

(1964) 01 GUJ CK 0004
In the Gujarat High Court

State of Gujarat

APPELLANT

Vs

Gandhi Jayantilal Sankalchand

RESPONDENT

Date of Decision : 11-01-1964

Acts Referred:

Industrial Disputes Act, 1947 — Section 34

Prevention of Food Adulteration Act, 1954 — Section 16, 2, 20, 7

Citation : (1966) CriLJ 475 : (1964) GLR 696

Hon'ble Judges : M.U. Shah, J;A.R. Bakshi, J

Bench : Division Bench

Judgement

M.U. Shah, J.—This is an appeal by the State against the order of acquittal passed by the learned Additional Sessions Judge, Ahmedabad (Rural) at Himatnagar, acquitting the original accused of an offence u/s 16(1) of the Prevention of Food Adulteration Act, 1954.

2. The prosecution case, shortly stated is that on 18th April 1960 at about 2 p. m. the respondent Gandhi Jayantilal Sakalchand (who will here after be referred to as ""the accused") was going in a touring car BYA No. 239 to the bazaar in Modasa. Mr. Narsi-bhai Karsanbbai Pate], who was Food Inspector of the Modasa Municipality, stopped the car while it was passing near the municipal office. The Food Inspector called the punches and, in the presence of the punches, the car was searched and 10 tins of ghee were found in the car. The Food Inspector, thereafter, gave requisite written intimation to the accused of his intention to take the sample of ghee for analysis by the Public Analyst, purchased 3/4 seer of ghee and paid the cost for the same to the accused in the presence of the panchas and this sample was then and there divided by him into three parts and each part was sealed and one of the parts was given to the accused and one was sent to the Public Analyst for analysis and one was retained by the Food Inspector with him.

3. On receipt of the report of the Public Analyst that the ghee was adulterated, the Food Inspector instituted a complaint being Criminal Case No. 1142 of 1960

against the accused before the learned Judicial Magistrate, First Class, Modasa. The learned Magistrate found the accused guilty and sentenced him to undergo six months rigorous imprisonment and to pay a fine of Rs. 1500/- in default to undergo further rigorous imprisonment for three months. On appeal being filed by the accused, the learned Additional Sessions Judge, Ahmedabad (Rural) at Himat-nagar, acquitted the accused in Criminal Appeal No, 24 of 1961 on the ground that the sanction to prosecute was not proper as there was only a general sanction by a resolution of the General Board of Modasa Municipality authorising the Food Inspector to file cases under the Food Adulteration Act and that the Act required sanction for each offence. Besides, it was held that there was no evidence that the accused wanted to sell the ghee within limits of the municipal area of Modasa. The State has come in appeal against this order of acquittal.

4. It is not disputed by the accused that the ghee sample that was taken from him was an adulterated article.

5. Mr. Surti, the learned Assistant Government Pleader appearing for the State has contended before us that Mr. Patel, the Food Inspector of Modasa Municipality was authorized by a resolution dated 29th of May 1956 passed by the General Board of the Modasa Municipality to institute prosecutions and therefore, the complaint by the Food Inspector was a valid one and the learned Judicial Magistrate, First Class, Modasa had jurisdiction to take cognizance of the offence and to try the offence. A certified copy of the resolution is produced at Exhibit 4 on the record of the trial Court. In order to examine this contention of Mr. Surti, we shall have first to refer to Section 20 of the Prevention of Food Adulteration Act (which will hereafter be referred to as "the Act"). Section 20 of the Act reads as under:

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 State Government or a local authority or a person authorized in this behalf by the State Government or a local authority....

6. This section provides for the manner in which and the Courts by which cognizance of, offences can be taken under this Act and also specifies Courts which can try the offences under the Act. The section makes provision for institution of a complaint by the State Government or a local authority or by a person authorised in that behalf by the State Government or a local authority. It also makes a provision for institution of a complaint with the written consent of the State Government or a local authority or of a person authorised in that behalf by the State Government or a local authority. The plain meaning of this section is that the prosecution can be instituted by any one of the four stated authorities or with the consent of any of these four authorities.

7. Section 20 may conveniently be divided into two parts. The first part speaks of institution of a complaint by or with the written consent of the State Government or a local authority and the second part speaks of institution of a complaint by, or

with the written consent of a person authorised in that behalf by the State Government or a local authority. We are here concerned with the second part of the section in the present matter. Perhaps it may be possible to argue and we do not desire to express any opinion on the question that written consent by the State Government or a local authority under the first part or by a duly authorised person under the second part can have relation to a particular offence committed by a particular person. But this argument obviously cannot be available in the case with which we are concerned here. It is clear that the authorization under the second part can be a general authorization to institute or give consent to prosecutions for offences under the Act.

