others, namely, M/s. Chunilal Bottva and Sorts, Gobardhan Road, Tezpur and Shri Balchand Bothra, partner, is being prosecuted in C.R. Case No. 278 of 1980 in the Court of the Chief Judicial Magistrate, Tezpur u/s 7 read with Sections 16 and 17 of the Prevention of Food Adulteration Act (hereinafter referred to as "the Act") for the offence of distributing, storing for sale as well as selling adulterated edible common salt for human consumption. The Petitioner appeared on 11.6.81 and raised a preliminary objection as to (sic) notion and late filed an application on 3. 8. 81 stating, inter alia (sic) was at the relevant time the Assistant Traffic Superintendent Railway, Rang(sic)ra North and as certain consignment were

lying in the Railway godown as unclaimed goods the same, (sic) due notice, were auctioned on behalf of the President at (sic) under Sections 53 and 56 of the Railways Act that as the Assistant Traffic Superintendent he conducted the auction in performance of his duties in the official capacity and as such he was neither a manufacturer nor a dealer or distributor of the food article so auctioned; and that he could not be impleaded in the case without prior sanction from the Central Government. The learned Magistrate rejected the submissions observing that the Petitioner had not been impleaded u/s 20A of the Act but had been impleaded as one of the original accused that the fact that he sold the food article by auction in course of his official duties was not the end of the matter as official duties could not extend to acting in breach of the food laws, and no sanction was necessary to prosecute a public servant in food offences; and moreover, there was no material before the Court to hold that the Petitioner was not removable from his office save by or with the sanction of the Central Government. The Court further observed that the Brochure on Railway Servants (Discipline and Appeal) Rules, 1968, produced before the Court by the Petitioner did not throw light on the question. The objection was accordingly dismissed and 24.8.81 was fixed for trial, Hence this petition

3. Dr. M.K. Sarma, the learned Counsel for the Petitioner, makes two submissions, namely, (i) that without prior sanction u/s 197 Code of Criminal Procedure shortly "the Code", the prosecution against the Petitioner, who is a public servant, is bad in law and (ii) that the Railway having been a carrier and therefore only a bailee, the auction held by the Petitioner on behalf of the President of India did not amount to sale u/s 2(13) of the Act and the Petitioner was neither a manufacturer nor dealer or distributor and hence the prosecution was liable to be quashed or at least he was entitled to be discharged.

4. Resisting the petition Mr. T.C. Khatri, the learned Counsel for the opposite parties No. 2 and 3 submits, Inter alia, that no sanction u/s 197 Code of Criminal Procedure is necessary under the Act in case of public servants as that sanction only involves the question of taking cognizance of offence and cognizance in the case was taken after sanction was given u/s 2 of the Act that the auction sale held by the Petitioner was a sale for purpose of the Act and he was at least a distributor or the person from whom the opposite parties No. 2 and 3 purchased the salt and whose name was disclosed u/s 14A of the Act, and as such neither the Petitioner is entitled to be discharged nor is his prosecution liable to be quashed.

5. First, we take up the question of sanction, u/s 197(1) of the Code of Criminal Procedure when any person who is or was a public servant not removable from his office save by or with the sanction of the 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 who is employed or as the case may be, was at the time of commission of the alleged

offence employed, in connection with the affairs of the Union, of the Central Government Under Sub-section (4) of that Section the Central Government or the State Government as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which the prosecution of the public servant is to be conducted, and may specify the Court before which the trial is to be held. It is not denied that the Petitioner at the time of commission of the offence was the Assistant taut Traffic Superintendent, N.F. Railway and as such employed in connection with the affairs of the Union of India. However, it was not stated in the, petition before the trial Court that be was not removable from his office save by or with the sanction of the Central Government, Section 197 Code of Criminal Procedure clearly draws a line between public servants and when souse lesser authority has by law or Rule or Order been empowered to remove a public servant, it cannot be said that be it not removable save by or with the sanction of the Government.

