

Nirmal Singh v. Union Territory, Chandigarh (H. S. Rai, J.)

heirs, the appeal cannot proceed *qua* interest of Nara Singh, as it would result in passing conflicting decrees. Such a course has to be avoided, as held in *Godha Ram and others v. Chuhara Ram and another* (6).

(6) For the reasons recorded above, both the applications are dismissed with no order as to costs. With the result, Regular Second Appeal is also dismissed with no order as to costs. C.M. 2640-C of 90 stands dismissed.

P.C.G.

Before : Harbans Singh Rai, J.

NIRMAL SINGH,—*Petitioner.*

versus

UNION TERRITORY, CHANDIGARH,—*Respondent.*

Criminal Misc. No. 1541-M of 1990.

6th June, 1990

Prevention of Food Adulteration Act, 1954—Ss. 9 and 20(1)—Notification authorising Food Inspectors to take samples and institute prosecution—Such notification issued by Chief Commissioner, Chandigarh—Validity of such notification.

Held, that at all relevant times, the Administrator of Union Territory, Chandigarh appointed by the President under Article 239 of the Constitution of India was called the Chief Commissioner and that the Administrator, Union Territory, Chandigarh is the Central Government. The Food Inspector who took the sample was appointed by the appropriate Government under Section 9(1) of the Act and that the prosecution was initiated by a person duly authorised to do so under Section 20(1) of the Act.

(Paras 6 & 8)

Petition u/s 482 Cr. P. C. praying that the complaint Annexure P-1 may kindly be ordered to be quashed and the prosecution of petitioner resulting into order. Annexure P-2 may kindly also be set-aside as the same is based on the notification made by the Chief Administrator, Chandigarh which is bad and is not in compliance

with the section 20(1) of the prevention of Food Adulteration Act, 1984, for acceptance of the revision petition and for setting aside the impugned order and complaint.

D. S. Marwaha, Advocate, for the Petitioner.

Anand Swaroop, Senior Advocate, Sunidh Kashyap, Advocate with him, for the Respondent.

ORDER

Harbans Singh Rai, J.

(1) This order will dispose of Criminal Misc. No. 1541-M of 1990 as well as Criminal Misc. Nos. 7086-M and 7841-M of 1987, 2785-M, 2786-M, 2787-M, 2788-M, 4065-M, 4877-M, 6252-M, 6664-M, 7931-M, 8355-M and 8943-M of 1988, Criminal Revision No. 601 of 1989, Crl. Misc. No. 732-M, 1090-M, 1801-M, 2012-M, 2838-M, 3339-M, 5260-M, 5291-M, 7717-M, 8254-M and 10844-M of 1989 and 307-M, 1010-M, 1842-M, 1929-M, 1995-M, 2158-M, 2631-M, 2756-M, 3114-M, 3217-M, 3371-M, 3528-M, 3588-M, 3637-M, 3659-M, 3904-M, 4075-M, 4119-M and 4875-M of 1990 as common questions of law are involved in all these cases.

(2) The facts of these cases need not be mentioned as only law points are involved which are enumerated as under :—

(i) Whether the Food Inspectors who had taken samples of adulterated food, had not been validly appointed by the appropriate Government under Section 9 (i) of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the Act).

(ii) Whether the Inspectors who instituted the prosecution in each case, had not been duly authorised to initiate prosecution under Section 20(i) of the Act.

(3) The learned counsel for the petitioners has relied on unreported decision of this court in Civil Writ Petition No. 3380 of 1985 "*Pawan Kumar v. The Chandigarh Administration and another*", in support of their contention.

Nirmal Singh v. Union Territory, Chandigarh (H. S. Rai, J.)

(4) I have heard learned counsel for the parties and gone through the record and the relevant provisions of the Act. The provisions of Sections 9(1) and 20(1) of the Act are as follows :—

“9. Food inspector—(1) The Central Government or the State Government may, by notification in the Official Gazette, appoint such persons as it thinks fit having the prescribed qualification to be food inspectors for such local areas as may be assigned to them by the Central Government or the State Government as the case may be :

Provided that no person who has any financial interest in the manufacture, import or sale of any article of food shall be appointed to be a food inspector under this section.”

20. cognizance and trial of offences.—(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 recognised 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.”

