

## **Municipal Board vs State on 29 March, 1950**

**Equivalent citations: AIR1952ALL209**

**Author: Raghubar Dayal**

**Bench: Raghubar Dayal**

ORDER

Raghubar Dayal, J.

1. The Medical Officer of Health, Brindaban, ordered prosecution of Janki Das for an offence under Section 4, U. P. Prevention of Adulteration Act, on 10-3-1948. The accused was summoned on this complaint. The complaint was dismissed by Shri F. S Fanthome Magistrate first class, with order "No sanction under Section 12 Adult. Act. Case dismissed."

2. A revision against this order was filed before the Additional District Magistrate of Mathura. He has referred the case to this Court with the recommendation that the order of the learned Magistrate be quashed. In his Court a copy of the order of the Chairman Municipal Board, Brindaban, was filed. This order, dated 2-2-1947, is :

"With reference to Section 12, Prevention of Adulteration Act read with Government Notification Nos. 2193/XVI-829-44, dated 20-12-1944, Dr. Maharaj Singh is hereby authorised to institute cases under the said Act."

3. The learned counsel for the accused had urged that the Chairman of the Municipal Board was not competent to authorise the Medical Officer of Health to institute cases under the Prevention of Adulteration Act. I do not agree with this.

4. Section 12, Prevention of Adulteration Act, 1912 (Act VI [6] of 1912) says:

"No prosecution under this Act shall be instituted without the order or consent in writing of the local authority, or in the case of a municipal board or a cantonment authority, of the person or persons authorised in this behalf by the said municipal board or cantonment authority."

The Chairman of the Municipal Board could exercise the power given to the Board under Section 12 to authorise any other person to act on its behalf for prosecuting persons under this Act in view of Section 50 (e), Municipalities Act which is:

"The following powers, duties, and functions of a board may be exercised, and shall be performed or discharged, by the Chairman of the board and not otherwise, namely: ....

(e) all other duties, powers and functions of a board with the exception of-

(i) where there is an executive officer, these vested in an executive officer, by Section 60 (and where there is medical officer of health, these vested in the medical officer of health by Section 60A),

(ii) these specified in Col. 2 of Schedule I, and

(iii) these delegated by the board under Section 112."

Clauses (a) to (d) do not affect the question before us. If the power to authorise any person to act on behalf of the board for prosecuting persons under the Prevention of Adulteration Act is not given to an executive officer by Section 60 or to a medical officer of health by Section 60-A, the chairman of a municipal board could exercise this power in view of the above provision. It is argued for the applicant that this power vests in the executive officer and that the executive officer alone could have exercised it.

5. Section 60, Municipalities Act, mentions such powers of the board which are to be exercised by the executive officer and not otherwise. The learned counsel for the applicant submitted that this power of authorising a person to prosecute under the Prevention of Adulteration Act vests in the executive officer on account of the provisions of Section 60 (1) (d), which mentions the power conferred by the sections or sub-sections specified in col. 1 of Schedule II. Reference is then made to the entries in Schedule II with reference to Sections 24 and 314, Municipalities Act. These two sections do not deal with this particular power. Section 244 deals with the seizure and removal of articles of food or drink unfit for the consumption of man at the time of inspection. Section 314 provides that no Court shall take cognizance of any of the offences punishable under the Municipalities Act and which are mentioned in Schedule 8 or under any rule or bye-law, except on the complaint of, or upon information received from, the Board or some person authorised by the board by general or special order in this behalf. An offence under the Prevention of Adulteration Act is not any such offence. It follows, therefore, that it is not the duty of the executive officer to prosecute a person who is alleged to have committed an offence under the Prevention of Adulteration Act and that he has no power to authorise any other person to make a complaint against the person for having contravened the provisions of the Prevention of Adulteration Act. I, therefore, hold that the Chairman of the Municipal Board was competent to authorise the Medical Officer of Health to institute cases under the Prevention of Adulteration Act.

6. It is true that the copy of the order of the Chairman did not accompany the complaint. The mere fact that it had not been submitted to the Court does not in my opinion justify the order dismissing the complaint. The Court should have allowed facilities to the Medical Officer of Health to show that he was duly authorised to prosecute the accused. It does not appear from the record that any such

opportunity was given.

7. It has been contended that Section 15 (2), Prevention of Adulteration Act, requires that every summons issued in a prosecution under Section 4, shall specify a particular charge and the name of the prosecutor; that the summonses issued to the accused did not mention the name of the prosecutor and therefore the trial of the applicant is bad. I am of opinion that the mere omission of the name of the prosecution from the summons would not make the entire trial illegal unless it be possible to say, in the circumstances of certain cases, that the accused is prejudiced on account of this omission.

8. Reference was made in the argument for the accused to Article 872, Constitution of India. The argument based on this article was simply to the effect that the laws which were in force prior to the commencement of the Constitution continued to remain in force after the Constitution came into effect. There is no dispute about it and this Constitution has nothing to do with the question whether the Chairman of the Municipal Board was empowered to authorise the Medical Officer of Health to prosecute persons under the Prevention of Adulteration Act.

9. It has also been submitted that it is now two years since the incident took place and the case was instituted, and that in view of these circumstances no retrial be ordered. I am unable to accept it. There has been no trial of the case so far on merits and the disposal of the case in the manner indicated above was against law.

10. I, therefore, accept this reference, set aside the order of the learned Magistrate dismissing the complaint on the ground of want of authority to prosecute and order retrial of the accused according to law by a competent Magistrate. I, therefore, order that the case be sent back to the District Magistrate for trial according to law.

11. This order will govern criminal Reference Nos. 767, 768, 770 and 771 in which the accused persons are different but the facts are the same.