

1960

August 31.

## THE STATE OF BOMBAY

v.

## PARSHOTTAM KANAIYALAL.

(S. K. DAS, M. HIDAYATULLAH and N. RAJAGOPALA  
AYYANGAR, JJ.)

*Criminal Trial—Statute barring prosecution except with written consent of competent authority—Whether consent must be in favour of named person—Food Adulteration Act, 1954 (37 of 1954), s. 20(1).*

A complaint was filed against the respondent by the Food Inspector for selling adulterated milk. Section 20(1) of the Food Adulteration Act, 1954, provided that no prosecution shall be instituted under the Act "except by, or with the written consent of, the State Government or local authority or a person authorised in this behalf by the State Government or a local authority". On the application of the Food Inspector consent in writing was given by a person authorised by the local authority. But it was contended by the respondent that the written consent was of no avail as it did not in terms name the person in whose favour it was given.

*Held*, that where a prosecution was launched on the basis of a written consent granted by the competent person or authority, it was not necessary to name the complainant in the consent. The Act did not in terms require that the complainant shall be named in the written consent nor could such a limitation or condition be gathered as a necessary intendment of the provision. The written consent was for the launching of a specified prosecution and need not necessarily be in favour of a complainant authorising him to file a complaint.

**CRIMINAL APPELLATE JURISDICTION :** Criminal Appeal No. 56 of 1959.

Appeal by special leave from the judgment and order dated December 18, 1957, of the former Bombay High Court in Criminal Revision No. 1671 of 1957, arising out of the judgment and order dated June 7, 1957, of the Sessions Judge, Baroda, in Criminal Appeal No. 33 of 1957.

*H. R. Khanna and D. Gupta*, for the appellant.

*G. C. Mathur*, for the respondent.

1960. August 31. The Judgment of the Court was delivered by

AYYANGAR J.—This appeal by special leave of this Court raises a very short point regarding the construction of s. 20(1) of the Prevention of Food Adulteration Act, 1954 (37 of 1954).

The respondent owned a milk shop within the Municipal limits of the city of Baroda. The Food Inspector of the Municipality visited the shop on July 9, 1956 and purchased milk for analysis. This was sent to the Public Analyst and when his report was to the effect that the sample was adulterated, the Inspector applied to the Chief Officer, Borough Municipality, Baroda, for the latter's consent, for instituting criminal proceedings under the Prevention of Food Adulteration Act, 1954 (referred to hereafter as the Act), against the respondent. A consent in writing to the initiation of this prosecution was given by the Chief Officer and thereafter the complaint out of which this appeal arises was instituted charging the respondent with an offence under s. 16 read with s. 7 of the Act for selling adulterated food.

The case was tried by the Special Judicial Magistrate, First Class, Baroda. Besides denying his guilt, the accused raised various technical objections, the principal of which was that the prosecution was incompetent because of non-compliance with the terms of s. 20(1) of the Act. This provision, omitting the proviso to which it is unnecessary to refer, runs:

“No prosecution for an offence under this Act shall be instituted except by, or with the written consent of, the State Government or a local authority or a person authorised in this behalf by the State Government or a local authority.”

The Magistrate overruled these objections and holding the accused guilty of the offence charged sentenced him to pay a fine of Rs. 300/- and in default to rigorous imprisonment for three months. Dealing with the objection based on s. 20(1) of the Act with which alone we are concerned, the learned Magistrate said:

“In the present case Baroda Municipal Borough is the local authority and it has authorized the Chief Officer and the health officer of the Municipality to

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grant sanction to institute proceedings under this Act by its resolution No. 222 dated May 7, 1956, the Chief Officer has given consent in writing to lodge this complaint against the present accused under the Act on October 13, 1956. The said consent in writing is on record at Ex. 10/7 and the copy of the Resolution of the Municipality empowering the Chief Officer and the health officer is also on record at Ex. 18/8. Thus in the present case there is a valid consent in writing given by the Chief Officer who has been duly authorised in this behalf by the Baroda Municipal Borough, to institute proceeding against the present accused under the Act.....The Food Inspector can lodge the complaints under the Act if consent in writing is given by a local authority or a person empowered in this behalf by the local authority. The food inspector had in the present case submitted all the papers to the Chief Officer who has been invested with the powers by the Municipality to give consent in order to seek his necessary consent in writing before lodging the complaint against the present accused. And after going through the said papers the Chief Officer had duly given consent to him to lodge this complaint. It is true that the consent does not bear the name of the food inspector but it impliedly follows that the consent was given by the Chief Officer to the person, viz., the complainant food inspector who sought the permission and none else."