6. Before invoking Section 197 two conditions must be satisfied, namely, (1) the public servant it removable from office either by the Union Government or a State Government and not by any lesser authority and (2) he is accused of an offences alleged to have been committed while acting or purporting to not in the discharge of his official duty. It is therefore, incumbent on the part of the Petitioner at a public servant while seeking quashing of the criminal prosecution against him to state and prove clearly not only that he is a public servant but also that as such he is not removable from his office save by or with the sanction of the Court Government. In *Sarjoo Prasad v. Bidyanandan Singh* 47 Cri.L.J. 445 it was held that the if Petitioner's prosecution could not bo quashed unless be showed that he fell in any of the categories mentioned in Section 197. The Petitioner was a Station Master. In *Ghanaram v. State* AIR 1954 Nag 265 the applicant was a fourth class railway employee and as such removable¹ by the head of the office and hence sanction u/s 197 was held to be unnecessary. Under Rule 105 of the Indian Railway Establishment Code, Vol, 1 railway services have been classified into Classes I, II, III and VI. Rule 106 enumerates the services included in each of the classes. In *Indu Bhusan v. the State* AIR 1950 All 679 it has been held that no sanction for prosecution of a gazetted servant of a Railway who is not removable from his office except by the Railway Board is required u/s 197 as the Railway Boardis neither the Provincial Government nor the Central Government. In *Crl. Rev. No. 80 of 1980*, disposed of on 25.7.83 (*Shri Gopalchand Sandle v. State of Assam*) it was not disputed that the Petitioner was a class I Officer of the Railways, appointed by the President and removable from his office only by the Central Government. That case is therefore distinguishable do facts. In the instant case the Petitioner has not said in his that he is not removable except by the Central Government I. *Nagraj Vs. State of Mysore*, it was held that a Inspector or Sub-Inspector of police or a (sic)stable being removable by the Inspector General or by the Superintendent of Police under the Mysore Police Act, no sanction, making that section available to all public necessary u/s 197 of the Code. When the legislature has limited the class of

offers entitled to protection that section available to all public servants would be against the legislative policy. As the Petitioner did not show before the trial Magistrate that he was not removable except by the Central Government and has not also shown to be so before this Court, it cannot be said for certain that previous sanction was necessary u/s 197 of the Code. The question whether the offence was committed in course of duty or not need not, therefore, be gone into.

7. Assuming that previous sanction was not necessary Dr. Sarma's submission that the Petitioner is not a duly licenced manufacturer, dealer or distributor appears to have force. Admittedly the Railways administration was only the carrier of the consignment of salt and as such a bailee, and had the right to demand the carriage charges. Under Sub-section (1) of Section 55 of the Indian Railways Act, if a person fails to pay on demand made by or on behalf of a Railway administration any rate, or other charge due from him in respect of any animals or goods, the railway administration may detain the whole or any part of the animals or goods or, if they have been removed from the railway, any other animals or goods of such person then being in or thereafter coming into possession. Under Sub-section (2) of that Section when any animals or goods have been detained under Sub-section (1), the railway administration may sell by public auction, in the case of perishable goods at once, and in the case of other goods or of animals on the expiration of at least fifteen days" notice of the intended auction. Under Sub-section (3) out of the proceeds of the sale the railway administration may retain a sum equal to the charge and the expenses foresaid, rendering the surplus, if any, of the proceeds, and such of the animals or goods (if any) as remain unsold, to the person entitled thereto. Under Sub-section (1) of Section that Act when any animals or goods have come into the possession of a railway administration for carriage or otherwise and are not claimed by the owner or other person appearing to the railway administration to be entitled thereto railway administration shall, if such owner or person it known, cause a notice to be served upon him, requiring him to remove the animals or goods. Under Sub-section (2) the railway administration may, within a reasonable time, sell the animals or goods as nearly as may be under the provisions of Section 55, rendering the surplus, if any, of the proceeds of the sale to any person entitled thereto. Similar provisions are contained in Section 56A. It is not denied that the consignment of common salt remained in petition of the railway administration as unclaimed property and the administration sold those goods by auction. The expression used in Section 55 it "sell by public auction", Would it be sale for the purposes of the Act? As defined in Clause (xiii) of Section 2 of the Act "sale" with its grammatical variations and cognate expression, means the sale of any article of food, whether for cash or on credit or by way of exchange and whether by wholesale or retail, for human consumption or use, or for analysis, and includes an agreement for sale, an offer for sale, the exposing for sale or having in possession for sale, of any such article, and includes also an attempt to sell any such article. This definition is comprehensive enough to include "sale by auction". Auction is a method of sale. An auctioneer it one who

sells or offers for sale goods at any sale where persons become purchasers by competition, being highest bidders. When a bid is accepted and the hammer falls the contract comes into existence, as was held in *Bristol Car Auction v. Wright* (1972) 1 WLR 1519.

