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**(1984) 10 DEL CK 0030**

**Delhi High Court**

**Case No:** Criminal Appeal No. 413 of 1977

Municipal Corporation of Delhi

APPELLANT

Vs

S.K. Jain and Others

RESPONDENT

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**Date of Decision:** Oct. 12, 1984

**Citation:** (1985) 27 DLT 52 : (1985) 1 RCR(Criminal) 403

**Hon'ble Judges:** T.P.S Chawla, J; G.R. Luthra, J

**Bench:** Division Bench

**Advocate:** P.R. Monga, B.G. Singh and Seema, for the Appellant;

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### **Judgement**

G.R. Luthra, J.

(1) The present appeal of the Municipal Corporation of Delhi (hereinafter referred to as Municipal Corporation) is directed against the judgment dated 3/02/1977 of Shri J.D. Kapoor, Metropolitan Magistrate, Delhi acquitting all the respondents in respect of an offence punishable on that section 7 read with section 16 of the Prevention of Food Adulteration Act .

(2) Satinder Kumar Jain, Smt. Phool Wati, Davinder Kumar and Rakesh Kumar (respondents 1 to 4) were partners. They, at the relevant time, were carrying on business of manufacture of "besan" for sale under the name and Style of M/s. Raj Dhani Floor Mills at 6549, Kutub Road, Delhi.

(3) ON 29/03/1973 at about 12-30 p.m., R.P. Chauhan (PW3), a food inspector, went to the aforesaid premises No. 6549, Kutub Road, Delhi. At that time only Satinder Kumar Jain, respondent No. J, was present from whom the former purchased "besan" weighing 450 grams. The said Food Inspector.. divided the "besan" into three equal parts and put them in separate containers and sealed them. One of the samples was handed over to Satendra Kumar Jain, another was sent to the Public Analyst and the third one was retained by him. The Public Analyst gave a report dated 7/04/1973 to the effect that "besan" was analysed on 5/04/1973 and that the same was adulterated due to the presence of 15% Kesari dal starches. After receipt

of the said report, the Municipal Corporation through Shri Ganga Ram, Assistant Municipal. Prosecutor (PW1), filed a complaint for prosecuting and punishing all the respondents for offence punishable u/s 7 read with section 16 of the Act. Satinder Kumar Jain, respondent No. 1, was sought to be prosecuted as seller of "besan." It was alleged in the complaint that respondents 2 to. 4 were partners of the firm, respondent No. 5, and that they were liable to be punished for the aforesaid offence as they were in charge of and responsible to the said firm for the conduct of business. The complaint was directed against respondent No. 5 also.

(4) There is and was no dispute about the factum of taking sample. However, it was urged before the learned Magistrate that there was noncompliance with Rule 22 of the Prevention of Food Adulteration Rules for short Rules) and that, Therefore, the respondents were entitled to acquittal. Rule 22 aforesaid (as it existed then) says that the quantity of sample of food to be sent to the Public Analyst/director for analysis shall be as specified in the table given in that Rule. That table, at the relevant time, did not specify the quantity in respect of "besan." "Besan" was treated as cereal vide item No.A-18 of the Appendix B to the Rules. Rule 22 specified quantity of sample as 250 grams for cereal. As by way of dividing the total quantity (for 450 gms.) purchased by the food inspector into three, the quantity in one sample came to 150 gms., it was found by the learned Magistrate that the quantity was less than that prescribed (250 gms.) by Rule 22. He, Therefore, held that due to violation of the aforesaid rule, respondent was entitled to acquittal.

(5) The view of the learned Magistrate was then justified by a judgment of the Supreme Court in *Rajaldas Gurunamal Pamanani v. The State of Maharashtra* 1975(1) F.A. C. 1. The propositions of law laid down in that judgment was that provisions of Rule 22 being mandatory, non-compliance caused not only infraction of the provisions but also injustice in as much as quantities mentioned in Rule 22 were required for correct analysis and that on account of aforesaid non-compliance accused was entitled to acquittal.

