

(1957) 06 CAL CK 0004

In the Calcutta High Court

Case No : Criminal Revision No"s. 231 and 232 of 1957

Rafique Khan

APPELLANT

Vs

The Corporation of Calcutta

RESPONDENT

Date of Decision : 10-06-1957

Acts Referred:

Calcutta Municipal Act, 1951 — Section 579(1), 579(2), 594
Prevention of Food Adulteration Act, 1954 — Section 18, 20, 20(2), 7

Citation : (1958) 2 ILR (Cal) 105

Hon'ble Judges : Guha Roy, J

Bench : Single Bench

Advocate : Nalin Chandra Banerjee and Prasun Chandra Ghosh, for the Appellant; Uma Prasad Mookerjee and Chittatosh Mookerjee, Advvs. and S.M. Base, General and Dhiren De, for State, for the Respondent

Judgement

Guha Roy, J.—The same points arise in Revision Case No. 231 and in Revision Case No. 232 and this judgment will cover both. It appears that the Petitioners in the two cases were prosecuted under Section 7 read with Section 18 of the Prevention of Food Adulteration Act, 1954, before a Municipal Magistrate. The points now taken on behalf of the Petitioners in the two cases are, first, that the Municipal Magistrate as such has no jurisdiction to take cognizance of such an offence and, secondly, that the Corporation of Calcutta not being a local authority is not entitled to file a complaint under the Prevention of Food Adulteration Act, 1954.

2. I shall take up the second point first. Section 20 of the Prevention of Food Adulteration Act, 1954, lays down that no prosecution for an offence under this Act shall be instituted except by, or with the written consent of, the State Government or a local authority or a person authorized in this behalf by the State Government or a local authority. The Expression "Local authority" is defined in Section 2(viii) as meaning in the case of a local area which is a municipality, the municipal board or municipal corporation. The expression "local area" is defined in Section 2(vii) as any area, whether urban or rural, declared by

the State Government by notification in the Official Gazette, to be a local area for the purpose of this Act. By Notification No. P.H./2503/2R-66/54, Part III, dated June 14, 1955, published in the Calcutta Gazette, dated June 30, 1955, Part, pages 2560-2561, the area described in Schedule I to the Calcutta Municipal Act, 1951, as deemed to have been amended u/s 594 of that Act was declared by the State Government to be a local area for the purpose of the Prevention of Food Adulteration Act, 1954. That being so, the Corporation became a local authority for the purpose of filing a complaint u/s 20. The Corporation was, therefore, quite competent to file a complaint against the Petitioners. There is thus no substance in that point.

3. The first point, however, is much more substantial. u/s 20(2) of the Prevention of Food Adulteration Act, 1954, no court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence under this Act. The Magistrate before whom the complaint was filed is admittedly a Municipal Magistrate. Municipal Magistrates are appointed u/s 579(1) of the Calcutta Municipal Act, 1951. As the whole question depends on the construction of Sub-section (2) of Section 579 it will be convenient and useful to reproduce the whole of that section. 579(1) The State Government may appoint one or more Magistrates for the trial of offences against-

(a) this act,

(b) the rules or by-laws made there under, and

(c) the Bengal Vaccination Act, 1880, and the Epidemic Diseases Act, 1897, and may prescribe the times and places at which such Magistrate or Magistrates shall sit for the dispatch of business. Such Magistrates shall exercise all other powers and discharge all other functions of a Magistrate as provided in this Act.

(2) Such Magistrate shall be called Municipal Magistrates, and when functioning within the Presidency town of Calcutta or within the limits of the Port of Calcutta shall be deemed to be Presidency Magistrates for the purposes of the Code of Criminal Procedure, 1898, and shall, if they are stipendiary, be paid such salary, pension and leave allowances by the State Government as may from time to time be fixed by the State Government.

(3) The Corporation shall, out of the Municipal Fund, pay to the State Government the amounts of the salary, pension and leave allowances as fixed under Sub-section (2), together with the cost of the establishments of the said Magistrates, and all other incidental charges in connection with such establishments.

(4) Each such Magistrate shall have jurisdiction over the whole of Calcutta.

4. It is clear that Sub-section (1) of Section 579 authorizes the State Government to appoint Municipal Magistrates for the trial of offences mentioned in this Sub-section namely, offences against the Municipal Act itself, offences against the Rules or by-laws made there under and also offences against the

Bengal Vaccination Act, 1880, and the Epidemic Diseases Act, 1897. In this Sub-section it is further laid down that such Magistrate shall exercise all other powers and discharge all other functions by a Magistrate as provided in this Act, that is, in the Calcutta Municipal Act. Thus, as far as Sub-section (1) is concerned there is no doubt that Magistrates appointed under that Sub-section are appointed for the specific purpose of trying certain offences only and if they are to exercise any other powers, those other powers they are to exercise and discharge are also under the Municipal Act itself. Sub-section (2) first says that such Magistrates shall be called Municipal Magistrates and when functioning within the Presidency town of Calcutta or within the limits of the Port of Calcutta shall be deemed to be Presidency Magistrates for the purposes of the Code of Criminal Procedure, 1898. It is argued by the learned Advocate General on behalf of the State that as soon as such Magistrates are deemed to be Presidency Magistrates for the purpose of the Code of Criminal Procedure, they at once have all the powers of the Presidency Magistrates so as to be entitled to take cognizance of all offences whether they are offences specified in Sub-section (1) or not. Sub-section (2) to my mind is not capable of that construction because of the opening words "such Magistrates". In the second part of Sub-section (2) also beginning with "when functioning" these words "such Magistrates" come in by grammatical construction alone. "Such Magistrates" means obviously Magistrates who are appointed under Sub-section (1) and as already stated, these Magistrates are appointed only for the specific purpose of trying certain offences and for exercising certain other powers under the Municipal Act and for no other purposes. That being so, what Sub-section (2) to my mind means is that when Municipal Magistrates exercise the powers of Municipal Magistrate within the limits of the Presidency town of Calcutta or within the limits of the port of Calcutta they shall be deemed to be Presidency Magistrates for the purpose of the Code of Criminal Procedure. In other words, Sub-section (2) does not seek to enlarge the jurisdiction of these Magistrates which is defined in Sub-section (1). "What Sub-section (2) does is merely to indicate the procedure which has to be followed by such Magistrates while functioning within the limits of the Presidency town of Calcutta. In this view, the Municipal Magistrates are not competent to take cognizance of an offence under the Prevention of Food Adulteration Act, 1954. The cognizance, therefore, taken by him in these two cases must be held to be bad.

5. The Rules must accordingly be made absolute and the proceedings before the Municipal magistrate quashed.

6. It will be open, however, to the Corporation to move a competent Magistrate in the matter, if they are so advised.