8. As defined in Section 4(1) of the Indian Sale of Goods Act, 1930, contract for sale of goods is a contract whereby the seller transfers or agrees to transfer property in goods to the buyer for a price. As defined in Sub-section (3) where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale. As defined in Section 2(1) and (13), respectively, of that Act buyer means a person who buys goods a seller means a person who sells or agrees to sell goods. Even sale includes a agreement, the payment of the price and the delivery of the property. The property in the goods sold is transferred at the time when the parties intend it to pass which is usually when agreement is other words sale means of a price paid in from one man to another in consideration of a price paid in money. There can, therefore be no do doubt that an suction sale will come within the definition of sale given in Section 2(xiii) of the Act. The Petitioner was therefore the seller of the salt to the auction purchaser.

9. The railway administration is neither a manufacturer nor a dealer in respect of the consignment of salt sold It being only the carrier in respect of the consignment. u/s 19(1) of the Act, it shall be no defence in a prosecution for an offence pertaining to sale of any adulterated or misbranded article of food to allege merely that the vendor was Ignorant of the nature, substance or quality of the food sold by him or that the purchaser having purchased any article of analysis was not prejudiced by the sale. Under Sub-section (2) a vendor shall not be deemed to have committed an offence pertaining to the sale of any adulterated or misbranded article of food if he proves (a) that he purchased the article of food- (i) in a case where a licence is prescribed for the sale thereof, from a duly licenced manufacturer, distributor or dealer: (ii) in any other case, from any manufacturer, distributor or dealer, with a written warranty in the prescribed form; and that the article of food while in his possession was properly stored and that he sold it in the same state as he purchased it. Under Sub-section (3) any person by whom a warranty as is referred to in Section 14 is alleged to have been given shall be entitled to appear an the hearing and give evidence. u/s 14 of the Act no manufacturer or distributor of, or dealer in any article of goods shall sell such article to any vendor unless he also gives a warranty in writing in the prescribed form about the nature and quality of such article to the vendor ; provided that a bill, cash memorandum or invoice in respect of the sale of any article of food given by a manufacturer or distributor of or dealer in, such article to the vendor thereof shall be deemed to be warranty given by such manufacture, distributor or dealer under this section. The existence of such warranty has not yet been shown in his case so far.

Under Section 14A of the Act every vendor of an article of food shall, if so

required, disclose to the food inspector the name, address and other particulars of the person from whom he purchased the article of food. This Section makes it incumbent upon the instant auction purchaser to disclose to the Food Inspector the name, address and other particulars of the Petitioner from whom he purchased the article of food when required by the Food inspector. u/s 16(I-C) if any person contravenes the provisions of Section 14 or Section 14A, he shall be punishable with imprisonment for a term which may extend to six months and with fine which shall not be less than five hundred rupees, No. objection can, therefore, be taken to the disclosure of the Petitioner's name by the auction purchaser.

10. To distribute means in divide amongst several to deal out or allot to diverse about a space to spread out. Distribution is an act or process of distributing disposal division. In this sense, if no licence was needed to deal in salt, the Petitioner could be said to be a distributor. It is the contention of the Petitioner that for dealing in salt a licence was prescribed and the Petitioner was not the holder of any such licence. However, if no such licence was prescribed, he might come under the definition of a distributor, as envisaged under Clause (a)(ii) of Sub-section (2) of Section 19 of the Act.

11. Thus it is seen that even assuming that the Petitioner was neither a manufacturer nor a dealer nor a distributor, he was the feller of the article of food and as such his name and particulars having been disclosed to the Food Inspector he has been prosecuted under the provisions of the Act.