(6) But that judgment was specifically overruled by a later judgment of the Supreme Court in *State of Kerala etc. etc. v. Alaserry Mohammed etc. etc.* 1978(1) F.A.C. 145. It was held that Rule 22 was purely directory, that it was for the Public Analyst to see whether the quantity of the sample sent to him was sufficient or not for making necessary analysis and that if the Public Analyst had; no complaint, no accused could be acquitted on the mere ground of non-compliance of Rule 22. However, the acquittals, which were challenged before the Supreme Court, were not converted into convictions and the following observations were made in the concluding paragraph of the judgment:

"FOR the reasons stated above, we dispose of these appeal a by merely laying down the correct proposition of law but do not make any consequential orders setting aside the acquittal of any of respondents or sending back the cases to the Courts below or convicting any of them by an order of this Court."

Relying on the aforesaid judgment, in subsequent cases, accused prayed for maintaining acquittal notwithstanding "that they were guilty. In *Ramdas Bhikaji Chaudhari v, Sada Nand and others* 1979(2) F.A.C. 215, it was held by Supreme Court that in appropriate cases acquittal recorded on the ground of non-compliance of Rule 22 could be set aside and conviction recorded. The result was that in that case, the Supreme Court converted the acquittal into conviction but having regard to the fact that the prosecution was started long ago in 1971, only sentence of fine of Rs. 2,000.00 (and not of imprisonment) was awarded.

(7) The appeal has been contested by the respondents on the ground that it is barred by limitation and also on merits it is liable to be dismissed against the respondents 2 to 4. Both the pleas, as is being mentioned hereinafter, have force..

(8) The present appeal is liable to be dismissed as barred by limitation. It was filed u/s 378 of the Code of Criminal Procedure (for short Cr.P.C.). It is in sub-section (5) of that section that the period of limitation is provided. That sub-section reads as under :

"(5) No application under sub-section (4) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of six months, where the complainant is a public servant, and sixty days in every other case ,computed from the date of that order of acquittal."

(9) It is clear from the above that a longer period of limitation has been provided where a complainant is a public servant. If the complainant is a public servant, the period of limitation is six months otherwise the said period is sixty days. Therefore, the first question to be determined is as to who is the complainant in the present case and then it is to be decided as to whether the complainant is a public servant or not. The word "complainant" is not defined Criminal Procedure Code Its obvious meaning is one who files a complaint.

(10) For the purpose of finding out as to who could file the complaint in the present case, we have to refer to the provisions of the Prevention of Food Adulteration Act. It is section 20 of the said Act, which deals with the Cognizance and trial of offences. That provision, as it existed at the time of the commission of the offence in the present case, (the aforesaid provision was amended afterwards in the year 1976) reads as under :

"20. Cognizance and trial of offences. (1) No prosecution for an offence under this Act shall be instituted except by, or with the written consent of, the Central Government or the State Government or a local authority or a person authorised in this behalf by general or special order, by the Central Government or 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 term local authority" is defined in section 2(viii) of the Prevention of Food Adulteration Act Which reads as under;

"(VIII)"Local authority" means in the case of:(1) a local area which is :(a) a municipality, the municipal board or Municipal Corporation;(b) a cantonment, the cantonment authority ;(e) a notified area, the notified area committee.(2) any other local area, such authority as may be prescribed the Central Government or the State Government under this Act."

(11) It is clear from the aforesaid provisions that prosecution can be instituted by any of the following and, Therefore, any of the following can be complainant:1. Central Government.2. State Government.3. Local authority which, inter alia, includes Municipal Corporation having jurisdiction in the area where offence was committed.4. Any person who is in possession of written consent of either Central .Government or State Government or local authority.5. Any person authorised by a general or special order by the Central Government or the State Government or local authority to institute a complaint.6. By a purchaser, as referred to in section 12 of the Prevention of Food Adulteration Act.