Against his conviction and sentence the respondent filed an appeal to the Court of the Sessions Judge at Baroda. The Appellate Court set aside the order of conviction and sentence on the ground that the Food Inspector was not competent to institute the prosecution under s. 20(1) of the Act. Relying on the decision of a single Judge of the Madras High Court in *Cannanore Milk Supply Co-operative Society, In re*<sup>(1)</sup>, the learned Sessions Judge held that under the terms of the section, the only authority with whose "written consent" a prosecution could be instituted was the State Government and that neither "the local authority" nor "the person authorized in that behalf by the

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State Government or the local authority" were competent to grant "written consents" for the initiation of prosecutions. He, therefore, set aside the conviction and sentence and discharged the respondent.

The matter was thereafter brought up before the High Court of Bombay by the State by an appeal later converted into a Criminal Revision petition. The learned Judges of the High Court affirmed the order passed by the learned Sessions Judge. They disagreed with the Sessions Judge in his interpretation of s. 20(1) that a prosecution could not be instituted with "the written consent" of any authority other than the State Government. They, however, held that "the written consent" should name the person who could institute the complaint and that as "the consent" in the present case had not named the Food Inspector as the person authorized to file the complaint, the prosecution was not legally initiated. It is from this decision of the High Court that the State of Bombay, having obtained special leave of this Court, has brought this matter up before us.

There is here no dispute that "the local authority"—the Baroda Municipality, had authorized the Chief Officer of the Municipality to grant consents under s. 20(1) of the Act for the filing of complaints in regard to offences under the Act. There is no dispute either that the Chief Officer granted on October 13, 1956, his "written consent" to the filing of this complaint against the respondent. The "consent" is in the following terms:

"Under authority vested in the Chief Officer of the Baroda Borough Municipality.....sanction is hereby given for instituting prosecution against the following milk vendors for contravening the provisions of Government of India's Prevention of Food Adulteration Act, 1954."

The name of the respondent, his address and the date of the offence are then set out and it is followed by a paragraph which runs:

"This sanction is accorded after going through Milk Analysis Report and other pertinent documents and the nature of offence committed by each of the

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above persons as required by s. 20 of the Prevention of Food Adulteration Act, 1954."

We may, at the outset, point out that we entirely agree with the learned Judges of the High Court in their view that on the terms of s. 20(1) a prosecution could be instituted with the written consent not merely of the State Government but "of a local authority" or "a person authorised in this behalf by the State Government or a local authority". In our opinion, on the language of the sub-section no other construction appears possible. The learned Judges of the High Court said:

"The construction which has been put by the learned Sessions Judge obviously ignores the two commas, which appear in the section before and after the clause "or with the written consent of". One of the commas precedes, and the other follows the clause "or with the written consent of". The plain grammatical meaning of this section is that the written consent may be of the State Government, or a local authority, or a person authorised in that behalf by the State Government or local authority. In our view, under this section, the prosecution can be instituted (1) by the State Government, (2) by a local authority, (3) by a person authorised in that behalf by the State Government, or (4) by a person similarly authorised by a local authority. Further, a prosecution can also be instituted with the consent of any of these four authorities."

Even apart from the two commas, the construction which found favour with the learned Judge of the Madras High Court in *Cannanore Milk Supply Co-operative Society, In re* <sup>(1)</sup> is not possible without the sub-section being rewritten in these terms:

".....shall be instituted by or with the written consent of the State Government or by a local authority or a person authorised in this behalf by the State Government or a local authority."

Without the insertion of the word "by" before the words "a local authority", it would not be possible to exclude the written consents of local authorities etc. from the content of the sub-section.

