

## REVISIONAL CRIMINAL

*Before Kapur, J.*HUKAM CHAND,—*Petitioner**v.*THE STATE,—*Respondent***Criminal Revision No. 950 of 1956.**

1956

Dec. 6th

*Punjab Pure Food Act (VIII of 1929)—Section 19—Object and effect of—Prosecution launched against a person in accordance with the Section—Any other person committing a similar offence—Whether can be tried in the same proceedings or a separate complaint in regard to every sale is necessary.*

B. L. was prosecuted for an offence under section 13(1) (a) of the Pure Food Act to which he pleaded guilty, but stated he had purchased the article from H. C. and prayed for his prosecution. The Magistrate ordered that H. C. be proceeded against and issued notice to him to appear before him to answer the charge. H. C. appeared, pleaded guilty and was fined. He filed an appeal but his conviction was maintained. He then filed a revision in the High Court on the ground that the proceedings taken against him were without jurisdiction as no complaint by a competent person as required by section 19 of the Act had been filed against him.

*Held*, that the object of enacting section 19 of the Pure Food Act and similar provisions is to give protection to the seller, so that they are not harassed and that in every case a responsible official has an opportunity of considering the case before the prosecution is instituted.

*Held*, that no Court can proceed in regard to an offence under the Pure Food Act unless there is a complaint filed particularising the person who has committed the offence and the nature of the article which has been sold. If this is not done the prosecution is without jurisdiction and must be quashed.

*Held further*, that once a prosecution is launched against a particular person for the sale of an adulterated article of food, another person who may have committed a

similar offence is not liable to be tried in the same proceedings. Every individual person who has committed an offence should be prosecuted separately on a complaint made in regard to a particular sale.

*Petition under sections 435/439 of Criminal Procedure Code, for revision of the order of Shri Manohar Singh Bakhshi, Sessions Judge, Hoshiarpur, Camp Dharamsala, dated the 8th November, 1955, modifying that of Shri Lal Singh, Sub-Divisional Magistrate, Nurpur, District Kangra, dated the 23rd July, 1955, convicting the petitioner under Section 13(1) (a) of the Pure Food Act.*

Y. P. GANDHI, for Petitioner.

HAR PARSHAD, Assistant Advocate-General for Respondent.

### JUDGMENT

KAPUR, J.—This case raises a question of some importance as well as of interest to the mercantile community. The Government Food Inspector of Kangra at Dharamsala filed a complaint in the Court of the Additional District Magistrate, Dharamsala, against Behari Lal under section 13(1)(a) of the Punjab Pure Food Act read with rule 18 of the Rules made under this Act. Kapur, J.

The complaint is a printed one and is given as from No. 1. In paragraph No. 1 of this complaint are given the nature of the sample and the person from whom it was taken. In paragraph No. 2 it is mentioned that a certificate of the Public Analyst is attached and paragraph No. 3 runs as under:—

“The petitioner prays that as Shri Behari Lal has committed an offence under section 13(1)(a) read with rule 18 of the Punjab Pure Food Act, 1929, action

Hukam Chand  
 v.  
 The State

may be taken against him under section 13(8)(a) of the Act."

Kapur, J.

There is a provision made for showing whether there are any previous offences against the accused person or not. The complaint is signed by the Government Food Inspector, Kangra at Dharamsala. Behari Lal pleaded guilty and also stated that he had purchased this turmeric from Messrs. Chand Traders of Amritsar, the proprietor of which is Hukam Chand, the petitioner before me, and prayed by an application dated the 18th April, 1955, that action be taken against Hukam Chand who had sold the goods to him. On the same day Hukam Chand was ordered to be proceeded against and was called upon to appear on the 25th April, 1955. Ultimately Hukam Chand appeared on the 23rd July, 1955 and pleaded guilty to the charge. He was convicted and fined Rs. 500. He took an appeal to the Sessions Judge who upheld the conviction but reduced the fine to Rs. 250 and has come in revision to this Court.

It is rather a novel procedure which was followed by the learned Magistrate and its legality or otherwise seems to have escaped the notice of the learned Sessions Judge.

Section 19 of the Pure Food Act, 1929, makes provision for institution of prosecution and provides:—

"19. No prosecution under this Act shall be instituted except on the complaint of an Inspector authorized in this behalf by a general or special order of the Director of Public Health or of the local authority which appointed such Inspector, as the case may be."

The question for decision in this case is as to what is the effect of this section. Does it mean

that once a prosecution is launched against a particular person for the sale of an adulterated article of food, any other person who may have committed a similar offence is also liable to be tried, or does it mean that the prosecution should be of each individual person who has committed an offence and that a separate complaint has to be made in regard to a particular sale. In order to determine this, it is necessary to look at the preamble of the Act which is as under:—

v.  
The State

Kapur, J.

