
(1977) 08 DEL CK 0002

In the Delhi High Court

Case No : Criminal Miscellaneous (Main) Appeal No. 398 of 1977

Ram Murti and Others

APPELLANT

Vs

Anil Sashi Gore and Others

RESPONDENT

Date of Decision : 21-08-1977

Acts Referred:

Citation : (1978) CriLJ 1177 : (1977) ILR Delhi 341

Hon'ble Judges : S.I. Rangarajan, J

Bench : Single Bench

Advocate : M.L. Lonial, for the Appellant;

Judgement

S. Rangarajan, J.

(1) This is a petition under Article 227 of the Constitution and Sections 397, 401 and 482 of the Code of Criminal Procedure to quash the order 30-5-1977 passed by the learned Chief Metropolitan Magistrate, Delhi (Shri Mohd. Shamim) allowing the application by Durga Dutt Vasudeva as a power of attorney agent of a private limited company, Pressure Cookers and Appliances Private Limited, to continue the complaint already instituted on behalf of the said company, filed by its power of attorney agent, Anil Sashi Gore, who has since resigned from the company and joined yet another company. The prosecution was for offences said to have been committed under Sections 78 and 79 of the Trade and Merchandise Marks Act read with section 120 1. .P. C.

(2) It is needless to be detained with substantial averments concerning the commission of the said offences which are matters for the trying Magistrate to decide upon. It is sufficient for the purpose of this petition to merely note that Anil Sashi Gore had described not the said company as the co-nominee complainant, but the complainant had been described as Anil Sashi Gore, giving his address. Nonetheless, the complaint, a copy of which is Annexure A to the petition, had specifically and repeatedly averred that he was the Marketing Director of the Pressure Cookers and Appliances Pvt. Ltd. ; the complaint was

made " concerning piracy in trade said to have been committed by the accused on the trade of the said company in relation to the pressure cookers and pressure cookers parts under the registered trade mark "Hawkins Universal" or "Hawkins"; the said company has its registered office at Bombay. It is needless to refer to the various averments in the complaint in this behalf; it is sufficient to record that this idea of the complaint having been given on behalf of the said company and by himself as duly constituted power of attorney has been very prominently, categorically and unequivocally expressed in the complaint. It may also be necessary to record that the right which has been put forward by Anil Sashi Gore in the complaint is the right of the company to the trade mark in question; it was not a personal trade mark issued to Anil Sashi Gore. The complaint being so clear it seems that it is not possible to dispute, as the petitioner and before the learned Magistrate and also before" me, "that the real complainant, on whose behalf the complaint had been filed in this case, was only the said company.

(3) The meaning of the complaint having been understood in the above manner the next question for consideration is whether after the power of attorney agent Anil Sashi Gore had ceased to be an employee of the company and had also joined yet another company, there is any impediment in the matter of yet another duly registered power of attorney agent of the company continuing the said complaint so as to be regarded as the complainant within the meaning of Section 256 Cr. P.C.; 1973 which reads as follows :

"256(1). If the summons has been issued on complaint, and on the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complaint does not appear, the Magistrate shall, notwithstanding anything hereinbefore contained, acquit the accused, .unless for some reason he thinks it proper to adjourn the hearing of the case to some other day: Provided that where the complaint is represented by a pleader or by the officer conducting the prosecution or where the Magistrate is of opinion that the personal attendance of the complainant is not necessary, the Magistrate may dispense with his attendance and proceed with the case.

(2) The provisions of sub-section (1) shall, so far as may be, apply also to cases where the non-appearance of the complainant is due to his death".

Shri VI. L. Lonial, learned counsel for the petitioner, has, however, contended that the complaint should be regarded as one filed by Anil Sashi Gore in his personal capacity, a contention which has not commended itself to me, as it did not, rightly, commend itself to the learned Magistrate.

(4) Shri Lonial next drew my attention to a decision of a Division Bench of the Rajasthan High Court in Municipal Council, Jaipur Vs. Prabhu Narain, . It may be noticed that the point for decision before the Division Bench for which Shinghal, (as he then was) spoke (Bhandari, J. concurring in a separate judgment) arose u/s 20 of the Prevention of Food Adulteration Act, 1954 which itself involves certain

consequences of a kind slightly different from the ordinary complaint. It will be necessary for the purpose of appreciating the applicability of the said decision to the case on hand to read Section 20 of the said Act :

"20. Cognizance and trial of offences.-(1) No prosecution for an offence under this Act shall be instituted except by, or with the written consent of, the Central Government or the State Government or a local authority or a person authorised in this behalf, by general or special order, by the Central Government or the State Government or a local authority : Provided that a prosecution for an offence under this Act may be instituted by a purchaser referred to in Section 12, if he produces in Court a copy of the report of the public analyst along with the complaint.