8. The second part enables a general delegation of the power given to the State Government and local authorities under the first part and the words "authorised in this behalf" appearing in the second part mean authorised to institute, or give consent to any prosecution for an offence under the Act. The authority cannot be restricted in its scope by relating the expression "authorised in this behalf" to the words "an offence" appearing at the beginning of the section and it cannot be said that the authorization must be in respect of each offence. If that was the intention of the Legislature, then the second part might as well not have been enacted at all. The special provision for authorization contained in the second part would in that case, become quite meaningless. It appears to us that the very object of the second part is to enable the State Government and local authorities to appoint some other person to exercise on their behalf, the discretion vested in them by the first part. If the State Government or the local authorities were to consider each particular case and determine whether a prosecution should be instituted or not, the section would become altogether unworkable having regard to the large number of offences that are committed and the very object of this part of the enactment would be defeated by the interpretation which is canvassed by Mr. Shah appearing for the accused.

9. In *M. J. Powell v. The Municipal Board of Missourian*, decided by a Full Bench of the Allahabad High Court and reported in (1900) I. L. R. 22 All. 123, the learned Judges have interpreted similar words "in this behalf" appearing in Section 69 of the N. W. P. and Oudh Municipalities Act, 1883 and have come to the same conclusion, The learned Judges were considering the scope of Section 69 of the said Act which provides that "a Court shall not take cognizance of an offence punishable under this Act or the rules made under this Act, except on the complaint of the Municipal Board or of some person authorised by the Board in this behalf" and they have held that Section 69 of the Act confers upon Municipal Board the power to delegate generally their authority to make complaints in respect of municipal offences and this general delegation includes not merely the giving of authority to do the formal act of presenting a complaint to a Court but the exercise of discretion as to whether in any given case, a complaint shall or shall not be made.

10. The leagued Additional Sessions Judge has relied upon the decision in *Jiwan*

Das Vs. Rabin Sen and Others, . In this Calcutta case, the question was of considering the authority that may be given u/s 34 of the Industrial Disputes Act, which reads as under: No court shall take cognizance of any offence, punishable under this Act or of the abetment of any such offence, save on complaint made by or under the authority of the appropriate Government." It is very clear from the reading of this Section 34 itself that the language of Section 34 of the said Act and that of Section 20 of the Act is different and the material words "a person authorised in this behalf" and the words "by, or with" are absent in 8, 34 of the-Industrial Disputes Act. The Calcutta decision cannot therefore be said to have any bearing on this point.

11. In our view, the words "in this behalf" do not mean that the authority must be given for each and every complaint. The general authority for taking action u/s 20(1) of the Act will meet the requirement of the section.

12. We find from the resolution of the Modasa Municipality that there was a general delegation of power given to the Food Inspector by the Modasa Municipality and that the Food Inspector was authorised to institute a complaint for an offence under the Act as the General Board of the Municipality is a "local authority" within the meaning of Section 2(viii) of the Act.

13. The learned Additional Sessions Judge has taken the view that the sanction that was given was not a valid sanction as it was merely a general sanction and not a sanction against a particular person in respect of a particular offence. The learned Judge has based his decision, as it appears from the judgment, on a misreading of the case of State of Kerala Vs. Saithu Muhammed Pareed Kunju and Others, . In that case, the Commissioner of the Corporation of Trivandrum who was the Executive Officer of a local authority authorised the Food Inspector to prosecute all offenders under the Prevention of Food Adulteration Act and it was on this authority that the complaint in that particular case was made by the Food Inspector. The case is therefore, not an authority for the proposition that there cannot be a general delegation by a local authority within the meaning of Section 20(1) of the Act. It also appears that in that case there was also no proof that the Commissioner had been authorised by the State Government or the local authority concerned to institute the prosecution. The learned Judge was therefore, clearly in error in finding that there can be no general delegation putting reliance on this decision of the Kerala High Court.

14. There is a later decision of a Single Judge of the Kerala High Court in the case of Municipal Health Officer and Food Inspector, Kozhikode v. Arthala Tea Estate Co. reported in AIR 1961 Ker page 84 to which, it appears that the attention of the learned Additional Sessions Judge was not invited. This later decision of the Kerala High Court clearly supports the view which we have taken. The learned Judge has taken the view that the second part of the section enables a general delegation of the power given to the State Government and local authorities under the first part of the section.

15. In our view, therefore, the Food Inspector was a person authorised in this behalf by the local authority and as such, he had authority to institute the prosecution against the accused. We therefore consider that the prosecution in the present case was instituted on a complaint which fulfilled the requirements of S- 20 (1) of the Act and the learned Judicial Magistrate, First Class(Modasa, had the jurisdiction to take cognizance of and try the said offence.

