

Dhian Singh vs Municipal Board, Saharanpur on 31 July, 1969

Equivalent citations: 1970 AIR 318, 1970 SCR (1) 736, AIR 1970 SUPREME COURT 318, 1970 (1) SCR 730, 1970 (1) SCJ 231, 1970 MADLW (CRI) 42, 1970 SC CRI R 251, 1970 MADLJ(CRI) 113, 1970 CRI. L. J. 492, (1970) 1 S C R 736 (1970) 1 S C J 236, (1970) 1 S C J 236

Author: K.S. Hegde

Bench: K.S. Hegde, S.M. Sikri, G.K. Mitter

PETITIONER:

DHIAN SINGH

Vs.

RESPONDENT:

MUNICIPAL BOARD, SAHARANPUR

DATE OF JUDGMENT:

31/07/1969

BENCH:

HEGDE, K.S.

BENCH:

HEGDE, K.S.

SIKRI, S.M.

MITTER, G.K.

CITATION:

1970 AIR 318

1970 SCR (1) 736

1969 SCC (2) 371

ACT:

Prevention of Food Adulteration Act (37 of 1954), s. 20--Scope of-- Complaint signed by Food Inspector but Municipal Board shown as complainant--Appeal by Municipal Board under s. 417(3) Code of Criminal Procedure (Act 5 of 1898)--Maintainability not questioned in High Court--If question can be raised in the Supreme Court--Public Analyst, report of--When can form basis of conviction.

HEADNOTE:

On a report of the Public Analyst that the coloured sweets sold by the appellant were adulterated a complaint was filed before the Magistrate under s. 7, read with s. 16

of the Prevention of Food Adulteration Act. The trial court acquitted the appellant. In appeal by the Municipal Board under s. 417(3), Code of Criminal Procedure, the High Court convicted the appellant. The appellant did not raise any objection as to the maintainability of the complaint or of the appeal, either in the trial court or in the High Court before the appeal was disposed of, on the ground that the Municipal Board was shown as the complainant and the complaint was signed by its Food Inspector. In appeal to this Court, it was contended that: (i) the appeal filed by the Municipal Board in the High Court was not maintainable in law as the complaint had been instituted by the Food Inspector and not by the Municipal Board; (ii) a permission under s. 20 of the Act was a condition precedent for validly instituting a complaint and the fulfilment of that condition had to be satisfactorily proved before the Court could exercise jurisdiction to try the case; and (iii) the appellant could not have been convicted on the strength of the certificate of the Public Analyst.

HELD: Dismissing the appeal,

(i) Under s. 20 of the Prevention of Food Adulteration Act, it was competent for the Municipal Board to authorise the Food Inspector to file the complaint. If the complaint had been filed by the Food Inspector on the authority of the Board the complaint must be held to have been instituted by the Board itself. The question whether the Food Inspector was so authorised is a question of fact. This was never put into issue and both the courts below and the parties before them proceeded on the basis that the Municipal Board was the complainant and the Food Inspector filed the complaint on its behalf. The appellant could not, therefore, be permitted to take up the contention for the first time after the appeal was disposed of in the High Court. [741 A-C]

K.C. Aggarwal v. Delhi Administration, Cr. A. No. 100 of 1966, dt. 27-5-1969, referred to.

(ii) There is no analogy between the section and those provisions requiring sanction for the institution of certain criminal proceedings. Under the section, no question of applying one's mind to the facts of the case before the institution of complaint arises as the authority under the section can be conferred long before a particular offence has taken place. It is a conferment of an authority to institute a particular case or even a class of cases. [741 G]

737

Gokal Chand Dwarkadas v. The King, 75 I.A. 30 and Madan Mohan Singh v. State of U.P.A.I.R. 1954 S.C. 736, held inapplicable.

(iii) It is not necessary that the report of the Public Analyst should contain the mode or particulars of analysis or the test applied. But it should contain the result of analysis, namely, data from which it can be inferred whether

the article of food was of was not adulterated. In the present case. the report of analyst did contain the data on the basis of which the analyst came to his conclusion. [742 C-E]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 122 of 1967.

Appeal by special leave from the judgment and order dated April 18, 1966 of the Allahabad High Court in Criminal Appeal No. 1642 of 1964.

R.K. Garg, S.C.Agarwal, Sumitra Chakravarty and Uma Dutt, for the appellant.

O.P. Rana, for respondent No. 2.

The Judgment of the Court was delivered by Hegde J. Two contentions advanced in this appeal by special leave are (1) that the appeal filed by the Municipal Board, Saharanpur before the High Court of Allahabad under s. 417(3) of the Criminal Procedure Code was not maintainable in law and (2) the accused could not have been convicted on the strength of the certificate of the Public Analyst annexed to the complaint. The High Court rejected both these contentions.

