

CASE NO.:
Appeal (crl.) 449 of 2002

PETITIONER:
SHRI RANAJAY BOSE

Vs.

RESPONDENT:
SHRI A.B. ROY & ANR.

DATE OF JUDGMENT: 05/04/2002

BENCH:
D.P. Mohapatra & Brijesh Kumar

JUDGMENT:

D.P. MOHAPATRA, J.

Leave granted.

This appeal filed by the accused is directed against the order passed by the High Court at Calcutta dismissing the application filed by him under Section 482 of Code of Criminal Procedure ('Crl. P.C.' for short) and confirming the order passed by the Senior Municipal Magistrate declining to accept his prayer for discharge in Complaint Case No.44-D of 1978. The application filed by the appellant under Sections 245(2) and 245(3) Cr. P.C. for discharge was dismissed by the learned Magistrate.

A criminal case was instituted against the appellant and some others alleging the commission of the offence punishable under Section 16(1) (a)(i) read with Section 7 of the Prevention of Food Adulteration Act, 1954 (for short 'P.F.A. Act'), on the allegation that he was selling adulterated tea leaves. The case of the prosecution was that the Food Inspector inspected the shop/godown/factory of M/s Brook Bond India Ltd. on 5.4.1978 and collected some samples of tea Grade PD-1. The said samples on analysis by the Public Analyst were found not conforming to the prescribed standard in respect of crude fibre content in the Tea and was found to be adulterated. The complaint was filed against the appellant after obtaining consent from the District Health officer IV (South West), Municipal Corporation of Calcutta. The Learned Magistrate on perusal of the complaint and the materials produced by the complainant, took cognizance of the offence under section 16(1)(a)(i) read with section 7 of the P.F.A. Act and issued process against the accused persons in May, 1978.

On consideration of the application filed by the appellant and other accused persons for discharge from prosecution, the learned Magistrate by the order passed on 25.08.1981 discharged the accused company M/s Brook Bond India Limited and Shri P.K. Banerjee, the Manager of the company from the prosecution but rejected the prayer

of the appellant. The Revision Petition filed by the appellant challenging the said order was dismissed by the High Court by order dated 22.12.1986. The appellant filed special leave petition, SLP(Crl.) 832/87 before this Court challenging the order of the High Court. The said SLP was later withdrawn by the appellant.

Thereafter the appellant filed an application under Sections 245(2) and 245(3) Cr. P.C. on 2.2.95 seeking discharge from prosecution on the grounds of delay in concluding the trial and want of a valid order giving consent for launching the prosecution against him. The learned Senior Municipal Magistrate rejected the application by the order dated 23.6.1995. The appellant challenged the order by filing the application under Section 482 of Cr.P.C. in the High Court which was registered as C.R.R.No.1978 of 1995. The High Court by the order dated 14.11.2000 dismissed the said petition with a direction for expeditious disposal of the case by the trial court. Hence this appeal.

On 19.11.2001 when the case was taken up the learned counsel appearing for the appellant submitted that he will not be pressing the question of delay in trial of the case. In view of the said order the only question that remains for consideration relates to the validity or otherwise of the order granting consent for the prosecution against the appellant.

The main thrust of the submissions of learned counsel for the appellant was that Dr. K.B.S. Chakraborty, District Health Officer-IV, Local (Health) Authority who had given consent for filing the complaint by the order dated 30.5.78 was not competent to accord such consent under the P.F.A. Act. He placed strong reliance on the judgment dated 14.2.1983, of the Calcutta High Court in the Criminal Revision Nos. 1275-1276 of 1982 titled Rasiklal Saxena vs. The State of West Bengal in which the High Court took the view that the Health Officer Calcutta Corporation was the only person competent to give consent for filing a complaint under the P.F.A. Act and that the District Health Officer-II and District Health Officer IV have no such authority for the purpose. Elucidating the point the learned counsel submitted that the Calcutta Corporation is split up into different districts and the District Health Officers are kept in-charge of each District; there is another officer who is designated as Health Officer of Calcutta Corporation. According to the learned counsel it is the latter officer who is authorised for according consent for prosecution under Section 20(1) of the P.F.A. Act. The District Health Officers in-charge of different Districts are not authorised for the purpose.

