

Before Ujagar Singh, J.

RAM SARUP,—Petitioner.

versus

STATE OF PUNJAB,—Respondent.

Criminal Revision No. 1334 of 1985

April 6, 1989.

Prevention of Food Adulteration Act (XXXVII of 1954)—Ss. 9 and 20—Prevention of Food Adulteration Rules, 1955—Rl. 8—Food Inspector authorised to launch proceedings by Director—Such authorisation—Validity of—Prosecution launched by the said Food Inspector—Effect of.

Held, that under Section 9 of the Prevention of Food Adulteration Act, 1954 only the Central Government or the State Government may by notification in the official gazettee appoint some persons to be Food Inspectors and U/s 20 of the Act, no prosecution under the Act can be launched 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 orders by the Central Government or the State Government. The notification had been issued and the powers have been delegated to the Director who further authorised the Food Inspector to institute prosecution against the persons committing the offences under the Act within the limits of the notified area. The prosecution was thus launched by the unauthorised person and the whole transaction was bad. Conviction and sentence awarded to the petitioner set aside and he is acquitted of the charge. (Para 5)

Petition for revision of the order of Shri Gurjit Singh Sandhu, Sessions Judge, Sangrur, dated 12th September, 1985 affirming that of Shri S. S. Hundal, J.M.I.C. Dhuri, dated 19th March, 1984 convicting and sentencing the petitioner.

CHARGE: Under Section 16 of the Prevention of Food Adulteration Act, 1954.

SENTENCE : R.I. for 6 months and a fine of Rs. 1,000 or in default further R.I. for 3 months.

Ashok Jindal, Advocate, for the petitioner.

P. S. Kang, Advocate, for the State.

JUDGMENT

Ujagar Singh, J.

(1) Food Inspector Nek Chand Goyal intercepted Ram Sarup, revision-petitioner on 20th July, 1983 at 8.40 a.m., near Bus Stand, Dhuri. He found him to be in possession of 10 kg of mixed milk,

contained in a drum. Out of the same, a sample of 660 ml. was purchased for an amount of Rs. 1/80 paise. Documents Ex.PA, PB and PC were prepared at the spot. Sample was divided into 3 parts, pouring the parts in 3 separate dried and clean bottles. After doing the needful, one sample was sent Public Analyst and the other two were deposited with the Local (Health) Authority. Report of the Public Analyst is Ex. PD, according to which, milk fat was 5.4 per cent and milk solids not-fat were 7.4 per cent. Thus, milk-solids not-fat were deficient by 13.0 per cent of the minimum prescribed standards. Ex. PF is the notice sent to the petitioner by registered acknowledgement due post. Ex. PF/1 is the acknowledgement due receipt, showing receipt of notice. Ex. PF/2 is the postal receipt for sending registered acknowledgement due letter. Ex.PG is the affidavit of Kidar Nath, Peon. According to the same, he took a sample given by Food Inspector Nek Chand Goyal, along with Form No. VII duly sealed and separate packets, in the evening time. Both these packets were handed over by him on 21st July, 1983 in the office of the Public Analyst. Report Ex. PD by the Public Analyst clearly shows that this sample was received on 21st July, 1983 from Food Inspector Nek Chand Goyal relating to mixed milk. The Food Inspector was accompanied by Dr. Mukesh Gupta. In support of prosecution case, Food Inspector Nek Chand Goyal himself stepped into the witness box as PW1. According to him, persons who were called to witness the proceeding did not agree to sign. Rather, they refused to do so. Dr. Mukesh Gupta (PW2) supported the version of Food Inspector Nek Chand Goyal. Sri Kishan (PW3) is a clerk from the Local (Health) Authority, Sangrur who has proved that the said Food Inspector had deposited two packets of the sample in his office. It is further proved by him that Ex. PD was received regarding the analysis of the sample on 23rd August, 1983 and was handed over to Food Inspector Nek Chand Goyal. On 2nd September, 1983, prosecution was launched and information was sent to the petitioner.—*vide* letter Ex. PF. The defence of the petitioner was that he came to supply milk in the milk centre and Food Inspector got his signatures on the representation that the petitioner was to appear as a witness. He examined, in his defence, Ram Dial (DW1) and Bakhshish Singh (DW2) who have supported the version of the petitioner, but their statements do not fix the date and time when the petitioner is said to have come to the milk centre.

