Municipal Corporation of Delhi Vs. Ved Sayal Kumar Ice Factory

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Court : Delhi

Decided On : Nov-23-1979

Reported in : 17(1980)DLT211

Judge : Prithvi Raj and; O.N. Vohra, JJ.

Acts : Delhi Municipal Corporation Act, 1957 - Sections 417; Prevention of Food Adulteration Rules, 1955 - Rule 50

Appeal No. : Criminal Appeal No. 101 of 1973

Appellant : Municipal Corporation of Delhi

Respondent : Ved Sayal Kumar Ice Factory

Judgement :

O.N. Vohra and Anand Sarup, JJ.

(1) Inspector, Department of Factories,Delhi Municipal Corporation, visited Kumar Ice Factory at 14, Upper BelaRoad;, Jamuna Ice Factory at 16, Upper Bela Road and Friends Ice Factoryat 18, Upper Bela Road, on 7/06/1969 and again on 10/06/1969 andfound that the ice factories were being run by electricity by Ved Sayal, DesRaj and Lochan Singh, respectively, in the absence of any license issued bythe Commissioner, Delhi Municipal Corporation under Sections 416 and 417 of Delhi Municipal Corporation Act, 1957 hereinafter referred to as the Act. Accordingly, he prepared challans on the basis of which six complaints wereprepared and were filed before the Magistrate by Inspector Raghbir Saran,Office Inspector, Prosecution Department, Delhi Municipal Corporation, whowas competent to file the same by virtue of an order passed by the Commissioner, Delhi Municipal Corporation, copy whereof is Ex. PE. The complaintsin respect of the first visit came up on June 11, 1969 when Ved Sayal, DesRaj and Lochan Singh were asked to show cause why they should not be convicted under Sections 416 and 417 read with Section 430 of the Act. Theypleaded not guilty and took the stand that licenses had been applied for.Similar show cause notices in regard to complaints in respect of second visitwere given to these persons on November 5,] 969 and they pleaded not guilty. Three separate trials in respect of both the notices ensued. Onbehalf of Municipal Corporation of Delhi, Anand Sarup appeared as Public Witness Public Witness 1and spoke about the two visits paid by him. He swoie that Ved Sayat, DesRaj and Lochan Singh were found running the three factories, namely,Kumar Ice Factory, Jamuna Ice Factory and Friends Ice Factory, in theabsence of any license issued by the Commissioner, Municipal Corporationof Delhi in the names of these factories. Raghbir Saran appeared as Public Witness Public Witness 2and proved his reports Ex. Pa and Ex. Pb in regard to the two visits andcomplaints Ex. Pc and Ex. Pd, which had been filed on the basis of

the saidreports. He swore that be was authorised to file complaints on behalf of theCommissioner, Municipal Corporation of Delhi, and produced Ex. Pe, copyof order passed by the Commissioner in that behalf.

(2) Ved Sayal, Des Raj and Lochan Singh admitted that they wererunning their respective ice factories with the help of electricity on the datesand timings which were put to them but denied visits having been paid byAnand Sarup. They filed written statements on identical lines contending that ice factories were set up as far back as the year 1948 or 1949 and theywere issued single license for running the factory by the Notified Area Committe but subsequently on the coming into existence of the Municipal Corporation of Delhi in the year 1958, their licenses were renewed up to 31/03/1969. They further stated that in the year 196 , Delhi Municial Corporation issued notification for issuance of trade licenses in regard tofactories situated in conforming as well as non-conforming areas and theyrequested for issuance of such licenses but despite long correspondence theyhad and legal notices which were served. Municipal Corporation of Delhiwithheld renewal of licenses by acting in the most indiscriminatory fashion.

(3) In defense Shri Mangey Ram (DW2), Deputy Assessor & Collector,Shri Bansi Lal (DW3), Zonal Assistant Commissioner, S.P. Zone and ShriH.L. Gupta, (DW3), license Clerk, Civil Lines Zone, all belonging to theMunicipal Corporation of Delhi, were examined. Subsequently, Shri R.L.Gupta was examined as CW.1. The pith and substance of the evidence ofthese witnesses was that Ved Sayal, Des Raj and Lochan Singh applied for renewal of licenses for their factories in April 1969 and the licenses wererenewed in the year 1969-70 or for even subsequent period but those licenseswere for sale and manufacture of ice issued by the Health Department ofMunicipal Corporation of Delhi whereas these persons were required toobtain separate licenses for running of factories by electricity from FactoryDepartment of the Municipal Corporation of Delhi.

(4) Shri B.L. Anand, Judicial Magistrate, 1st Class, Delhi, vide hisseparate judgments passed on 3/04/1972 found firms Kumar Ice Factory,Jamuna Ice Factory and Friends Ice Factory guilty of having Contravenedthe provisions of Section 417 of the Act punishable under Section 461 of theAct and imposed on each of the firms a fine of Rs. 1,000.00.