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As already stated, the reasoning, however, by which the learned Judges of the High Court held the prosecution to be incompetent was that "the written consent" did not in terms, name the person "in whose favour" the sanction or "written consent" was given. The learned Judges stated :

"A written sanction of the nature which we have in the present case, or a written consent, without mentioning the person to whom such consent or sanction is given, would, in our view, not be a sufficient compliance with the terms of the sanction..... The present written consent does not mention the name of the Food Inspector as the person competent to institute the prosecution, and therefore we must hold that the institution of the prosecution, was without jurisdiction".

The learned Counsel for the appellant-State challenged the correctness of this construction. He referred us to the analogy of the decisions rendered on s. 197 of the Criminal Procedure Code where it has been held that "the sanction" referred to need not name the person who could institute the prosecution. We consider it unnecessary to canvass the relative scope of the language of s. 197 of the Criminal Procedure Code and of s. 20(1) of the Prevention of Food Adulteration Act. We prefer to rest our decision on the terms of s. 20(1) itself. To start with, the Statute does not in terms prescribe that the complainant shall be named in the "written consent". The only question, therefore, is whether such a limitation or condition could be gathered as a necessary intendment of the provision. In the first place, the reason of the rule could not suggest or imply such a condition. The rule has undoubtedly been designed to prevent the launching of frivolous or harassing prosecutions against traders. It therefore provides that the complaint should be filed, either by a named or specified authority or with the written consent of such authority. To read by implication that before granting a written consent, the authority competent to initiate a prosecution should apply its mind to the facts of the case and satisfy itself that a *prima facie* case exists for the

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alleged offender being put up before a Court appears reasonable, but the further implication that the complainant must be named in the written consent does not, in our opinion, follow. In the present case, the Analyst's Report was before the Chief Officer of the Municipality and it was after considering that report and the connected documents that the written consent or sanction was given. In the second place, the subsection itself contains an indication that the written consent is for the launching of a specified prosecution, and not one "in favour" of a complainant authorising him to file the complaint. Omitting for the moment the State Government and "the local authority" which are specified in the provision as competent by themselves to initiate prosecutions, persons "authorised by" these two authorities are further included. The expression "person authorised in this behalf" obviously refers to a named person who is so authorized. In the case of these four categories, the authority or person filing the complaint has itself or himself to consider the reasonableness and propriety of the prosecution and be satisfied that the prosecution is not frivolous and is called for. Turning next to the other class, the relevant words are "no prosecution.....shall be instituted except.....with the written consent of.....". Here the emphasis is on the consent to the filing of the prosecution, not to the person filing it. The preliminary examination of the facts to ascertain the desirability and propriety of the prosecution is in this last case, the responsibility of the person or authority giving the written consent—not of the person who figures as the complainant. The two classes are distinct and the employment of different phraseology to designate the two types of devolution of authority, constitutes an indication that in the second class of cases—where prosecutions are filed on the basis of written consents granted by the competent person or authority, the specification of the name of the complainant is not a statutory requirement—the consent being to a *specified prosecution*. We, therefore, consider that the prosecution in the present case was instituted on a

complaint which fulfilled the requirements of s. 20(1) of the Act.

One part of the reasoning of the learned Judges of the High Court was, that in the absence of persons being named in the written consent, a complaint might be lodged by persons over whom "the local authority" would have no control and that for this reason it was necessary to adopt the construction which they did of s. 20(1), namely, that the written consent should name the person authorized to file the complaint. In our opinion, this apprehension is not justified, for the written consent has to be filed by the complainant in order to enable the complaint to be entertained, and it is not as if the written consent will be available to all and sundry to be filed before the Magistrate. Besides, even on the reasoning of the learned Judges of the High Court there is no restriction as to the person who might be named as authorised to file the complaint. Normally, of course, the person named would be an officer of the Municipality, but theoretically there is a possibility that the person named might not be a Municipal servant, and if "the written consent" is in favour of such a person, the Municipal authority would have no administrative control over him. The complication referred to by the learned Judges would still be there, even though a person be named in the written consent given by the local authority. We, therefore, consider that this is not a circumstance which of necessity leads to the construction that the complainant ought to be named in "the written consent" under s. 20(1).

The respondent was not represented before this Court, and in view of the importance of the matter, Mr. G. C. Mathur was requested by the Court to appear as amicus-curiae and we express our thanks to him for the assistance he rendered us.

The appeal is accordingly allowed, the order of the High Court is set aside, and that of the Magistrate restored.

*Appeal allowed.*

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