(2) After going through the file, the trial Court convicted the petitioner u/s 7 read with s. 16 of the Prevention of Food Adulteration Act, 1954 (the Act in short) and sentenced him to undergo

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rigorous imprisonment for 6 months and to pay a fine of Rs. 1,000. In default thereof, he was directed to suffer further RI for 3 months. The petitioner has challenged his conviction and sentence before the Court of Session, but his challenge was declined. The defence of the petitioner was rightly disbelieved.

(3) The learned counsel for the petitioner has raised an argument that the notification authorising Shri Nek Chand Goyal to prosecute the petitioner was *ultra vires* the provisions of s. 20(1) of the Act and he urges that he is supported by an authority of the Supreme Court in *A. K. Roy v. State of Punjab* (1).

(4) I have heard the learned counsel and gone through the papers thoroughly. The complaint Ex. PE shows that Shri Nek Chand Goyal was appointed as Food Inspector,—*vide* notification No. EIV-1-Pb-73/1872 dated 9th March, 1973 u/s 9 of the Act. The said notification is reproduced as:

“In exercise of the powers conferred by section 9 of the Prevention of Food Adulteration Act, 1954 (No. 37 of 1954) read with rule 8 of the Prevention of Food Adulteration Rules, 1955 and the powers delegated,—*vide* Punjab Government Notification No. 5576-2 HBII-68/29659, dated 10th October, 1968, Sarvshri Nek Chand Goyal, Dhani Ram, Som Parkash Chopra, Balwant Singh and Sarbjit Singh Sikand are hereby appointed as Food Inspectors for the notified areas of the district in which they have been posted.

In exercise of the powers conferred by section 20 of the Prevention of Food Adulteration Act, 1954 (No. 37 of 1954) read with Punjab Government Notification No. 5575-2HBII-68/29659, dated 10th October, 1968, they are authorised to institute prosecution against the persons committing offences under the said Act within the limits of their notified areas.

(Sd/-)

Director, Health and Family Planning, Punjab.”

This notification shows that Shri Nek Chand Goyal was further authorised to institute prosecution against the persons committing offences under the Act within the limits of their notified area. This notification purports to have been issued under the signatures of the

Director, Health and Family Planning, Punjab who was himself delegated the powers,—*vide* the Punjab Government Notification dated 10th October, 1968, *ibid* u/s 9 read with rule 8 of the Prevention of Food Adulteration Rules, 1955. It is further revealed that u/s 20 of the Act, the Director had been delegated the powers,—*vide* Punjab Government Notification dated 10th October, 1968 quoted above.

(5) Under section 9 of the Act only the Central Government or the State Government may by notification in the official gazette appoint some persons to be Food Inspectors and u/s 20 of the Act, no prosecution under the Act can be launched 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 orders by the Central Government or the State Government. Interpreting this provision, the apex Court held in *A. K. Roy's case* (supra) that the prosecution for offences under the Act not being an offence u/s 14 or s. 14(a) can be instituted only by one of the following authorities, namely :

- (i) the Central Government, or the State Government, or
- (ii) with the written consent of the Central Government or the State Government, or
- (iii) a person authorised in this behalf by a general or special order by the Central Government or the State Government, or
- (iv) with the written consent of a person so authorised.

In that case, same notification had been issued and the powers had similarly been delegated to the Director,—*vide* the same earlier notification. The prosecution in this case has been launched by an unauthorised person and therefore, the whole proceedings are bad.

