SURESH H. RAJPUT ETC. ETC. A

v.

BHARTIBEN PRAVIN BHAI SONI AND ORS. ETC.

NOVEMBER 28, 1995

[K. RAMASWAMY AND S.B. MAJMUDAR, JJ.] B

Food Adulteration Act, 1954—Section 20(1)—Sanction for prosecution-Requirement of—Sanction granted by a cyclostyled order stating reasons for grant of sanction—Whether valid in law—Held, yes.

C

Food Adulteration Act, 1954—Section 16—Scope of qualification of Food Inspector—If can be challenged in a proceeding under the Act—Held, no.

Constitution of India-Article 142—Order acquitting respondents found to be unsustainable—Acquittal not interfered with because of the time gap. D

The appellant, a Food Inspector, purchased sample of milk from the premises of the respondents and sent the same to an analyst for examination. Report of the analyst indicated that the milk was adulterated.

Under Section 20(1) of the Food Adulteration Act, 1954, for laying prosecution, a written consent of the Central Government, or the State Government or the person authorised in that behalf is mandatory. The appellant applied for such consent and was granted the same by the local Health Authority, who had been authorised under Section 20(1). The consent order dated 7.6.1986 mentioned that the consent was given after going through the analysis report of the public Analyst and other pertinent papers and documents and the nature of offence committed by the alleged offenders. The sanction letter was cyclostyled. E F

The Magistrate by order dated 8.2.1991 acquitted the respondents holding that the sanction granted by the local Health Authority was not in accordance with law as the said Authority had failed to apply its mind to the facts of the case and the sanction order was a cyclostyled order. On merits, the Magistrate found in favour of the appellant. The High Court confirmed the acquittal of the respondents. Hence the present appeals. G

In one of the cases, the qualification of the Food Inspector was also H

A challenged and it was alleged that he did not have required training.

Disposing of the appeals, this Court

HELD : 1. The analysis report and the other pertinent material in connection therewith have been placed before the sanctioning authority. B After going through the material, sanction was granted for laying the prosecution. At that stage, it was not for the sanctioning authority to weigh pros and cons and then to find whether the case could end in conviction or acquittal or the adulteration was abnormal or marginal etc. All these are not matters for the sanctioning authority to weigh and to consider the C pros and cons of the case before granting sanction to lay prosecution against the respondents. Considered from this perspective the Magistrate was not right in law in holding that the sanction granted under Section 20(1) is not valid in law. [752-D-F]

A.K. Roy & Anr. v. *State of Punjab & Ors.*, [1984] 4 SCC 326, D distinguished.

State of Bombay v. *Parshottam Kanaiyalal*, [1961] 1 SCR 458 and *State of Bihar* v. *P.P. Sharma*, [1992] supp. 1 SCC 222, relied on.

2. The qualifications of the Food Inspector cannot be challenged in E collateral proceedings. What is material is whether the Food Inspector had taken the samples in accordance with the provisions of the Act or the rules made thereunder. In case the Court finds that if he committed any contravention, what would be its effect on the prosecution is a matter to be considered but his qualifications cannot be looked into when he lays the F prosecution for adulteration of the articles of food under the Act. [752-G-H]

3. It would not be proper under Article 142 of the Constitution of India in the facts and circumstances of the cases, to interfere at this belated stage. [753-A]

G CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1612 of 1995 Etc. Etc.

From the Judgment and Order dated 28.10.95 of the Gujarat High Court in Misc. Crl. A. No. 1836 of 1991.

H Harish N. Salve, R.P. Bhat, B.A. Desai, Sunil Dogra, S.S. Shroff, for

S.A.S. & Co., M.V. Goswami, Ms. H. Wahi, Mrs. Nandini Mukherjee, M.N. Shroff, Mrs. J.S. Wad, Ms. Meenakshi Arora, K.K. Gupta and Anil Sachthey (NP) for the appearing parties. A

The following Order of the Court was delivered :

Leave granted. B

Facts in Criminal Appeal @ SLP (Crl.) No. 1755 of 1992 would be sufficient for disposal of all the appeals.

On June 4, 1986, the appellant-Food Inspector inspected the premises of the respondent and purchased pasteurized toned milk in the C presence of witnesses. He divided samples in three bottles and gave one of them to the respondent. He took with him two samples of which one was deposited with the court and the other was sent to the analyst. Report of the analyst indicated that the milk was adulterated. Consequently, the local Health authority on June 7, 1986 granted sanction under Section 20 D (1) of the Food Adulteration Act, 1954 (for short, "the Act") for laying the complaint against the respondent. In furtherance thereof, on June 7, 1986, a complaint was laid under Section 16 read with Section 7 of the Act against the respondent. The Magistrate by order dated February 8, 1991 acquitted the respondent on the ground that the consent given by the local health authority was not valid in law, though he found on merits in favour E of the prosecution. On appeal filed by the appellant under Section 378 (4) of the Code of Criminal Procedure, 1973, the High Court by order dated October 28, 1991 refused leave and confirmed the acquittal. Thus these appeals by special leave.

Section 20 (1) of the Act provides thus : F

> "20. Congnizance and trial of offences. - (1) No prosecution for an offence under this Act, not being an offence under Section 14 or Section 14-A, shall be instituted except by or with the written consent of, the Central Government or the State Government or G a person authorised in this behalf, by general or special order, by the Central Government 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 H

A the report of the public analyst along with the complaint".

A reading of Section 20(1) clearly indicates that before laying the prosecution for an offence under the Act, not being an offence under s.14 or s.14-A, the condition precedent is that written consent of the Central Government or the State Government or the person authorised in this B behalf by general or special order by the appropriate Government is mandatory.