16. The next question to be considered is whether the accused wanted to sell adulterated ghee within the municipal limits of Modasa. The material prosecution evidence on the point is that of P. W. 1, Patel the Food Inspector, Panch Mangaldas Kalidas P. W. 2, Constable Babaii Motiji P. W. 3 and that of Ranchodlal Shankerlal, P. W. 4. The evidence of P. W. 1 Patel the Food Inspector, Ext. 3 is that the car in which the accused was driving was stopped by him while it was passing near the municipal office and that the car contained 10 tins of ghee and that he had purchased ghee from the accused after giving him necessary intimation in writing and that the pane has were called and that it was in the presence of the pane has that the sample was taken. The Food Inspector further deposes that the accused said in the presence of the pane has that the ghee tins were for sale and that the price was Rs. 3/- per katcha seer. There appears to be no cross-examination on this point.

17. Panch Mangaldas Kalidas, P. W. 2, Ext. 15, deposes that he has a shop near the office of the Modasa Municipality and that he was called as a panch along with another panch Jayantilal Panjabi and that 10 tins of ghee were taken out from the car and that in their presence the accused said that the ghee tins were for .sale and that the price of the ghee was Rs. 120/- per katcha maund that the panchnama was drawn in their presence. This panch witness also is not cross-examined on this aspect of the case.

18. P. W. 3, Babaii Motiji, Exhibit 18, who was a constable at Modasa, deposes that the motor car of the accused came from Dhansura and that one need not pass by Dhansura if one has to go to Udaipur and Chitarla and that Dhansura does not come in the way while going to Chitaria from Udaipur. There is no cross-examination on this point and this statement of the Police Constable gives a lie to the defiance version that the accused was going from Udaipur to Chitaria on the relevant date via Modasa. It was not necessary for the accused to pass through Modasa if he was going to Chitaria as this was also not the way through which one has to pass while traveling from Udaipur to Chitaria.

19. P. W. 4, Ranchodlal Shankerlal, Exhibit 18, who is a merchant dealing in ghee in Modasa, deposes that the accused had gone to his shop sometime in March 1960 to sell ghee. This evidence corroborates the testimony of the Food Inspector that ghee tins were taken by the accused to Modasa for the purpose of sale. There is, therefore, sufficient evidence to establish the fact that the accused had gone to Modasa within the municipal limits for the purpose of sale of ghee and he did sell ghee to the Food Inspector.

20. Now, the defiance of the accused is that he is permanently residing in village Chitaria and that on the relevant date he had purchased 10 tins of ghee from Udaipur and that the ghee was purchased for the purpose of personal use in their family house at Chitaria. The defiance that ghee tins were meant for personal use is highly improbable. This defiance of the accused is not established and the accused had no reason to pass through Modasa. The defiance plea is also that the accused was going from Udaipur to Chitaria and that his car had engine trouble and so he had to pass through Modasa. On an examination of the testimony of the two defiance witnesses Kantilal Samtabhai, D. W. 1, Exhibit 20, and Amratlal Nanalal, D. W. 2, Exhibit 21, we find that the evidence of the two defiance witnesses is contradictory. Witness, D. W. 1 Kantilal deposes that the accused had gone to him about a year back and he wanted to sell his Chevrolet car and therefore, the accused had asked the witness to find out a buyer. He does not say anything about the car requiring any repairs. D. W. 2, Amratlal Nanalal deposes that the accused was coming from Udaipur and the Hub Dum was broken and that they went for repair to the garage of Mehdi Husseini and that as it was closed they went to Dhansura and while on return the accused was telling him that he was to go to Himatnagar. As we have referred to above according to the evidence of the Police Constable there was no necessity for the accused to pass through Modasa while on his way to Dhansura. The testimony of this witness does not inspire any confidence. The two Courts below have not relied upon this testimony and we are not prepared to accept this part of the defiance case.

21. We find, therefore, on a review of the entire evidence on the record of the case that it is proved beyond reasonable doubt that the accused did carry 10 tins of ghee in the touring car for the purpose of sale within the municipal limits of Modasa and that the article was an adulterated food.

22. In the result, therefore, we find that the accused has clearly contravened provisions of Section 7 of the Act and has committed an offence within the meaning of Section 16(1)(a) of the Act for which punish, recent is provided u/s 16(1)(i). We, therefore allow the appeal, set aside the order of acquittal passed by the learned Additional Sessions Judge Ahmedabad (Rural), at Himatnagar, and we convict the accused Gandhi Jayantilal Sankalchand for an offence u/s 16(1) of the Prevention of Food Adulteration Act, 1954 and sentence him to undergo rigorous imprisonment for a period of two months and to pay a fine of Rs. 1, 500/, in default, to suffer further rigorous imprisonment for a period of one month.