“Whereas it is expedient to make better provision in Punjab for the control of the preparation and sale of food, and whereas the previous sanction of the Governor-General under section 80-A (3) of the Government of India Act has been obtained; It is hereby enacted as follows:—”

Thus the object of the Act is to make provision for the control of the sale of food. Sale has been defined in the Sale of Goods Act to mean a contract by which the property in goods is transferred from the seller to the buyer. Thus in every sale there must be a seller and there must be a buyer and if the object of the Pure Food Act is to control sales then in every case it must be indicated as to who the seller is, and when a prosecution is to be started for the sale of an adulterated article. It appears to me that it would be making the provisions nugatory, if the Magistrate can call anybody he likes without there being a prosecution instituted before him against that particular person under section 19.

Mr. Har Parshad for the State submits that the meaning of the words “no prosecution shall be instituted” is that no case can be started except on the complaint of an Inspector and not that no

Hukam Chand  
v.  
The State  

---

Kapur, J.

prosecution shall be instituted against a particular person, and he has referred to section 190(1) (c) of the Criminal Procedure Code but that provision is wholly a different one because it is meant to give jurisdiction to Magistrate for taking cognizance of offences. If that had been a sufficient provision for the Magistrate to take cognizance of an offence under the Pure Food Act, I do not think there was any necessity for enacting section 19, the object of which, in my opinion, appears to be that nobody should be harassed unless some responsible Government official is satisfied that a case has been made under the Pure Food Act.

Reference has been made to English provisions in regard to informations and indictments. Now every indictment has to be commenced in a particular form which begins:—

“The Queen v. AB

Court of Trial (e.g., Central Criminal Court, (or) (Kent) Assizes held at (Maidstone), (or) (Hampshire) Quarter Sessions held at (Winchester).

AB is charged with the following (offences).”

Similarly in the case of an information the form prescribed is similar in which also the name of the accused person is to be indicated.

The form of the complaint which is being filed in this particular case shows that the person from whom a particular substance has been purchased has to be mentioned in the complaint as also the article which has been purchased and also that, according to the Public Analyst, the

article has been found to be adulterated as defined in section 4 of the Pure Food Act. In this connection it would be advantageous to quote from the judgment of Spens C. J. in *Basdeo Agarwalla v. Emperor* (1), where his Lordship observed:—

Hukam Chand  
v.  
The State  
Kapur, J.

“In our view, the absence of sanction prior to the institution of the prosecution cannot be regarded as a mere technical defect. The clause in question was obviously enacted for the purpose of protecting the citizen, and in order to give the Provincial Government in every case a proper opportunity of considering whether a prosecution should in the circumstances of each particular case be instituted at all. Such a clause, even when it may appear that a technical offence has been committed, enables the Provincial Government, if in a particular case it so thinks fit, to forbid any prosecution. The sanction is not intended to be and should not be an automatic formality and should not be so regarded either by police or officials.”

It is quite clear from this passage that the object of enacting section 19 of the Pure Food Act and similar provisions is to give protection to the sellers, so that they are not harassed and that in every case, as I have said before, a responsible official has an opportunity of considering the case before a prosecution is instituted. In my opinion the proper interpretation to be put on section 19 is that no Court can proceed in regard to an offence under the Pure Food Act unless there is

(1) A.I.R. 1945 F.C. 16

Hukam Chand *v.* The State  
Kapur, J.

a complaint filed particularising the person who has committed the offence and the nature of the article which has been sold. That has not been done in the present case. Thus the prosecution was without jurisdiction and must, therefore, be quashed. I would rely for this purpose on a judgment of this Court in *Dwarka Das v. The Union of India and others* (1), where it was held dealing with section 80 of the Civil Procedure Code that the language is imperative and absolutely debars a Court from entertaining a suit instituted without compliance with its provisions. One has only to substitute section 19 of the Pure Food Act and the result will be that the proceedings against the petitioner were without jurisdiction. I would, therefore, quash the proceedings, allow the petition and make the rule absolute. The fine, if paid, shall be refunded.

## APPELLATE CIVIL

*Before Bishan Narain and Chopra, JJ.*

HARI KISHEN AND OTHERS,—*Defendants-Appellants*

*v.*

HIRA AND OTHERS,—*Plaintiffs-Respondents*

**Regular Second Appeal No. 421 of 1949.**

**1956**  
**Dec. 12th**

*Hindu Succession Act (XXX of 1956)—Section 14—Object and scope of—Whether applies where the female Hindu had parted with possession of property before the coming into force of the Act—Section 14 whether retrospective—‘Possessed’ meaning of.*

*Practice—Alienation by widow—Declaratory decree passed in favour of the nearest reversioners—Order of succession changed during the pendency of Second Appeal—Effect of, on declaratory decree.*

*Custom—Widow—Alienation—Rs. 3,200 out of the sale consideration of Rs. 5,000 raised for Tirathyatra—Whether Rs. 3,200 can be held to be for necessity.*

---

(1) 1953 P.L.R. 267 at page 275