Per contra learned counsel appearing for the Corporation contended that on a fair reading of the relevant provisions of the P.F.A. Act the Calcutta Municipal Act, 1951 and the notifications issued under Section 20(1) of the P.F.A. Act it is clear that the District Health Officers of the Calcutta Corporation are authorised to give consent for filing complaints within their respective areas. Referring to column-II of the notification No.PII/213/3F-15/76 dated 25.1.1978 the learned counsel contended that the Health Officer-in-charge of every District of the Calcutta Corporation is authorised under the notification to exercise the power of granting consent for prosecution under Section 20(1). He further contended that if it was the intention of the State Government that

only the Health Officer of the Calcutta Corporation should exercise the power of granting consent under Section 20(1) then the entry in column-II of Item No.3 of the notification which reads "the area comprised in every District or areas added to the Calcutta Corporation" will be redundant. Regarding the expression "Health Officer" in column-I of item No.3 of the notification, learned counsel contended that the words in singular includes the plural and vice versa as provided in Section 13(2) of the General Clauses Act, 1897.

It will be convenient to notice some statutory provisions relevant for appreciating the point raised in the case before dealing with the merit of the case.

In Section 2(vii) of the P.F.A. Act "local area" means any area, whether urban or rural, declared by the Central Government or the State Government by notification in the Official Gazette, to be a local area for the purposes of this Act. Under Section 2(viii) "local authority" means, a local area which is (a) a municipality, the municipal board or municipal corporation. In Section 2(viia) the expression "Local (Health) Authority" in relation to a local area is defined to mean the Officer appointed by the Central Government or the State Government, by notification in the Official Gazette, to be in-charge of Health administration in such area with such designation as may be specified therein.

In Section 20 PFA Act provision is made regarding cognizance and trial of offences which reads as follows:

"(1) No prosecution for an offence under this Act, not being an offence under Section 14 or Section 14-A shall be instituted 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 order, by the Central Government or the State Government :

Provided that a prosecution for an offence under this Act may be instituted by a purchaser (or recognized consumer association) referred to in Section 12, (if he or it produces) in Court a copy of the report of the public analyst along with the complaint."

In Section 76 of the Calcutta Municipal Act, 1951 (West Bengal Act XXXIII of 1951) (CM Act for short) it is laid down that the State Government shall appoint a person to be the Finance Officer and the Chief Accountant of the Corporation and the Corporation shall appoint proper persons to be the Chief Engineer, Health Officer and the Secretary and may appoint one or more Deputy Commissioners. It is relevant to state here that in the C.M. Act neither the expression "Health Officer" nor "District Health Officer" is defined.

The Government of West Bengal issued three notifications on 25.1.1978 which are relevant for the

purpose of the present case. By the Notification No.PII/211/3F-15/76 dated 25.1.1978 issued in exercise of the powers conferred by clause (vii) of Section 2 of the P.F.A.Act and in supersession of all previous notifications on the subject, the Governor has been pleased to declare certain areas as local areas as mentioned in the Schedule for the purposes of the P.F.A. Act. In clause 3 of the said notification, it is stated that the area comprised in every district or the area added to, the Calcutta Corporation will be a local area as described in Schedule I to the C.M.Act.

In the notification No.PII/212/3F-15/76 dated 25.1.78 the Governor of West Bengal in exercise of power conferred by clause (viii-a) of Section 2 of the P.F.A.Act has appointed officers as mentioned in column I of the Schedule as the Local (Health) Authority in relation to the Local Areas declared in notification No.PII/211/3F-15/76 dated 25.1.78 each in column II of the said schedule to be in charge of the Health Administration in such areas as noted in column II of the said schedule. Against item No.3(1)(v) therein it is stated that the Health Officer, District No.IV of the Corporation of Calcutta shall be the Local (Health) Authority in-charge of the areas comprised within District No.IV of the Calcutta Corporation.

