

(1990) 01 PAT CK 0021

In the Patna High Court

Case No : Criminal Miscellaneous No's. 4030 and 6540 of 1988

Yamuna Sah and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 30-01-1990

Acts Referred:

Essential Commodities Act, 1955 — Section 7

Penal Code, 1860 (IPC) — Section 420

Prevention of Food Adulteration Act, 1954 — Section 10, 10(1), 10(2), 10(4), 10(6)

Prevention of Food Adulteration Rules, 1955 — Rule 22

Citation : (1990) 38 BLJR 562 : (1992) CriLJ 2311 : (1990) 1 PLJR 656

Hon'ble Judges : Surendra Narain Jha, J

Bench : Single Bench

Advocate : Baidya Nath Prasad, No. 2 and Harendra Narain Sinha, for the Appellant; Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Surendra Narain Jha, J.—Both these applications were heard together and they are being disposed of by this judgment as common questions of law are involved in both these applications.

2. The facts relevant for disposal of these applications, in short, are that on 9th July, 1986 and Police Inspector, Town Police Station, Muzaffarpur, lodged a first information report alleging, inter alia, that while he was on patrolling duty he got an information that some adulteration in mustard oil is being done in the shops of Yogendra Sah (petitioner No. 1 in Cr. Misc. No. 6540 of 1988) and Yamuna Sah (petitioner No. 1 in Cr. Misc. No. 4030 of 1988) and on such information raided the shops and recovered certain tins of mustard oil. On the basis of the said first information report Muzaffarpur Town P.S. Case No. 246 of 1986 dated 9th July, 1986 was instituted u/s 7 of the Prevention of Food Adulteration Act, 1954 (for short "the Adulteration Act") and Section 420 of the Indian Penal Code (for short "the Penal Code") against the six petitioners in both the aforesaid applications.

3. After completing the investigation the police submitted charge sheet on the basis of which the learned Chief Judicial Magistrate, Muzaffarpur, took cognizance against the petitioners u/s 7 of the Essential Commodities Act, 1955 (for short "the E.C. Act") and Section 16 of the Adulteration Act and Section 420 of the Penal Code by the impugned order dated 27th February, 1988, which has been assailed in the aforesaid applications.

4. Mr. Baidya Nath Prasad No. 2, learned counsel appearing on behalf of the petitioners in both these applications has submitted that the impugned order taking cognizance is illegal and fit to be quashed because there has been non-compliance of the mandatory provision of Section 20 of the Adulteration Act. It was further submitted that the police had no authority to initiate the prosecution against the petitioners because he has not been authorised under the Adulteration Act to institute the Case. It was also submitted that even the procedure laid down in Clause 7 of Section 10 of the Adulteration Act has not been followed while sending the samples to the Public Analyst. On the aforementioned grounds he has prayed for quashing of the same.

5. In order to appreciate the points raised on behalf of the petitioners it is essential to examine some of the provisions of the Adulteration Act. Section 20 of the Adulteration Act reads as follows:--

No prosecution for an offence under this Act, not being an offence u/s 14 or Section 14A shall be instituted except by, or with the written consent of, the Central Government or the State Government or a person authorised in this behalf, by general or special order, by the Central or the State Government.

Provided that a prosecution for an offence under this Act may be instituted by a purchaser or recognised consumer association referred to in Section 12 if he or it produces in court a copy of the report of the public Analyst along with the complaint.

2 to 3....

I am not concerned with the proviso as it is not relevant, so far as the present case is concerned.

6. Section 20 of the Adulteration Act speaks of cognizance and trial of offences. From a bare perusal of this section it appears that the prosecution can be instituted with the written consent of the Central Government or the State Government or a person authorised in this behalf by general or special order by the Central or the State Government. It appears that there has been some change in the old provision of Section 20 of the Adulteration Act and the new provision. The words "or a local authority" appearing in the old Section were omitted by Act No. 34 of 1976, which came into force w.e.f. 1st April, 1976. Under new section the prosecution can be instituted with the consent of any of these authorities noticed above. Prior to the changes made in Section 20 in 1976 even the "local authorities" were also empowered to accord written consent for

such prosecution.

7. It was vehemently argued by Mr. Prasad that in this case neither the written consent has been obtained by the prosecution party nor the case has been instituted by a person authorised in this behalf.

8. In support of his contentions, the learned counsel placed reliance on a decision in the case of State Vs. Parshottam Kanaiyalal and Another, where the Food Inspector was the complainant. In the aforesaid case on behalf of the State it was argued that written consent of Chief Officer was there and that by a resolution No. 222 dated 7th May, 1956 the Baroda Borough Municipality authorised the Chief Officer and the Health Officer as per Section 20 of the Adulteration Act, 1954 to allow them to give permission to file complaint for the commission of offences under the said Act. On the basis of the said resolution it was argued on behalf of the State that sanction or written consent as required u/s 20 were there, therefore, the complaint filed by the Food Inspector is valid in law. But this argument was not accepted by the Bombay High Court. Their Lordships on the construction of the language of the then Section 20 has held that under this section the prosecution can be instituted only (i) by the State Government; (ii) by a local authority; (iii) by a person so authorised in that behalf by the State Govt; or (iv) by a person similarly authorised by a local authority, and their Lordships held that a written sanction or a written consent for prosecution without mentioning the person to whom such consent or sanction is given would not be a sufficient compliance with the terms of the Section.