The material facts relating to this appeal are these:

The accused in this case is proprietor of Khalsa Tea Stall situated in Court Road, Saharanpur. Among other things, he was selling coloured sweets. On suspicion that the sweets sold by him were adulterated, the Food Inspector, Municipal Board, Saharanpur purchased from the accused for examination some coloured sweets under a Yaddasht on May 31, 1963 and sent a portion if the same to the Public Analyst of the Government of U.P. for examination. The Public Analyst submitted his report on June 24, 1963. It reads:

"See Rule 7 (3) REPORT BY THE PUBLIC ANALYST Report No. 11652.

I hereby certify that I, Dr. R.S. Srivastava, Public Analyst for Uttar Pradesh, duly appointed under the provisions of the Prevention of Food Adulteration Act, 1954, received on the 4th day of June 1963 from the Food Inspector c/o Medical Officer of Health, Municipal Board, Saharanpur, a sample of coloured sweet (Patisa) prepared in Vanaspati No. 264 for analysis, properly sealed and fastened and that I found the seal intact and unbroken.

I further certify that I have caused to be analysed the aforementioned sample, and declare the result of the analysis to be as follows:

Test for the presence of coal-tar dye :--Positive. Coal-tar dye identified :-- Metanil yellow. (colour Index No. 138) ANALYTICAL DATA IN RESPECT OF FAT OR OIL USED IN THE PREPARATION OF THE SAMPLE.

1. Butyro-refractometer reading at 40 degree C :-- 50.5.
2. Melting point :-- 33.8oC.
3. Baudouin's test for the presence of Til oil :Positive.
4. Tintometer reading on Lovibond Scale 4.0 Red Units plus 0.1 yellow unit coloured with a coal-tar dye namely, Metanil Yellow (Colour Index No. 138) which is not one of the coal- tar dyes permitted for use in foodstuffs under rule No. 28 of the Prevention of Food Adulteration Rules, 1955. No chance had taken place in the constituents of the sample which would have interfered with analysis. Signed this 24th day of June 1963. The sample belongs to :--

S. DHIAN SINGH S/O JIWAN SINGH R.S. Srivastava M.Sc., LL.B. Ph.D. (Lond.)
P.R.L.C. Public Analyst to Govt. of U.P. Sender's address:

Public Analyst, Uttar Pradesh, Lucknow The Food Inspector, c/o. Medical Officer of Health, Municipal Board, Saharanpur."

On the basis of that certificate, a complaint was filed in the court of City Magistrate, Saharanpur under s. 7 read with s. 16 of the Prevention of Food Adulteration Act, 1954. It is purported to have been filed by the Municipal Board, Saharanpur but it was signed by its Food Inspector. The accused pleaded not guilty. Various contentions were taken by the accused in support of his defence. The trial court acquitted him taking the view that as the report of the analyst did not contain any data, no conviction could be rounded on its basis and as the Yaddasht relating to the sale had not been attested as required by law, the seizure in question must be held to be invalid. As against that decision, the Municipal Board of Saharanpur went up in appeal to the High Court under s. 417(3), Cr. P.C. the High Court allowed the appeal disagreeing with the trial court on both the questions of law referred to earlier. It came to the conclusion that the analyst had given the necessary data hence his report afforded sufficient basis for conviction. It further opined that the fact that the Yaddasht had not been attested by the witnesses of the locality, did not vitiate the seizure made. At the hearing of the appeal, no objection about the maintainability of the appeal was taken. The judgment of the High Court was rendered on April 18, 1966. The High Court convicted the appellant and sentenced him to undergo rigorous imprisonment for two months. and to pay a fine of Rs. 100/-, in default to undergo further imprisonment for a period of one, month. On April 28, 1966, the accused filed an application for certificate under Art. 134 of the Constitution. On May 4, 1966, when the application filed under Art. 134 of the Constitution for certificate was still pending, the accused moved the High Court under s. 561 (A), Cr. P.C. for reviewing its judgment dated April 18, 1966 principally on the ground that the appeal filed by the Municipal Board was not maintainable under s. 417(3), Cr. P.C. as the complaint had been instituted by the' Food Inspector and not by the Municipal Board. The

application under s. 561(A) was dismissed by the High Court as per its order of March 16, 1967 repelling the contention of the accused that the complaint had not been instituted by the Municipal Board. It further came to the conclusion that it had no power to review its own judgment. The certificate prayed for under Art. 134 of the Constitution was also refused by a separate order of the same date. Thereafter this appeal was brought after obtaining special leave. Mr. Garg, learned Counsel for the appellant strenuously contended that the appeal filed by the Municipal Board of Saharanpur before the High Court under s. 417(3), Cr. P.C. was not maintainable as the complaint from which that appeal had arisen had been instituted by the Food Inspector. Section 417(3) of the Criminal Procedure Code provides that if an order of acquittal is passed in any case instituted upon complaint, the High Court may grant to the complainant special leave to appeal against the order of acquittal. It is clear from that section that special leave under that provision can only be granted to the complainant and to no one else. It may be noted that in this case no appeal against acquittal had been filed by the State. Hence the essential question for consideration is whether the complainant before the Magistrate was the Municipal Board of Saharanpur? The complainant shown in the complaint is the Municipal Board of Saharanpur but the complaint was signed by the Food Inspector. Section 20 of the Prevention of Food Adulteration Act, 1954 prescribes that no prosecution for an offence under that Act should 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. There is no dispute that the Municipal Board is a local authority. Hence it was competent to file a complaint. It was also competent for that board to authorise someone else to file complaints under the Prevention of Food Adulteration Act on its behalf. As seen earlier, the complaint purports to have been filed by the Municipal Board. That Board could have authorised its Food Inspector to file the complaint on its behalf. Neither in the trial court, nor in the High Court at the stage of hearing of the appeal, any objection was taken by the accused as to the maintainability either of the complaint or of the appeal. Both those courts and the parties before it proceeded on the basis that the Municipal Board, Saharanpur was the complainant and its Food Inspector had filed the complaint on its behalf. It is only after the disposal of the appeal, the accused for the first time took up the contention that the Municipal Board was not the real complainant.