12. It is true the Petitioner sold the salt consignment by public auction. If the adulterated salt has found its way into the market law has to penalise the persons responsible and guilty of the food offence. mens rea is not necessary for conviction under the act. There is no evidence at this stage to show that the Petitioner was of the state or condition of the (sic) at the time of holding the public auction. The prosecution of the Petitioner, after his name was disclosed as required u/s 14A of the Act cannot at this stage be an abuse of the process of the Court. If Petitioner can by evidence establish that he was not removable from his service except by the Central Government or that he was entitled to acquittal, the Court will decide his case on merit on the basis of the evidence adduced, The decisions holding that performance of duty could never include the commission, of any food offence are not relevant at this stage of the case.

13. The guidelines have been given and the categories of cases where the inherent jurisdiction to quash proceedings can and should be exercised have been formulated in *R.P. Kapoor v. State of Punjab* AIR 1960 S.C. 869. In *P. Vijayapal Reddy and Others Vs. The State*, it has been observed that it is now well settled that the High Court does not ordinarily interfere at an interlocutory stage of a criminal proceeding pending in a subordinate Court specially when the case is at its threshold and evidence has still to be adduced and it is not possible to determine different questions purely in the abstract without relevant evidence bearing on the matter to issue, of course, in the *State of Karnataka Vs. L.*

Muniswamy and Others, it was held that in that case there no material on the record on the basis of which any tribunal if could reasonably come to the conclusion that the accused were in any manner connected with the incident leading to the prosecution and that the High Court was therefore Justified in holding that for meeting the ends of justice the proceedings against the rest of the accused ought into be quashed. In the instant case on the basis of the materials on record at this stage, without further evidence, it cannot safely be said that no tribunal would be able to find any food offence having been committed by the Petitioner. In Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others, where the complaint against the Company, its Directors and Manager was made under the Act, it was being reiterated that proceedings Against an accused in the initial stages could be quashed only if on the face of the complaint or the papers accompanying the same, no offence was constituted. In other words, the test is that taking the allegations and the complaint as they are, without adding or subtracting anything, if no offence is made out then the High Court would he justified in quashing the proceedings in exercise of its powers u/s 482 of the Code. Reiterating the guidelines and the grounds on which proceedings can be quashed as were laid down in Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others, and in Dr. Sharda Prasad Sinha Vs. State of Bihar, Their Lordships held that so far as the manager was concerned, from the very nature of his duties it could be safely inferred that be would under(sic) be vicariously liable for the offence; vicarious liability being an incident of an offence under the Act. But so far as the directors were concerns that was not even a whisper nor a shred of evidence nor anything to show, apart from the presumption drawn by the complainant, that there was any act committed by the Directors from which a reasonable inference could be drawn that they could also be vicariously liable. Their Lordships accordingly allowed the appeal only to the extent that the order of the High Court quashing the proceedings against the Manager was set aside and that of the Magistrate in that regard was restored. The quashing of the proceedings by the High Court as regards the other Respondents (Directors) was upheld. In the State of Punjab Vs. Devinder Kumar and Others, it has been held that adulteration and misbranding of food stuffs are rampant evils in our country. The Act to brought into force to check these social evils in the larger public interest for ensuring public welfare. In certain cases the Act provides for imposition of penalty without proof of a guilty mind. This shows the degree of concern exhibited by Parliament in so far as public health is concerned. While construing such food laws Courts should keep in view that the need for prevention of future injury is as important as punishing a wrong does after the injury is actually inflicted. In such cases, Courts should be too eager to quash on lender grounds the prosecutions, for offences, alleged to have been committed under the Act.

14. For the reasons discussed above. I hold that the proceedings are not liable to be quashed and the Petitioner is not entitled discharged at this stage. Whether it would be liable to be basis of evidence adduced, or whether the accused

Petitioner would be acquitted or not on the basis of the evidence adduced in the case are entirely different matters on which I refrain from expressing any opinion and the trial Court will proceed to decide such question if raised and the case on merits on the basis of the evidence adduced untrammelled by any observation made hereinabove regarding the guilt.

15. This petition is accordingly rejected and the Rule discharged. Send down the records forthwith so that the trial may proceed expeditiously.