

(1975) 07 KL CK 0014
In the High Court Of Kerala

P.K. Gopinathan Nair and Others

APPELLANT

Vs

The Executive Officer and Another

RESPONDENT

Date of Decision : 14-07-1975

Acts Referred:

Constitution of India, 1950 — Article 19, 21
Criminal Procedure Code, 1973 (CrPC) — Section 482
Prevention of Food Adulteration Act, 1954 — Section 23, 24

Citation : (1976) CriLJ 171

Hon'ble Judges : V. Khalid, J; P. Janaki Amma, J

Bench : Division Bench

Judgement

V. Khalid, J.—There are eight petitioners in this petition. The petition is filed u/s 482 of the Code of Criminal Procedure, 1973, The petitioners seek to quash the prosecutions pending against them before the Sub-Divisional Magistrate. Chengannur, as C. Cs. Nos. 42 to 48 and 57 of 1975. The second petitioner, who is the accused in C C. No. 47 of 1975, has sworn to an affidavit on behalf of all the petitioners.

2. The first respondent is the Executive Officer of Anikkad Panchayat and the second respondent is the Food Inspector, Thiruvella Circle. The first respondent issued a notice, to each of the petitioners separately, calling upon them to take licences under the Prevention of Food Adulteration Act, Act 37 of 1954. for short the Act, since they are authorised distributors of rationed " articles like wheat, rice, etc. The petitioners submitted a written representation before the Panchayat requesting that Executive Officer be directed not to insist upon the petitioners in take out licence which according to them is unwarranted either by the Act or by the Rules, It is stated that the petitioners received a reply from the Panchayat that the matter has been referred to the District Panchayat Officer, Alleppey. Thereafter, the petitioners received a notice from the Food Inspector, the 2nd respondent, dated 9-1-1975, calling upon each of them to take licence under the Act within seven days and report the matter to him and threatening with prosecution on failure to comply with the said notices. The petitioners did not

comply with the notice and therefore prosecutions were launched against them.

3. The petitioners appeared before Court on receipt of the summons. On 4-4-1975 the Food Inspector was examined and the case was adjourned to 14-4-1975 for his cross-examination. It is at this stage that the petitioners have come to this Court.

4. There are allegations against a political party and of mala fides. They are beside the point and we do not think it necessary to refer to them.

5. Among the grounds taken in the petition, the petitioners have raised violation of the provisions contained in Articles 19(1)(i) and (a) and 21 of the Constitution of India. We do not refer *Raghubir Singh v. State of Punjab* to these grounds also since they are not available to the petitioners now and since we are rejecting the application on merits.

6. Contention of the petitioners in this case is that the licence under the Act is not necessary since they are authorised ration distributors. Be that as it may the complaint which has been extracted in Ground 3 reads as follows:

Original in Malayalam omitted here?Ed.1 One doesn't know what is meant by [Original in Malayalam omitted here.] Whether a licence is necessary or not under the Act can be satisfactorily agitated before the trial Court and can be adjudicated upon only after evidence is let in this Court cannot at this stage go into the said question and give relief to the petitioners.

7. The legal contention raised by the petitioners is that the rule-making power contained in Section 23 of the Act is vested in the Central Government and the Central Government have made Rule 50 pursuant to the aforesaid power. Although Section 24 of the Act provides the State Government with power to make rules regarding matters which are outside the scope of Section 23, the petitioners' counsel would contend, that since rules have already been made by the Central Government, the State Government cannot make " the rules regarding the same matter. The " relevant State rule is Rule 10 of the Kerala Prevention of Food Adulteration Rules, 1957, for short the Kerala Rules, which reads:

No person shall sell, stock and exhibit for sale or distribute any food without a valid licence issued under these rules.

The Central rule is Rule 50 of the Prevention of Food Adulteration Rules, 1955, for short, the Central Rules, which enumerates the various articles of food for which a licence is necessary to sell, stock, distribute or exhibit for sale-

8. Counsel for the Panchayat contended that Section 28(i) and (a) of the Act related to prohibition or defining the conditions of sale of any substance which may be injurious to health and defining the condition of sale or conditions for licence of sale of any article of food in the interests of public health. Section 24 of the Act enables the State Government to make rules for the purpose of giving

effect to the provisions of the Act in matters not falling within the Purview of Section 23. Therefore, it cannot be said that Rule 10 enacted by the State Government is either an usurpation of the powers vested in the Central Government or in excess of the power conferred u/s 24 of the Act on the State Governments. All that the rule states is that no person shall sell, stock and exhibit for sale or distribute any food without a valid licence. If the petitioners are able to satisfy the Court below that a licence is not necessary for the articles of food which they sell, stock and exhibit for sale or distribute, they are entitled to relief from that Court. But we would like to make it clear that reading Sections 23 and 24 together and Rule 50 of the Central Rules and Rule 10 of the Kerala Rules together, it cannot be said that Rule 10 is either invalid or beyond the jurisdiction or on account of excessive jurisdiction.

9. This criminal miscellaneous petition is without any merits and is therefore dismissed.

10. The trial Court will dispose of the case before him in accordance with law. It will be free to take its own decision whether it is necessary for the petitioners to the any licence under the Act Or the Rulers.