It is not in dispute that the local health authority has been designated with the power to accord sanction for laying the prosecution under the Act. C Material portion of the consent order reads thus :

"I hereby give consent to the Food Inspector Shri S.H. Rajput to prosecute

(name of the accused was mentioned in each case)

D

x x x x x x x x x x x x x

for contravening the provision of Food Adulteration Act 1954 as alleged in the above report of the Food Inspector.

E This consent is given after going through the analysis report of public Analyst and other pertinent papers and documents and the nature of offence committed by the alleged offenders, as required by Section 20 of the Food Adulteration Act 1954."

It would thus be clear that the sanctioning authority, viz., local health F authority had considered the report of the public Analyst and other pertinent papers and the documents which contained the report of the Food Inspector and thereafter accorded sanction to prosecute the respondent.

The question that emerges is whether the sanction is in accordance with law. The learned Magistrate held that the sanction was a cyclostyled G order and that the authority did not apply its mind to the facts constituting the offence and that, therefore, the grant of sanction is invalid in law. We find it difficult to give acceptance to the reasoning of the learned Magistrate. Unfortunately, the learned single Judge of the High Court did not apply his mind nor adverted to any of the material questions. He merely H concurred with the view expressed by the Magistrate in a cryptic order. In

fact, on merits, the learned Magistrate has held that the prosecution had established the offence. All that was held was that the sanction was not in accordance with Section 20 (1) of the Act. A

Learned counsel for the respondents sought to rely on the decision of this Court in *A.K. Roy & Anr.* v. *State of Punjab & Ors.*, [1984] 4 SCC 326. That was a case where sub-delegation was made by the Local (Health) Authority to the Food Inspector for laying the prosecution. It was not a case of granting any sanction by him. In fact, this Court had pointed out in paragraph 9 that "it is common ground that the prosecution in the instant case has not been launched either by or with the written consent of the Central Government or the State Government. It, therefore, becomes necessary to ascertain whether the Food Inspector, Faridkot was duly authorised to launch a prosecution". Then this Court had examined the question and held in paragraph 11 that "the terms of Section 20 (1) of the Act do not postulate further delegation by the person so authorised; he can only give his consent in writing when he is satisfied that a *prima facie* case exists in the facts of a particular case and records his reasons for the launching of such prosecution in the public interest". In other words, this Court had held that the local (Health) authority has no power to delegate the power to launch prosecution to the Food inspector, but in terms of Section 20(1), the authority can give its consent in writing when it is satisfied that prima facie case exists in the facts of a particular case for laying the prosecution. B C D E

In the State of Bombay v. *Parshottam Kanaiyalal*, [1961] 1 SCR 458, far from helping the respondents, this Court at page 461 held that "this sanction is accorded after going through Milk Analysts Report and other pertinent documents and the nature of offence committed by each of the above person as required by Section 20 of the Prevention of Food Adulteration Act, 1954". This Court had approved the sanction given by the local (Health) authority of this very Municipality in this case and it was held that it is not necessary that the name of the offender should be indicated in the sanction order. After this judgment, to avoid further protraction, the Form was revised and the name of the offender and the authority to whom sanction is given have been expressly specified in the sanction order. F G

In *State of Bihar* v. *P.P. Sharma*, [1992] Supp. 1 SCC 222, one of us, H

A (K. Ramaswamy, J.) considered the effect of the sanction under Section 197 of the Criminal Procedure Code at page 268 thus :

> "It is equally well settled that before granting sanction the authority or the appropriate Government must have before it the necessary report and the material facts which *prima facie* establish
B the commission of offence charged for and that the appropriate Government would apply their mind to those facts. The order of sanction is only an administrative act and not a quasi-judicial one nor is a lis involved. Therefore, the order of sanction need not contain detailed reasons in support thereof as was contended by
C Shri Jain. But the basic facts that constitute the offence must be apparent on the impugned order and the record must bear out the reasons in that regard."

It is seen that the analysis report which was placed before the local (Health) authority and the other pertinent material in connection therewith
D have been placed before the sanctioning authority. After going through the material, sanction was granted for laying the prosecution. At that stage, it was not for the sanctioning authority to weigh pros and cons and then to find whether the case could end in conviction or acquittal or the adulteration was abnormal or marginal etc. All these are not matters for the
E sanctioning authority to weigh and to consider the pros and cons of the case before granting sanction to lay prosecution against the respondents.

Considered from this perspective, we hold that the learned Magistrate was not right in law in holding that the sanction granted under Section 20 (1) is not valid in law.

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In appeal @ SLP (Crl.) No. 1924 of 1992, the learned Magistrate had further held that the Food Inspector did not have training for required number of days and that, therefore, he was not competent to take the samples. We find that the Magistrate illegally proceeded on that assumption. The qualifications of the Food Inspector cannot be challenged in
G collateral proceedings. What is material is whether the Food Inspector had taken the samples in accordance with the provisions of the Act or the rules made thereunder. In case the Court finds that if he committed any contravention, what would be its effect on the prosecution is a matter to be considered but his qualifications cannot be looked into when he lays the
H prosecution for adulteration of the articles of food under the Act.

Considered from this perspective, the only question that remains to be considered is whether these are fit cases for interference. At this belated stage, in the facts and circumstances of the cases, we think that it would not be proper under Article 142 to interfere. This should not be treated as a precedent in future cases. A

The appeals are accordingly disposed of. B

B.K.M. Appeals disposed of.