(1963) 09 P&H CK 0003

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Revision No. 194-D of 1962

Ajudhya Nath		APPELLANT
	Vs	
Municipal Committee of Delhi and Another		RESPONDENT

Date of Decision: Sept. 16, 1963

Acts Referred:

- Prevention of Food Adulteration Act, 1954 - Section 16, 7

Hon'ble Judges: P.D. Sharma, J

Bench: Single Bench

Advocate: P.C. Khanna and Yogeshwar Dayal, for the Appellant; D.D. Chawla for Respondent No. 1 and Mr. M.K. Chawla, for the Respondent

Final Decision: Dismissed

Judgement

P.D. Sharma, J.

Sham Sundar Mathur as Municipal Prosecutor for the Delhi Municipal Corporation instituted three separate complaints u/s 7/16 of the Prevention of Food Adulteration Act, 1954, (hereinafter referred to as the Act) against Bala Pershad, Ajudhia Nath and Ram Nath accused-petitioners in the Court of Magistrate First Class, Delhi. They raised a preliminary objection before the Trial Court that the complaints against them had not been instituted by a person duly authorised u/s 20 of the Act. Their objection was overruled. The revision petitions filed by them against the order overruling the preliminary objection also failed in the Court of the learned Additional Sessions Judge, Delhi. They have filed three revision petitions Nos. 194-D, 181-D of 1962 and 15-D of 1963 against the above orders in this Court which will be disposed of by this judgment as common question of law is involved therein. Section 20 of the Act runs as :

20.(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

authorised in this behalf by 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.

The learned counsel in support of his argument that Sham Sunder Mathur under the law was not competent to institute complaints against the petitioners urged as under :

(1) That the local Authority under the Act could not have authorised the Municipal Prosecutor and the Assistant Municipal Prosecutor by their designation to institute such complaints. They should have been authorised to do so by the Local authority by names :

(2) That the resolution No. 57 (U.B.) of the ordinary meeting of the Municipal Corporation of Delhi held on 23rd December, 1958, authorised the Municipal Prosecutor and the Assistant Municipal Prosecutor to launch prosecutions u/s 20 of the Act and not to institute them;

(3) That the complaints should have been instituted in the name of the persons authorised by the local authority to institute such complaints and not in the name of the Delhi Municipal Corporation; and

(4) That notification No. F. 38(30)/58-N and PH(i) dated 13th June, 1958, declaring the Delhi Municipal Corporation as the Local area under the Act was not valid in law.

The learned counsel for the Delhi Municipal Corporation maintained that Shri Sham Sunder Mathur Municipal Prosecutor and Bankey Behari Tawakley, Assistant Municipal Prosecutor were authorised by names also by the Municipal Corporation of Delhi by resolution No. 57 (U.B.) dated 23rd December, 1958 to institute complaints against the delinquents under the Act. The resolution refers to a letter from the Commissioner of the Municipal Corporation to the Municipal Secretary recommending that the Corporation may authorise Sham Sunder Mathur and Bankey Behari Tawakley u/s 20 of the Act to institute and conduct prosecutions arising under the said Act. The resolution was moved in the Delhi Municipal Corporation by Shri Vijay Kumar Malhotra and seconded by Shri Prem Sagar Gupta in the following terms :

Resolved that the recommendations of the Commissioner vide letter No. 139/Legal/58/58, dated 1st December 1958, regarding authorising the Municipal Prosecutor and the Assistant Municipal Prosecutor to launch prosecutions u/s 20 of the Prevention of Food Adulteration Act, 1954, be approved.

If the resolution is read along with the letter written by the Commissioner it will mean that Sham Sunder Mathur Municipal Prosecutor and Bankey Behari Tawakley Assistant Municipal Prosecutor were authorised by names to institute and conduct prosecutions under the Act because the resolution is based on the letter of the Commissioner on the subject. If it may be accepted that the Municipal Prosecutor and the Assistant Municipal Prosecutor were authorised by designation to institute prosecutions under the Act then even under the Law Sham Sunder Mathur Municipal Prosecutor could institute the present three complaints. It is nowhere stated in section 20 of the Act that the Local Authority should authorise a person by name only to institute the complaint and not by designation. The term "person" has not been defined in the Act. Clause (42) of section 3 of the General Clauses Act, 1897, defines the term "person" as :

(42) "person" shall include any company or association or body of individuals, whether incorporated or not.

According to this definition a person can be authorised by designation also u/s 20 of the Act to institute complaints of the present category. In the two cases, (1) The State of Bombay Vs. Parshottam Kanaiyalal, and (2) The State v. Moti Ram (1962) 64 P.L.R. 1039, such delegation by the State Government or local authority in favour of persons by designation was not challenged.

2. The learned counsel for the accused-petitioners submitted that the resolution authorised the Municipal Prosecutor and the Assistant Municipal Prosecutor to launch prosecutions and not to institute them. The Commissioner in his letter recommended that the Municipal Prosecutor and the Assistant Municipal Prosecutor should be authorised to institute and conduct the proceedings arising under the Act. The word "launch" has been used in the same sense as the word "institute" and in fact both are synonymous and carry the same sense. Therefore, the resolution authorising the Municipal Prosecutor and his Assistant to institute the criminal proceedings does not suffer from any infirmity of the kind alluded to by the accused-petitioners" learned counsel.

The heading of the complaints runs as :

Municipal Corporation, Delhi through Municipal Prosecutor

Versus

Respective names of the accused-petitioners.

but the complainant as given at the bottom of the complaints remains Sham Sunder Mathur, Municipal Prosecutor, Municipal Corporation of Delhi. The complaints, therefore, cannot be said to have been instituted by the Municipal Corporation, Delhi, but by Sham Sunder Mathur Municipal Prosecutor.

3. The notification declaring the Delhi Municipal Corporation area as local runs as :

Delhi, the 13th June, 1958.

No. F. 38(30)/58-N & PH (i)-In pursuance of the provisions of clause(vii) of section 2 of the Prevention of Food Adulteration Act, 1954 (37 of 1954) read with the Government of India, Ministry of Health Notification No. F. 9-3/55-D, dated the 1st June, 1955, the Chief Commissioner of Delhi is pleased to declare the following areas as "Local Areas" for the purposes of the said Act.

1. Delhi Municipal Corporation Area.

2. New Delhi Municipal Area.

3. Delhi Cantonment Area.

The learned counsel for the accused-petitioners contended that- the notification was defective in as much as the Chief Commissioner while declaring Delhi Municipal Corporation area as local area relied on the delegation of powers made to him in this behalf by the Government of India, Ministry of Health Notification No. F. 9-3/55-D. dated 1st June, 1955, which stood spent up with the amendment of Article 239 of the Constitution of India, when the Delhi State was declared a Union Territory. In advancing this argument he omitted to take note of another notification issued by the Government of India on 1st November, 1956 (Annexure ''D'') by which all the powers delegated by the Government of India to the Chief Commissioner before the amendment of Article 239 of the Constitution were saved and he was allowed to exercise them as before. Therefore, it will be futile to argue that the Chief Commissioner was not competent under the law to issue the impugned notification by which he declared the Delhi Municipal Corporation area as local area under the; provisions of the Act.

4. The three complaints instituted by Sham Sunder Mathur, Municipal Prosecutor, against the accused-petitioners did not offend section 20(1) of the Act. The revision petitions, consequently, are devoid of all merits and are hereby dismissed. The accused-petitioners are directed to appear before the Trial Court on 7th October, 1963.