(5) Feeling aggrieved the three firms filed three separate appeals beforethe Sessions Judge, Delhi. The appeals came upbefore Shri M.K. Chawla,Additional Sessions Judge, Delhi for hearing. It was submitted before thelearned Additional Sessions Judge that complaints had not been filed by a duly authorised person and, thereforee, the trials stood vitiated on thatcount. It was also submitted that from the facts which bad come on therccord, it was manifest that the prosecution was barred by limitation. Boththese objections found favor with the learned Additional Sessions Judge whofurther took the view that there was no merit in the contention that the threefirms were required to obtain separate sets of licenses from the Departmentof Health and Department of Factories and if that wera so, the Commissionerof Delhi Municipal Corporation should have made it clear to the three firmsthat they were so required. The result was that the three appeals wereaccepted vide consolidated judgment dated 8/12/1972.

(6) Peeling dissatisfied with the judgment of acquittal, the DelhiMunicipal Corporation has preferred Criminal Appeal No. 101 of 1973 in respect of Kumar Ice

Factors, Criminal Appeal No. 102 of 1973 in respect ofJamun Ice Factory and Criminal Appeal No. 103 of 1973 in respect ofFriends Ice Factory. Inasmuch as common questions of law and fact areinvolved, it would be expedient to dispose of these three appeals by a singlejudgment.

(7) It is submitted by Shri Maheshwar Dayal, learned Counsel appearing for Municipal Corporation of Delhi, that Raghbir Saran was a personduly authorised by the Commissioner, Municipal Corporation of Delhi tomake complaints and that the complaints were actually made and no objection in this behalf was raised before the learned Magistrate and, thereforee,the finding of the learned Additional Sessions Judge that complaints had notbeen filed by a person duly authorised is wholly unwarranted. After havingbeen led through the records it is found that reports in regard to two dateswhen the ice factories were visited. Ex. Pa and Ex. Pb in each case are onone side and complaints Ex. Pc and Ex. Pd are on the reverse of the samesheets. All the complaints bear the signatures of Raghbir Saran and it is notin dispute that he was a person duly authorised by the Commissioner, Municipal Corporation of Delhi under Section 467 of the Act. The provision, in substance, creates an embargo on holding trial for any offence made punishable by or under the Act except on the complaint of, or upon informationreceived from the Commissioner etc. or a person authorised by the Commissioner etc. by general or special order in that behalf. It appears that RaghbirSaran stated in answer to a question put in cross-examination that he receivedthe reports Ex. Pa and Ex. Pb on 12/06/1969 and filed complaints in Courton that very day. The learned Additional Sessions Judge got so much boggeddown by this submission, which was partially correct, that he came to theconclusion that it could not be said that both the complaints had been filed inaccordance with the provisions of Section 467 of the Act. This conclusion ismanifestly erroneous and unwarranted. The complaint Ex. Pc bears thedate 6/06/1969 and happens to be on the reverse of the sheet bearingreport Ex. Pa which pertains to the visit paid on 7/06/1969. There is aspecific mention that the respondents had been directed to appear befor theMunicipal Magistrate on 9/06/1969. The judicial record shows that thecomplaint was put up on that day and appearance was entered on behalfof the respondents as well as the Counsel. Not only this, notices under section 242 of the Criminal Procedure Code were given to the respondentsand their pleas of not gvilty were recorded. These facts when put to ShriPrabhash Chand Mathur. learned Counsel who represented the respondentsbefore the Magistrate, were not denied. It, thereforee, follows that what wagstated by Raghbir Saran in cross-examination pertained to the one set ofcomplaints Ex. Pd which appears on the back side of the report Ex. PB. Thecomplaints bear the date 12/06/1969. The fact that after the transfer ofthe case from the Magistrate who took cognizance on 9/06/1969, freshnotices in regard to subsequent complaints dated 12/06/1969 were issuedand fresh pleas of not guilty were recorded, gives strength to the conclusionthat the two complaints were filed on June 9 and June 12, 1969 which werethe dates intimated to the respondents for appearance before the Magistrate.

(8) It is next submitted that the findings of the Perned AdditionalSessions Judge that the prosecutions were barred by limitation is hot sustainable inasmuch as the violation with which the respondents' were (chargedcame to notice within six months of the filing of the complaints as providedby Section 471 of the Act.' There is obvious force in this contention. Section 416(1) of the Act provides that no person shall, without the previous permission in writing of the Comnussioner,' establish in any prmises or materiallyalter, enlarge or extend, any factory, workshop or trade premises