In another notification issued on 25.1.78 PII/213/3F-15/76 the Governor in exercise of power conferred under sub-section (1) of Section 20 of the P.F.A. Act and in supersession of the Department's notification dated 2nd July, 1976 appointed the authorised officers specified in column I of the schedule in respect of the Local Area specified in column II of the said schedule as the authority for the purpose of sub-section (1) of Section 20. Against item No.3 therein it has been stated "Health Officer of the Corporation of Calcutta" in relation to the areas comprised in every District of, or areas added to, the Calcutta Corporation.

The question formulated earlier is to be considered in the light of the statutory provisions and the notifications applicable to the matter. As noted earlier, the main contention of the learned counsel for the appellant is that under the notification issued by the Governor of West Bengal on 25.1.78 the Health Officer of the Corporation of Calcutta is the only person authorised to grant consent for launching prosecution under Section 20(1) of the P.F.A. Act.

Considering the rival contentions raised by the learned counsel appearing for the parties, we are of the view that the contention raised by the learned counsel for the Corporation is to be accepted. While issuing the notifications if the intention of the authority was to vest the power to accord consent for launching prosecution under Section 20(1) of the P.F.A. Act, then it would have been so stated in column-II against item No.3 of the notification, 'the areas comprised in or areas added to, the Calcutta Corporation' instead of 'the areas comprised in every District of the Calcutta Corporation'. If the entire Corporation was to be taken as one unit for the purpose of vesting power under Section 20(1) P.F.A. Act then reference to every District was redundant. For ascertaining the intention of the authority issuing the notification the entry should be read in its entirety. Construing a portion of the notification which will result in

rendering the other portion redundant should be avoided.

The matter can also be viewed from another angle. If the area of the Corporation has been split up into different Districts for convenience of administration, then it is reasonable to think that the State Government intended to delegate the power under Section 20(1) of the PFA Act to the Health Officers in-charge of the Districts. The necessity to deal with matters relating to accord of consent under Section 20(1) for launching prosecution against persons allegedly involved in offences under the P.F.A. Act is important keeping in view the menace of food adulteration in society. Every effort should be made to eradicate such a menace for the sake of a healthy society. Therefore, the interpretation that each District Health Officer is authorised to exercise the power under Section 20(1) to accord consent under Section 20(1) P.F.A. Act in respect of the respective District in his charge appears to us to be more rational and in keeping with the purpose of delegation of the power of the State Government.

Coming to the decision of the Calcutta High Court in *Rasiklal Saxena vs. The State of West Bengal* (supra) on which strong reliance was placed by learned counsel for the appellant, we find that the High Court has not properly considered the notification No.PII/213/3F-15/76 dated 25.1.78 while holding that the District Health Officers have no authority to grant consent for launching prosecution under Section 20(1) of the P.F.A. Act. The decision is erroneous and it is declared as no longer good law.

The High Court in the order under challenge did not disturb the view taken in the earlier decision in *Rasiklal Saxena vs. The State of West Bengal* (supra) and decided the case against the appellant and in favour of the Corporation applying the 'de facto doctrine'. It was fairly stated by the learned counsel appearing for the Corporation that the said doctrine has no application in the case. If the authority who granted consent for launching prosecution was not vested with such power under the statute then question of applying the 'de facto doctrine' to the order passed by such authority does not arise. However, as we have not accepted the contention raised on behalf of the appellant on merits of the case and have taken the view that the District Health Officer is competent to pass the order granting consent for prosecution, the order of dismissal of the Revision Petition filed by the appellant is to be maintained. Therefore, the appeal is dismissed though for reasons different from those given in the impugned order.

.J.
(D.P.MOHAPATRA)

.J.
(BRIJESH KUMAR)

April 5 , 2002