(2) No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence under this Act."

What happened in the Rajasthan case, as a fact, has been set out by Shinghal, J. (vide paragraph 10, on page 301) as follows :

"(10) A perusal of the complaint leaves me in no doubt that this was really so and that the complaint was not filed by or on behalf of the Council. In the cause title of the printed complaint, Abhinandan Prashad Goyal inserted his own personal name as the complainant. He made it quite clear that he, the complainant, was a Food Inspector in the Municipal Council, and he referred to the general order of authorisation dated September 12, 1963, as his authority for launching the prosecution. At the end of the complaint, he struck off the words in print that the complaint had been filed by the Administrator- Municipal Council, Jaipur, and by suitable insertions, made known to the Magistrate that he, Abhinandan Prashad Goyal, Food inspector, was the complainant in the case."

(emphases added). Earlier, it had been observed by Shinghal, J. (vide paragraph 6) that the term "complainant" had not been defined in either the Prevention of Food Adulteration Act (1954) or in the Code of Criminal Procedure; the old Code fell for consideration in the aforesaid decision, though the new Code applies to the present case even the new Code does not define the expression "complainant". On the other hand what has been defined in both is the expression "complaint". Referring to the said definition Shinghal, J. observed:

"ACCORDING to that definition "complaint" means the allegation made to a magistrate with a view to his taking action under the law, that a person has committed an offence. It would follow, Therefore, that a complainant is a person who makes such an allegation to a magistrate".

(5) I have stated enough concerning the kind of allegations made in the complaint in the case on hand. Apart from the considerations which may be peculiar to section 20 of the Prevention of Food Adulteration Act the above Rajasthan decision seems distinguishable even on the facts. It may be recalled that Shinghal, J. held. as a fact, that the complainant, namely, the Food

Inspector had held himself out to be the complainant, to the Magistrate, a feature which is thoroughly absent in the present case.

(6) The learned Magistrate relied upon a decision of the High Court of Oudh in *Mian Tej Singh v. Kalloo* A.T.R. 1946 Oudh 15. It was observed by Madeley, J. that "an estate agent, a servant, is, equally with his principal, the master, adversely affected by offences committed in respect of the estate of which the servant is in charge. It is, Therefore, open to the master either himself to file a complaint or to give his servant a power-of-attorney to enable him to file it on his behalf; he may also allow the servant to file it apart from any power. But if he adopts the latter course he runs the risk of the servant leaving his service and abandoning the case. The master cannot then say that as he is the real complainant his name should be substituted for that of his servant and that the complaint filed by the servant is not liable to be disposed of u/s 247" (of the old Act, corresponding to section 256 of the new Code). In the present case it was not even a case of servant not disclosing that he was a servant but the complaint had very prominently, even to start with, referred to Anil Sashi Gore having been the duly constiuted power of attorney agent for this company.

(7) My attention was also drawn to a decision of Travancore-Cochin High Court in *Kannan Devan Hills Produce Co. Ltd. v T. N. Madhavan Pillai* (A.T.R. 1956 T.C 189. Koshi, C. J., speaking for the Division Bench, held that the complaint in the case was on behalf of the company. The complainant's name had also been given in the cause title of the complaint itself as the cpmpany represented by the General Manager. The true legal principle is that the court is entitled to find out who is the complainant by looking into the complaint fully and as a matter of substance. Once the complainant has been found to be the company represented by Anil Saslii Gore as power of attorney agent there seems to be no legal impediment in the matter of continuance of the complaint, on his ceasing to be an employee of the said company by yet another duly constituted power of attorney.

(8) My attention has also been drawn to two decisions which are wholly inapplicable to the present case. They are : (1) The decision of Yuhya Ali. J. in *Natesa Naicker v. Mari Gramani* A.T.R. 1948 Mad 45 only concerns a case where a complaint had been dismissed u/s 247 Cr. P.C. (old) and whether the same had been dismissed for a proper reason or not and whether it should have been adjourned ; (2) The decision in *Henderson. J. in A. N. M. Ashraf v. Surendra Nath Sen* A.T.R. 1949 Cal 252. All that has been pointed out is that when a father had complained and died the son could not continue the complaint. The son in no sense could be rcgarded as the complainant in that case.

(9) No case has been made out for interference at this stage. The petition is, Therefore, dismissed in liming.