9. It is well settled that where certain special offences have been created in special Act such as the Adulteration Act and where that special Act itself makes a further provision as to who should be the prosecutors in regard to the offences specified in that Act, then a prosecution which does not conform to the provision of that Act would be obviously without jurisdiction and it is not open to the complainant to say that the complaint has been filed in exercise of his right under the common law.

10. In the instant case the first information report was lodged by the police and on the report submitted by it cognizance was taken. The police, under the Act, has not been authorised to institute a case under the Adulteration Act. Section 20 of the Adulteration Act speaks of cognizance and trial of offences where it has been laid 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 person authorised in this behalf by the State or the Central Government.

11. This provision is mandatory and the court cannot take cognizance of the prosecution initiated by a person other than those mentioned in the aforesaid Act. In the instant case, as I have already indicated above, cognizance has been taken on the charge-sheet submitted by the police without any order or direction by the State Government or by a person duly authorised by the State Government, muchless written consent. In that view of the matter the

cognizance in my opinion, is bad in law and it suffers from legal infirmities.

12. In this connection reference may also be made to a decision reported in *Chaturbhuj Vs. State*, wherein it has been held (at page 18 of Cri LJ):

Section 20 of the Prevention of Food Adulteration Act is mandatory. Courts can take cognizance of prosecutions instituted by persons or authorities mentioned therein alone and by none other. There is nothing on the record to establish that the Assistant Director of Medical and Health Services was also authorised either by the State Government or by any local authority to institute prosecution. Prosecutions instituted by such a person would be totally incompetent and the Courts cannot take cognizance of such complaints.

In the instant case also there is nothing on the record to show that the police was authorised by the State Government or by the Central Government to institute prosecution. In that view of the matter, the court had no power to entertain the complaint and the proceeding consequent is liable to be quashed.

13. The same view has been reiterate by the Andhra Pradesh High Court in the case of *Public Prosecutor Vs. Kuppam Satyanarayana and Others*, , where it has been held (at page 47 of Cri LJ):

While it can be conceded that the Food Inspector of the area as well as the Municipal Health Officer could have instituted prosecutions in these cases, it is the Commissioner who purports to do so and the mere fact that these two Officers viz. the Sanitary Inspector and the Municipal Health Officer had subscribed their signatures to page 2 of the complaint does not, in my opinion, in any way alter the fact that the complainant is the Commissioner of the Municipality himself and not any other authority.

14. Needless to say that when statutes, which create an offence, provides for a procedure to be followed and prescribed the limits and limitations within which the jurisdiction created thereunder could be exercised it is not open to courts of law to give a go-bye to it and hold that notwithstanding the non-compliance with the conditions provided in the Act, they could nevertheless proceed with the enquiry and the trial into these offences. In the instant case, I have no doubt, in my mind, that the prosecution has been launched by a person, who has no authority in law to institute the same.

15. Relying on the aforesaid decisions, I find force in the argument of the learned counsel appearing on behalf of the petitioners that the complaint itself suffers from legal infirmities and fit to be quashed on this ground alone.

16. It is also relevant to mention here that under the Adulteration Act, the Food Inspector has power to take samples of any article of food from any person selling such article. Under sub-clause (Sub-section) (7) of Section 10 where the Food Inspector takes any action under Clause (a) of Sub-section (1), Sub-section (2), Sub-section (4) or Sub-section (6), he shall call one or more persons to be present at the time when such action is taken and take his or their signatures.

Rule 22 of the Prevention of Food Adulteration Rules, 1955 deals with the procedure as laid down for sending the quantify of samples to the Public Analyst. In the instant case, the sample was not sent by the Food Inspector or by the complainant, but by the Chief Judicial Magistrate himself without taking recourse to the procedure as laid down under the Adulteration Act as well as the Rules framed thereunder. On that score also, in my view the cognizance is bad. Since I have already indicated above that the cognizance suffers from legal infirmities and it can be quashed on that score alone, I do not think it necessary to go into the details so far as other grounds are concerned.

17. Quite apart, the Hon"ble Supreme Court has also laid down certain class of cases in Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others, wherein the High Court in its inherent jurisdiction can quash a proceeding and one of the said cases is, at page 1537 of Cri LJ:

Where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of complaint by legally competent authority and the like".

This principle squarely covers the present case.

18. For the reasons stated above both these applications are allowed and the impugned order dated 27-2-1968 is hereby quashed.