

(1960) 01 CAL CK 0043

Calcutta High Court

Case No: Criminal Revision Case No. 844 of 1958

Jagadish Prosad
Bhakat

APPELLANT

Vs

Rampurhat
Municipality

RESPONDENT

Date of Decision: Jan. 5, 1960

Acts Referred:

- Bengal Municipal Act, 1932 - Section 51
- Prevention of Food Adulteration Act, 1954 - Section 15, 16, 2(8), 20, 25

Citation: (1961) 2 ILR (Cal) 167

Hon'ble Judges: Das Gupta, J; D. Mookerjee, J

Bench: Division Bench

Advocate: J.N. Sinha and J. Nag, for the Appellant; Mukti Prosonno Mukharjee, for the Respondent

Judgement

Debabrata Mookerjee, J.

The Petitioner Jagadish Prosad Bhakat is being prosecuted u/s 16 of the Prevention of Food Adulteration Act, 1954, on the allegation that he sold adulterated mustard oil to a Food Inspector of Rampurhat Municipality on December 28, 1956.

2. No evidence appears to have been adduced yet. A preliminary objection has been taken on behalf of the Petitioner that the proceedings against him have not been validly instituted; it is accordingly prayed that they may be quashed.

3. The Petitioner was summoned upon a complaint addressed to the Subdivisional Magistrate, Rampurhat. In this summons application there was an endorsement to the effect that the Chairman of the Municipality has sanctioned the prosecution.

4. The objection raised in this Court was taken before the trial Magistrate that the proceedings had not been commenced in accordance with law. The objection was

overruled.

5. In order to be able to appreciate the point raised, it is necessary to recall the words of Section 20 of the Prevention of Food Adulteration Act. That section provides that no prosecution for an offence under the Act shall be instituted except by, or with the written consent of, the State Government or a local authority or a person authorised in that behalf by the State Government or the local authority. This being a prosecution by a local authority, it may be useful to refer to the definition of "local authority", in Section 2(VIII) where it has been defined as a Municipality, a Municipal Board or a Municipal Corporation; The other types of local authority are left out of consideration since they are not relevant to the present purpose. It seems therefore clear that local authority includes a Municipality.

6. Question then arises whether the sanction said to have accorded by the Chairman of the Municipality would be sufficient in a case of this kind. Reliance is placed on behalf of the Municipality upon the terms of Section 51 of the Bengal Municipal Act, 1932, which says that the Chairman of a Municipal body, shall for the transaction of business connected with that Act, or for the purpose of making any order authorised thereby, exercise all the powers vested by that Act in the Commissioners. There can be no doubt that the power in question is the power to consent to the initiation of a proceeding in prosecution. But the prosecution in the present case cannot be said to relate to transaction of business under the Bengal Municipal Act. It is a prosecution under a different Act, namely, the Prevention of Food Adulteration Act which is a Central Act. Section 20 of this Act makes it obligatory that consent has to be given by the local authority or by a person authorised in that behalf by that authority. In the present case there does not appear to be anything to indicate that there has been such authority given to the Chairman. Indeed the existence of such authority has to be pleaded and proved since that is a condition precedent and an essential requisite for initiation of proceedings in prosecution. The words of Section 20 are imperative and they must receive full effect. It seems to us that whatever powers the Chairman might have possessed under the general provision embodied in Section 51 of the Bengal Municipal Act, stand modified to the extent indicated in the Prevention of Food Adulteration Act. Section 25 of the latter Act clearly provided that it, immediately before the commencement of this Act, there is in force in any State any law corresponding to this Act, that corresponding law shall stand repealed. Quite obviously the power to consent to a prosecution would be a power exercisable in relation to a prosecution for prevention of adulteration and preservation of public health. That being so the provisions of the Central Act supersede the corresponding provisions in the State Act and if there is any conflict anywhere between a State Act and a Central Act the latter Act must prevail.

7. The learned Magistrate appears to have misdirected himself in thinking that the Chairman of the Municipality had power to sanction the prosecution under the proviso to Section 15 of the Bengal Food Adulteration Act. That proviso was to the

Effect that in the case of an offence of food adulteration committed, within a Municipality, an order or consent of the Chairman initiating proceeding's in prosecution might be validly given and no order or consent in writing of the local authority was required., Quite clearly Section 25 of the Prevention of Food Adulteration Act, which we have read, repeals all provisions in a State Act relating to prosecution for food adulteration and they cannot be prayed in aid of the contention that the prosecution in this case has been validly commenced.

8. This is a prosecution by a public body and it is indeed desirable that it should be commenced and conducted in a manner which might be above question. As we have indicated no evidence has yet. been gone into; and we think in the interest of all concerned, there should be a proper sanction in terms of. Section 20 of the Prevention of Food Adulteration Act before the prosecution can be allowed to proceed.

9. In the result, we quash the present proceedings and leave it open to the local authority concerned to proceed in accordance with law.

10. The Rule is made absolute.

D.N. Das Gupta, J.

11. I agree.