

(1937) 03 BOM CK 0008

In the Bombay High Court

Case No : Criminal Application for Revision No. 47 of 1937

The Bombay Municipality

APPELLANT

Vs

Haridas Vallabhdas

RESPONDENT

Date of Decision : 30-03-1937

Acts Referred:

Bombay Prevention of Adulteration Act, 1925 — Section 14, 16, 4

Citation : (1937) 39 BOMLR 629

Hon'ble Judges : N.J. Wadia, J;Broomfield, J

Bench : Division Bench

Final Decision : Allowed

Judgement

N.J. Wadia, J.—This is an application in revision against an order made "by the Presidency Magistrate, 3rd Court, Bombay. The applicant is a dealer in ghee. On July 13, 1936, an Inspector of the Bombay Municipality visited his shop and purchased from him two samples of ghee bearing a certain trade-mark. On August 6, 1936, the Assistant Health Officer of the Municipality filed an information before the Honorary Presidency Magistrate alleging that the petitioner had committed an offence u/s 4 of the Bombay Prevention of Adulteration Act (Bom. V of 1925) by having sold or caused to be sold or offered for sale a certain article of food under the description of ghee, which was not in fact ghee as it contained over thirty-eight per cent, of foreign ingredients.

2. The petitioner had applied that the public analyst, whose certificate was to be put in, should be called as a witness as the petitioner wanted to test the accuracy of the certificate given by him before he entered upon his defence. The application was opposed on behalf of the Municipality, and the learned Magistrate disallowed it holding that the public analyst could be called u/s 16 but not until the contrary was proved u/s 14 of the Act. He apparently took the view that Section 16 does not begin to operate until the contrary has been proved within the meaning of Section 14. Section 14 of the Act provides that the production in any proceedings under the Act of a certificate of a public analyst in the form

specified in Schedule A shall, until the contrary is proved, be sufficient evidence of the facts therein stated. Section 16 provides that when any person is accused of an offence under the Act he may require the Court to summon as a witness the public analyst who analysed the article or sample of food in respect of which he is accused of an offence and the Court may and shall in every case in which the accused deposits in the Court such sum of money in accordance with the scale prescribed as would be sufficient to meet the expenses of the attendance of the analyst before the Court, summon the analyst. There is, in our opinion, nothing in the language of Sections 14 and 16 to suggest that the ordinary rule with regard to the burden of proof in a criminal trial is to be departed from. Section 14 does not deal with the procedure to be followed in a trial under the Act; it merely lays down a rule of evidence and allows a presumption to be drawn. The certificate of a public analyst is to be accepted as correct without further proof until the contrary is proved. There is nothing in the language of this section or of Section 16 to support the view which the learned Magistrate apparently took that before the accused can ask the Court to summon the public analyst, he must prove by other evidence that the certificate of the public analyst is not correct. If there had been no provision in the Act corresponding to Section 14, it would have been necessary for the prosecution in each case to prove the certificate of the public analyst by examining the public analyst as a prosecution witness. All that Section 14 does is to relieve the prosecution of the obligation to examine the public analyst in cases in which the correctness of the certificate is not challenged, and to enable the Court to accept the certificate without further proof of the facts stated in it. But the section expressly states that the certificate can only be accepted as sufficient evidence of the facts stated in it until the contrary is proved, and it is open to the accused to prove the contrary in, any one of several ways. He can do it in the manner provided in Section 14(2) by asking the Court to cause a sample of the article to be sent for analysis to the Chemical Analyser to Government. He can also challenge the correctness of the certificate by producing a certificate of analysis by a private analyst. But it is obvious that the easiest and probably the best method of challenging the correctness of the public analyst's certificate might, in many cases, be by cross-examining the public analyst and showing that the method of analysis adopted by him was wrong. Section 16 nowhere says that the accused's right to insist upon the public analyst being summoned and examined as a witness is to be exercised only after the accused has led evidence in his own defence challenging the correctness of the public analyst's certificate. The language of the section on the contrary appears to us to show clearly that it is open to the accused at the commencement of the trial, as soon as he is accused of the offence, to require the Court to. summon the public analyst as a witness, and the section provides that if the accused deposits the requisite amount in Court, he is entitled as of right to have the public analyst called as a witness.

3. In our opinion, the view taken by the learned Magistrate was clearly wrong. The rule will be made absolute and the order made by the learned Magistrate set

aside.

Broomfield, J.

4. I agree and have only to add this that Section 14(2) of the Act applies to any certificate of a public analyst and not only to a certificate on which the prosecution is based. There is no necessary connection between it and Section 16. The rebuttable presumption u/s 14(1) will equally apply to a certificate of a public analyst produced by the accused himself. That seems to be a further indication that the provision merely lays down a rule of evidence and has nothing to do with the order of proceedings at the trial.