in which IT is intended to e.i ploy steam, electricity, water or other mechanical powerand, thereforee, no complaintagainst establishing, materially altering of anyfactory etc. alter the expiry of six months, from the date , the Commissionof such an offence or the date on which the commission or existence of suchan offence was first brought to the notice of the Municipal Corporation ofDelhi, could be filed. Herein we are concerned with the violation of theprovisions of Section 417 of the Act. The relevant portion of this Sectionsays that no person shall use any premises for any of the purposes withoutor otherwise than in conformity with the terms of a license granted by theCommissioner. Clause (a) of sub-section (1) mentions any of 'the purposesspecified in Part I of the Elevnth Schedule', and such item (xxxi) pertainingto manufacturing is ice (including dry ice). According to the scheme of theAct, licenses are issued from year to year. The visits in these cases were paidby the Inspector during the year 1969-70. The respondents 'were found running ice factories by using electricity. They were not in possession of anylicense issued by the Commissioner under Section 417 of the' Act. The coniplaints were filed within a couple of days of the detection of the violation.No consideration, in the circumstances, of prosecutions being barred and6rSection 471 of the Act, at all, arises. It appears that the learned AdditionalSessions Judge completely mis-directed himself by excessively relying uponthe statement of Mangey Ram who stated on the basis of an office note towhich no finality attached that the respondents were issued licenses by' (heNotified Area Committee prior to the coming into force of the Act and thatno licenses had been issued after 31/03/1958 or Mar 31/03/1959. Theoffence of running factory without license is a continuing offence and if prosecution for violation of Section 417 of the Act is launched within six monthsof the detection of the violation in a particular financial year, it is not possible to say that the bar of limitation arises.

(9) On merits, the acquittals were wholly unjustified. Although therespondents pleaded not guilty on 9/06/1969 they admitted that they werenot in possession of licenses. They admitted that they had applied forlicenses. Submission of an application for license or payment of license feein anticipation of the grant of the license may, in certain circumstances. Constitute factors which have bearing on the consideration of quantum of sentence once violation of the provision of Section 417 of the Act is found to havebeen established but these have no relevance when the point for determinationis whether there was violation inasmuch as something was done withoutprocuring license when there was prohibition against doing of that thing inthe absence of a license. Learned Counsel for the respondents have takenus through the evidence of the three witnesses examined in defense and thelast one who was again called as a Court witness. We have also been shownreceipts in regard to payment of certain amounts on account of license feeas v ell as penalty to the Health Department. Inasmuch as it was claimedthat everything that was required of the respondents in the matter of procuring licenses had in fact been done and licenses had been withheld withoutjust cause, we called for the records of the Municipal Corporation of Delhiand found that in regard to the alleged payments for the period from 1972 to1980, licenses had been renewed by Zonal Health Officer on receipt oflicense fees and penalties licenses had been issued but those licenseswere licenses prescribed by Rule 50 of the Prevention of Food AdulterationRules, 1955. Administration' Circular No. 161 dated 14/03/1960 comprises of two parts. The first part states that with effect from 1/04/1960licensing of food shops and the allied traders will be done, regulated andcontrolled in accordance with the provisions of, the Delhi Prevention of FoodAdulteration Rules, 1956 and para 2 mentions .rates for original license orits renewal after one month from the expiry of the previous license. Item 9of the Schedule pertains to manufacture of ice and Item 10 pertains to sale

ofice. Rule 7 of Delhi Prevention of Food Adulteration Rules, 1956 containsscale of fee for the issue and. renewal of license for each trade as fixed bylocal authority concerned in its local area and mentions maximum rates whichcould be fixed formanufacture of ice and sale of ice against Items 11 and 12. It is manifest that respondents sought renewal of licenses under the Preventionof Food Adulteration Rules and had last succeeded in their endeavor.This if, however, wholly irrelevant for determining their liability for havingviolated the provisn of Section 417 of the Act. The witnesses examined indefense have been categorical that besides the license required under the Prevention of Food, Adultertion Rules, another license issued by the FactoriesDepatment of the Municipal Corporation of Delhi is incumbent. The observations of the learned Additional Sessions Judge that if it were so, therespondents.should have clearly notified is to say the least wholly uncalledfor. Every citizen is expected to know the law of the land and ignorancethereof can never furnish an excuse. In the instant case, however, the respondents' knew that they were required to have a license from the FactoriesDepartment of the Delhi Municipal Corporation and they were running theirfactories in the hope that they would be granted the license. The license inwriting,is a condition precedent for the working of an ice factory under theMunicipal Corporation Law and once that fact is admitted or established,the necessary conclusion is in regard to guilt of the respondents. It wouldalso be seen that the respondents have brought on record copy of noticedated 24/06/1969 served by them through Gauri Shanker, Advocate, onthe Commissioner, Municipal Corporation of Delhi. It is mark 'A'. In para4 of this it is mentioned that the respondents were granted healthlicenselby the ealth Department of the Municipal Corporation of Delhi butthe otter licenses known as trade licenses were required to be issued by theLicensing Department of the Municipal Corporation of Delhi and which hadbeen applied for but had been withheld despite issuance of many remindersand personal approaches by the respondents. It cannot, thereforee, be saidthat the respondents were not aware of the requirement of the law, namely,the issuance of licenses for running factories in the premises by use of electricity in addition to the health license which was required under thePrevention of Food Adulteration Rules, 1955.

(10) For the foregoing reasons, the acquittals of the respondents must be held to be wholly illegal, and unjust besides being contrary to the facts established on record. Accordingly, we accept these appeals and set aside the impugned judgment dated 8/12/1972 of the Additional Sessions Judge and restore the judgment dated 3/04/1972 of the Judicial Magistrate 1st Class, Delhi. A period of 15 days is allowed for payment of the fine.