(6) The Prevention of Food Adulteration (Punjab) Rules, 1958 were framed in exercise of the powers u/s 24 (2)(e) of the Act and rule 3 thereof reads as under:

“Power of Food (Health) Authority.—The State Government may, by an order in writing delegate its powers to appoint Food Inspectors, to authorise a person to institute prosecutions for an offence under the Act and such other powers exercisable by it under the Act as may be specified in the

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order of the Food (Health) Authority of the State of Punjab.”

It was ultimately held as under:

“12. In the case of statutory powers the important question is whether on a true construction of the Act, it is intended that a power conferred upon A may be exercised on A's authority by B. The maxim *delegatus non potest delegare* merely indicates that this is not normally allowable but the legislature can always provide for sub-delegation of powers. The provision contained in Section 24(2)(e) enables the State Government to frame a rule for delegation of powers and functions under the Act but it clearly does not envisage any sub-delegation. That apart, a rule framed under Section 24(2)(e) can only provide for delegation of minor administrative functions e.g. appointment of Food Inspectors, Food (Health) Authority etc. In the case of important executive functions like the one contained in Section 20(1) of the Act to authorise launching of prosecutions for an offence under the Act which is in the nature of a safeguard, the courts may be disposed to construe general powers of delegation restrictively. Keeping in view the language of Sections 20(1) and 24(2)(e) of the Act, Rule 3 of Punjab Rules can be treated to be a general order issued by the State Government to authorise the Food (Health) Authority, i.e. the Director of Health Services to institute prosecutions for an offence under the Act. Unfortunately, the draftsmen of Rule 3 more or less employed the language of Section 20(1) of the Act. If Rule 3 were to be literally interpreted, the words “to authorise the launching of prosecutions” may lead to the consequence that the Food (Health) Authority who had been delegated the power of the State Government under Section 20(1) of the Act could, in his turn, sub-delegate his powers to the Food Inspector. Such a consequence is not envisaged by Section 20(1) of the Act. It is well settled that rules framed pursuant to a power conferred by a statute cannot proceed or go against the specific provisions of the statute. It must therefore follow as a logical consequence that Rule 3 of the Prevention of Food Adulteration (Punjab) Rules, 1958 must be read subject to the provisions contained in Section 20(1) of the Prevention of Food Adulteration Act, 1954 and cannot be

construed to authorise sub-delegation of powers of Food (Health) Authority, Punjab to the Food Inspector, Faridkot. If so construed, as it must, it would mean that the Food (Health) Authority, was the person authorised by the State Government to initiate prosecutions. It was also permissible for the Food (Health) Authority being the person authorised under Section 20(1) of the Act to give his written consent for the institution of such prosecutions by the Food Inspector, Faridkot as laid down by this Court in *State of Bombay v. Purshottam Kanaiyalal and Corpn. of Calcutta v. Md. Omer Ali.*" (1961)1 SCR 458 and (1976) 4 SCC 527 respectively.)

In view of *A. K. Roy's case* (supra), this criminal revision is accepted conviction and sentence awarded to the petitioner are set aside and he is acquitted of the charge. Fine, if paid, be refunded.

S.C.K.

Before Ujagar Singh. J.

REET SINGH,—*Petitioner.*

versus

STATE OF HARYANA,—*Respondent.*

Criminal Revision No. 5 of 1986

April 24, 1989.

Prevention of Food Adulteration Act (XXXVII of 1954)—Ss. 7, 16(1) (a) (i)—Sample of Cow's milk found deficient of milk solid not fat by 11 per cent—Fat contents found to be more than required—Evidence to the effect that stirring was not properly done—Milk sample not true representative of whole quantity—Delay in launching proceedings—Conviction set aside.

Held. that the stirring was not carefully done so as to make the sample as representative of the whole quantity of milk contained in the drum. It caused serious prejudice with the result that the conviction is set aside. *Held,* further that there was no explanation from the side of the prosecution, why there was undue delay of six months after the sample was analysed by Public Analyst. On this score also, the petitioner is at least entitled to benefit of doubt.
(Para 5)