(12) It is apparent that it is a question of fact as to who is a complainant in a particular case. In the present case it was by and in the name of the Municipal Corporation that complaint was filed through Shri Ganga Ram. In [Municipal Corporation of Delhi Vs. Jagdish Lal and Another](#), the Supreme Court held that even if the complaint had been filed by and in the name of a person authorised in that behalf by the Municipal Corporation of Delhi, it was the Municipal Corporation who was the complainant entitled to file an appeal against acquittal u/s 417 of the old Code of Criminal Procedure, which was similar to section 378 of the present Cr.P.C. In that case, one Sham Sunder Mathur was authorised to institute a complaint for prosecution of some persons under the provisions of Prevention of Food Adulteration Act. That prosecution resulted in acquittal. The appeal was filed by Municipal Corporation and not by Sham Sunder Mathur. It was held by the High Court that the complainant being Sham Sunder Mathur, the appeal filed by Municipal Corporation was not maintainable. Accordingly, the appeal was dismissed by the High Court. The Municipal Corporation went in appeal to the Supreme Court who while accepting the appeal held asunder:

"IT is true that Shri Sham Sunder Mathur filed the complaint petition on 20/08/1960. But in filing the complaint Shri Mathur was not acting on his own personal behalf but was acting as an agent authorised by the Delhi Municipal Corporation to file the complaint. It must, Therefore, be deemed in the contemplation of law that file Delhi Municipal Corporation was the complainant in the case."

(13) Shri P.R. Monga, learned counsel for the Municipal -Corporation, relied upon a division bench judgment of this court in [Oriental Bank of Commerce Vs. Delhi](#)

Development Authority and Another, In that case, Delhi Development Authority launched a prosecution u/s 29(2) of the Delhi Development Act for using a premises in contravention of the Master Plan. The accused in that case felt aggrieved and brought a revision petition, inter alia, urging that the complaint filed by the Secretary of Delhi Development Authority was barred by limitation as provided by section 468 Cr.P.C. The dispute was in respect of starting point of limitation which matter is dealt by section 469 Criminal Procedure Code. That section 469 Cr.P.C. reads as under:

"469.(1) The period of limitation, in relation to an offender, shall commence: (a) on the date of the offence; or (b) where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier; or (c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is, earlier. (2) In computing the said period, the day from which such period is to be computed shall be excluded."

(14) While interpreting the words "person aggrieved" occurring in section 469 Cr.P.C., it was held (by M.L. Jain, J. speaking for the bench) that both the Delhi Development Authority, and the officer who actually filed the complaint were the "aggrieved persons" and thus complainants.

(15) Learned counsel for the Municipal Corporation contended that in view of that judgment, the complainant in this case were both the Municipal Corporation as well as Shri Ganga Ram who filed the complaint on behalf of the Municipal Corporation. The learned counsel for supporting the aforesaid proposition also relied upon a judgment of a Division Bench of this Court (consisting of R.N. Aggarwal, J. and myself) in Delhi Development Authority v. Sh. K.P. Shankara 1983 RLR 530. In that case, inter alia, showing inclination to agree with the view expressed in the judgment of the Division Bench in Oriental Bank of Commerce and another (supra), it was held that both the Secretary of the Delhi Development Authority and the Delhi Development Authority were the complainants in respect of a complaint filed u/s 29(2) of the Delhi Development Act against K.P. Shankara.

(16) But the authorities relied upon by the learned counsel for the Municipal Corporation have no application in the present case. They relate to filing of complaint under the provisions of Delhi Development Act by Delhi Development Authority. As noticed in para 13 of the judgment of M.L. Jain, J. (On case of Oriental Bank of Commerce) the provisions of section 20 of the Prevention of Food Adulteration Act are different from the provisions relating to filing of complaint contained in section 49(l) of Delhi Development Act. The former provides for filing of complaint inter alia by Municipal Corporation whereas the latter does not contain any similar word providing for filing of a complaint "by" Delhi Development

Authority itself. The Development Act provides for filing of a complaint only by an officer authorised by Delhi Development Authority. Moreover, in the aforesaid Division Bench judgment (in Oriental Bank of Commerce and another v. D.D.A.) interpretation of words "persons aggrieved" was involved whereas in the present case the interpretation of those words is hardly relevant. Concept of a "person aggrieved" is wider than a "complainant. So, as already stated, it is a question of fact to be determined in each individual case as to who is the complainant under the provisions of section 20 of the Prevention of Food Adulteration Act. In the present case, as already help, Municipal Corporation of Delhi is complainant.