(5) In all the cases, notifications, similar to the one quoted below had been issued and published in the Chandigarh Administration Gazette :—

“Chandigarh Administration, Health Department Notification The 9th February, 1984. No. MH-III-84/1425—In exercise of the powers conferred by sub-section (1) of Section 9 of the Prevention of Food Adulteration Act, 1954 (Central), Act No. 37 of 1954, the Chief Commissioner Chandigarh, is pleased to appoint the following Sanitary Inspectors as Food Inspectors for the Union Territory of Chandigarh.

1. Shri Vireshwar Singh.
2. Shri M. K. Sharma.
3. Shri Balbir Singh.

P. D. VASHISHAT,
Finance Secretary
Chandigarh Administration.”

Notification dated 27th October, 1979. No. 7652-MH-III-79/10991—in supersession of the Chandigarh Administration Health Department Notification No. 2859-MH-III-78/9174, dated the 6th May, 1978 and in exercise of the powers conferred by sub-section (1) of Section 20 of the Prevention of Food Adulteration Act, 1954 (Central Act No. 37 of 1974) the Chief Commissioner Chandigarh is pleased to authorise the following persons to institute prosecution for offences under the aforesaid Act within the Union Territory Chandigarh.

1. Shri Kuldip Singh, Sanitary Inspector, Chandigarh Administration.
2. Shri Hardial Singh, Sanitary Inspector, Chandigarh Administration.

RAM GOPAL,
Finance Secretary,
Chandigarh Administration.

(6) Mr. Anand Swaroop, Senior Advocate, learned counsel for Union Territory Chandigarh has contended that in every case the sample was taken by the Food Inspector named in the relevant notification and the prosecution in Court was initiated by the person named in the said notification. He further contended that at all the relevant times, the Administrator of the Union Territory of Chandigarh appointed by the President under Article 239 of the Constitution of India was called the Chief Commissioner and that the Chief Commissioner/Administrator of the Union Territory of Chandigarh is the Central Government. He has placed reliance on Section 3(8)(iii) of the General Clauses Act, 1897 in support of his arguments. He has also relied upon "*Goa Sampling Employees Association v. General Superintendance Co. of India Pvt. Ltd. and others* (1), A.I.R. 1985 Supreme Court 357 wherein it has been held as under :—

‘The High Court after referring to the definitions of the aforementioned three expressions as set out and discussed herein first observed that on a careful reading of the definition, it appears that in relation to the administration

(1) A.I.R. 1985 S.C. 357.

Maya Devi (Smt.) *alias* Savita Rikhi *v.* Surjit Singh and another
(A. L. Bahri, J.)

of a Union Territory, the administrator thereof acting within the scope of the authority given to him under Article 239 of the Constitution is the Central Government. So far there is no dispute. The High Court then observed that it must follow that the Administrator is the State Government in so far as the Union Territory is concerned and it is so provided in the definition of the State Government in Section 3(60) of the General Clauses Act.' The High Court fell into an error in interpreting clause (c) of Section 3(60) which upon its true construction would show that in the Union Territory, there is no concept of State Government but wherever expression 'State Government' is used in relation to the Union Territory, the Central Government would be the State Government. The very concept of State Government in relation to Union Territory is obliterated by the definition."

(7) A Division Bench decision of this Court reported in *Chief Commissioner, Union Territory Chandigarh and others v. Sushil Flour, Dal and Oil Mills* (2), has also been relied upon on behalf of Union Territory.

(8) In view of the law laid down in Goa Sampling Employees Association's case (Supra), I do not find any force in the arguments of learned counsel for the petitioners that the Food Inspector who took the sample in any of the cases was not appointed by the appropriate Government under Section 9(1) of the Act and that the prosecution was not initiated by a person duly authorised to do so under Section 20(1) of the Act. I, therefore, dismiss all the petitions.

(9) The parties, through their counsel, are directed to appear in the trial court on June 15, 1990.

S.C.K.

Before A. L. Bahri, J.

MAYA DEVI (SMT.) ALIAS SAVITA RIKHI,—Appellant.

versus

SURJIT SINGH AND ANOTHER,—Respondents.

Regular Second Appeal No. 858 of 1983

16th August, 1990

(2) 1983 (2) (PRH)I.