Municipal Corporation Of Delhi vs Girdharilal Sapuru And Ors. on 11 February, 1981

Equivalent citations: AIR1981SC1169, (1981)83PLR593, (1981)2SCC758, 1981(13)UJ217(SC), AIR 1981 SUPREME COURT 1169, 1981 (2) SCC 758, 1981 (2) FAC 198, 1981 SCC(CRI) 598, 1981 FAJ 384, 1981 UJ (SC) 217, (1981) 2 FAC 198, (1981) ALLCRIR 161, (1981) 8 CRILT 252, (1981) 83 PUN LR 593, (1981) ALLCRIC 110, (1981) ALL WC 293

Author: D.A. Desai

Bench: A.P. Sen, D.A. Desai

JUDGMENT

D.A. Desai, J.

1. Dr. A G. Ajwani, Deputy Health Officer of the petitioner Municipal Corporation of Delhi - accompanied by an Inspector of C.B.I. and some Food Inspectors employed by the petitioner, visited the premises of the respondents where they being manufactures of various articles of food stored the same for sale, and took number of samples of various spices like the red chillies kutti, haldi powder rise kinky add red chillies whole as well as some others. These samples nine in all involved in the present petition, on analysis by the Public Analyst were found to be adulterated, the adulteration consisting of use of artificial coaltar dye, presence of foreign extraneous matter to the extent of 90%, ash in percentage higher then the permissible limit, etc. Initially the complaint was filed against respondent 1 but subsequently on collecting further evidence prosecution was launched against respondents 1 to 7. When the matter was being heard by the Metropolitan Magistrate, Delhi, he discharged all the respondents observing that there was a breach of mandatory provisions of Rule 22 of the Prevention of Food Adulteration Rules in as much as the minimum quantity necessary for analysis as prescribed in the relevant rule was not taken by way of sample by the Food Inspector. It was also observed that chilli powder is a 'condiment' and not 'spice' and, therefare, it was incumbent upon the Food Inspector to have sent sample weighing 200 gms. for analysis to the Public Analyst, and that this having not been done, there was breach of the relevant rule and, therefore, also the respondents were entitled to be discharged. In reaching this conclusion he relied upon the decision in Rajaldas Guru Namal Pamnani v. The State of Maharashtra . Therefore, he closed evidence for the prosecution, though the prosecution wanted to examine some more witnesses, and discharged the responednts.

2. The petitioner-Corporation preferred a revision petition to the High Court of Delhi. By the time the High Court heard the matter, the decision in Rajaldas's case was overruled by this Court in State

of Kerala etc. v. Alaserry Mohammed etc. etc wherein this Court held that rule 22 is directory and so long as the quantity was sufficient for analysis by the Public Analyst, the prosecution cannot fail on the sole ground that the minimum quantity prescribed by the rule was not sent for analysis by the Public Analyst.

3. However, the High Court was of the opinion that the revision petition filed by the petitioner was barred by limitation in view of the fact that even though the petition was actually filed on November 29, 1977, by one Shri B.T. Singh, Advocate on behalf of the petitioner-Corporation, the requisite power of attorney was not filed and the same was returned for removing the objection and after removing the objection it was re-submitted on March 1, 1978, but in the meantime the limitation expired on February 1, 1978, The High Court further was of the opinion that as no application for condonation of delay was filed, the petition was liable to be dismissed as being barred by limitation. Hence this appeal by special leave.

4. In our opinion the High Court was clearly in error in dismissing the revision petition filed by the petitioner. The learned Magistrate discharged the accused relying upon a decision of this Court in Rajaldas's case but when the matter was before the High Court the decision in Rajaldas's case was clearly over-ruled and the decision in Alaserry Mohammed's case held the field and if the law laid down in Alaserry Mohammed's case was applied the order of discharged passed by the learned Magistrate was utterly unsustainable. The High Court itself was aware of this fact and, therefore, the High Court ought to have set aside the order of discharge and directed further trial.

5. It, however, appears that the respondents contended that the revision petition was barred by limitation. Even this contention is founded on a very technical ground that even though the revision petition was filed very much in time the requisite power of attorney of the learned advocate on behalf of the petition was not legally complete and when it was re-submitted the limitation had expired. Without going into the nicety of this too technical contention, we may notice that Section 397 of the CrPC enables the High Court to exercise power of revision suo motu and when the attention of the High Court was drawn to a clear illegality the High Court could not have rejected the petition as time barred thereby perpetuating the illegality and miscarriage of justice. The question whether a discharge order is interlocutory or otherwise need not detain us because it is settled by a decision of this Court that the discharge order terminates the proceedings and, therefore it is revisable under Section 397(1), Cr. PC and -Section 397(1) in terms confers power of suo motu revision on the High Court, and if the High Court exercises suo motu revision power the same cannot be denied on the ground that there is some limitation prescribed for the exercise of the power because none such is prescribed. If in such a situation the suo motu power is not exercised what a glaring illegality goes unnoticed can be demonstrably established by this case itself. We however, do not propose to say a single word on the merits of the cause because there should not be even a whimper of prejudice to the accused who in view of this judgment would have to face the trial before the learned Magistrate.

6. No other contention was reside before us by Mr. Shing save saying that; long time has elapsed since the prosecution was launched and, therfore, further trial would cause hardship to the accused. Times without number it has been pointed out by this Court that those who indulge in to such a

pernicious activity of manufacturing and/or selling adulterated articles of food posing a threat to the health and well being of large number of people should be properly dealt with according to law and in such cases such narrow technicalities should not be allowed to outweigh the cause of justice.

7. We accordingly allow this appeal and set aside the order of discharge recorded by the learned Metropolitan Magistrate and direct that the trail be proceeded with against the respondents in accordance with law.