(17) The aforesaid being the situation, it is to be seen if the Municipal Corporation is a public servant or not. The words "public servant" are not defined in the Criminal Procedure Code However, in section 2(y) of Criminal Procedure Code it is stated that words and expressions used in the said Code and not defined but define in Indian Penal Code have the meanings respectively assigned to. them in the latter Code. Therefore, for the purpose of finding out meaning of the words "public servant," we have to refer to the provisions of Indian Penal Code. The words "public servant" are defined in section 21 of the said Code. It is clear from a bare reading of the said definition of "public servant" that it is only a natural person who can be a "public servant." In fact, the very word "servant" denotes that it is only a natural person who can have that capacity. Municipal Corporation cannot be and is not a "public servant" within the meaning of section 21 of Indian Penal Code. On the other hand, Municipal Corporation is master or employer and, Therefore, not a servant under clause twelfth (b) of section 21 of Indian Penal Code which reads as under :

" TWELFTH. Every person: (a) .....(b) in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Actor a Government Company as defined in section 617 of the Companies Act, 1956. Illustration A Municipal Commissioner is a public servant."

(18) That being so, the period of limitation within which the present appeal could be brought was 60 days from the date of the order of acquittal In Municipal Corporation v. Amrit Lal 1981 R.L.R. 1, Division Bench of this Court held that Municipal Corporation of Delhi or Delhi Development Authority is not a public servant within the meaning of section 21 of Indian Penal Code and that the period of limitation for filing appeal u/s 378Cr.P.C., by the Municipal Corporation is 60 days from the date of order of acquittal. Of course, the time spent in obtaining the certified copy of the order is to be excluded under the provisions of section 12(3) of the limitation Act .

(19) We have now to make necessary calculations. The date of order of acquittal was 3/02/1977. The appellant applied for obtaining certified copy of judgment of 15/02/1977, and the copy was ready on 14/03/1977. The appeal was filed on July 11, 1977. In that way, after excluding the time spent on obtaining certified copy of the judgment appealed against, the appeal was filed after expiry of 139 days. Therefore,

it was clearly barred by limitation.

(20) On merits, but for the reason that entire appeal is being dismissed as barred by limitation, the acquittal of Satinder Kumar Jain, respondent No. 1 and the firm respondent No. 5 would have been converted into conviction in view of charge (as mentioned already) of interpretation by the Supreme Court in respect of Rule 22 of the Rules.

(21) Acquittal of respondents No. 2 to 4, however, must be maintained on merits also. Liability on them is sought to be fastened merely because they are partners of respondent No. 1. It was held by us on 20/09/1984 in *Municipal Corporation of Delhi v. Des Raj and others*. Criminal Appeal No. 337/77. that u/s 17 of Prevention of Food Adulteration Act, a partner of the firm who had not sold the article of Food Inspector could be liable only if the prosecution proved beyond reasonable doubt that at the time of the commission of the offence he was in charge of and responsible to the firm for the conduct of the business of the firm. In the present case, admittedly, respondents 2 to 4 were not present at the time of the commission of the offence. They also did not sell the "besan" to the Food Inspector. There is no evidence that respondents 2 to 4 were in charge of and responsible to the firm for the conduct of the business of the firm. Reliance of the Corporation is on the following statement of Shri R.P. Chanhani, Food Inspector.(P.W.3):

"THREE four times I visited the firm premises for finding out the working partners of the firm I saw Satinder Kumar Jain, Davinder Kumar Jain and Rakesh Kumar Jain but I never met Phool Wati. I also came to know from Satinder Kumar Jain that accused No. 1 to 4 are the active partners of the firm."

(22) It was urged by the learned counsel for the Municipal Corporation that the statement showed that Davinder Kumar Jain and Rakesh Kumar Jain, - respondents were also taking part in the carrying on of the business of the firm and that, Therefore, it must be held that they were in charge of and responsible to the firm for the conduct of the business of the firm. But the aforesaid statement refers to a point of time later than the date and time of the commission of the offence, while according to the provisions of section 17 of the Prevention of Food Adulteration Act, the relevant time when partner should be in charge of and responsible to the firm for the conduct of the business should be the time of the commission of the offence i.e. the sale of "besan" in the present case.

(23) Under the above circumstances, the appeal is hereby dismissed and the acquittal of the respondents is maintained.