It is true that the complaint was signed by the Food Inspector. As seen earlier it was competent for the Municipal Board to authorise him to file the Complaint. The question whether he was authorised by the Municipal Board to file the complaint was never put into issue. Both the parties to the complaint proceeded on the basis that it was a validly instituted complaint. If the Municipal Board had not authorised him to file the complaint then the complaint itself was not maintainable. If that is so, no question of the invalidity of the appeal arises for consideration. It was never the case of the accused that the complaint was invalid. In *K.C. Aggarwal v. Delhi Administration*(1), this Court has held that a complaint filed by one of the officers of a local authority', at the instance of that authority is in law a complaint institut-

(1) Criminal Appeal No. 100 of 1966 decided on 27th May, 1969;

ed by that local authority. Therefore if the Complaint with which we are concerned in this case had been filed by the Food Inspector on the authority of local board, the complaint must be held to have been instituted by the local board itself. The question whether the Food Inspector had authority to file the complaint on behalf of the local board is a question of fact. Official acts must be deemed to

have been done according to law. If the accused had challenged the authority of the Food Inspector to file the complaint, the trial court would have gone into that question. The accused cannot be permitted to take up that contention for the first time after the disposal of the appeal. This Court refused to entertain for the first time an objection as regards the validity of a sanction granted in *Mangaldas Raghavji and Anr. v. State of Maharashtra and Anr.* (1) Mr. Garg, learned Counsel for the accused urged that a permission under s. 20 of the Prevention of Food Adulteration Act, 1954 to file a complaint is a condition precedent for validly instituting a complaint under the provisions of that Act. The fulfilment of that condition must be satisfactorily proved by the complainant before a court can entertain the complaint. Without such a proof, the court will have no jurisdiction to try the case. In support of that contention of his he sought to take assistance from the decision of the Judicial Committee in *Gokulchand Dwarkadas Morarka v. The King*(2) and *Madan Mohan Singh v. The State of U.P.*(3). Both those decisions deal with the question of the validity of sanctions given for the institution of certain criminal proceedings. The provisions under which sanction was sought in those cases required the sanctioning authority to apply its mind and find out whether there was any justification for instituting the prosecutions. The Judicial Committee as well as this Court has laid down that in such cases, the court must be satisfied either from the order of sanction or from the other evidence that all the relevant facts had been placed before the sanctioning authority and that authority had granted the sanction after applying its mind to those facts. The ratio of those decisions has no bearing on the facts of this case. Under s. 20 of the Prevention of Food Adulteration Act, 1954, no question of applying one's mind to the facts of the case before the institution of the complaint arises as the authority to be conferred under that provision can be conferred long before a particular offence has taken place. It is a conferment of an authority to institute a particular case or even a class of cases. That

-section merely prescribes that persons or authorities designated in that section are alone competent to file complaints under the statute in question.

(1) [1965] 2 S.C.R. 894. (2) 75 I.A.p. 30.

(3) A.I.R. 1954 S.C. 736.

For the reasons mentioned above, we are unable to accept the contention of the accused that the Municipal Board of Saharanpur was not competent to file the appeal. The only other question canvassed before us is that the report of the analyst could not have afforded a valid basis for rounding the conviction as the data on the basis of which the analyst had reached his conclusion is not found in that report or otherwise made available to the court. We are unable to accept this contention 'as well. It is not correct to say that the report does not contain the data on the basis of which the analyst came to his conclusion. The relevant data is given in the report. A report somewhat similar to the one before us was held by this Court to contain sufficient data in *Mangaldas's*(1) case referred to earlier. The correct view of the law on the subject is as stated in the decision of the Allahabad High Court in *Nagar Mahapalika of Kanpur v. Sri Ram*(2) wherein it is observed:

"that the report of the public analyst under s. 13 of the Prevention of Food Adulteration Act, 1954 need not contain the mode or particulars of analysis nor the test applied but should contain the result of analysis namely, data from which it can be inferred whether the article of food was or was not adulterated as defined in s. 2 (1) of the Act."

In the result the appeal fails and the same is dismissed. The appellant is on bail. He should surrender to his bail and serve the sentence imposed on him.

Y.P. Appeal dismissed.

(1) [1965] 2 S.C.R. 894. (2) [1963] All. L.J. 765.