

Rent Controller nor Appellate Authority is a Court, and so they cannot be held to be civil Courts within the meaning of section 476 Criminal Procedure Code unless the term 'Civil Court' in that section is to be taken as having a much wider meaning than is ordinarily given to it. I accordingly accept the revision petition and set aside the order of the learned District and Sessions Judge as Appellate Authority calling on the petitioner to show cause why he should not be prosecuted for perjury.

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I feel bound, however, to add that I think that the resulting situation is unfortunate and anomalous in that witnesses in proceedings under the Act should in this way be immune from proceedings for perjury under Section 476, Cr. P. C. and I feel that the Act should be amended so as to make the Rent Controller and Appellate Authority Civil Courts for the purpose of Section 476.

B.R.T.

REVISIONAL CRIMINAL

Before D. Falshaw, J.

GURNAM SINGH,—Petitioner.

versus

THE STATE,—Respondent.

Criminal Revision No. 999 of 1961

*Prevention of Food Adulteration Act (XXXVII of 1954)—Section 20—Prosecution lodged by Food Inspector to whom power to institute prosecutions delegated—Whether competent.*

1961

Nov., 21st

*Held*, that the written consent, as provided in section 20 (1) of the Prevention of Food Adulteration Act, 1954, is only necessary where the prosecution is being instituted by some person who has not already been given powers to institute such prosecutions. So far as persons who have been duly delegated with authority to institute prosecutions under the Act are concerned the section can be

read as if the words "or with the wirtten consent of" were omitted altogether, and what the section means is that the prosecution must be instituted either by some person duly authorised with delegated power or else by some person not so authorised but with the written consent of an authorised person.

*City Corporation of Trivandrum v. V. P. N. Arunachalam and another* (1), dissented from.

*Petition under section 439 of Criminal Procedure Code, for revision of the order of Shri Radha Krishan Baweja, 1st Additional Sessions Judge, Amritsar, dated the 31st May, 1961, affirming that of Shri R. C. Sharma, Magistrate 1st Class, Tarn Taran, dated the 21st April, 1961, convicting the petitioner.*

T. S. MUNJRAL AND B. S. CHAWLA, ADVOCATES, for the Petitioner.

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K. L. KAPUR, ADVOCATE, FOR THE ADVOCATE-GENERAL, for the Respondent.

#### JUDGMENT

Falshaw, J.

FALSHAW, J.—This is a revision petition by Gurnam Singh, who has been convicted under section 16(1) (g) (ii) of the Prevention of Food Adulteration Act and sentenced to one year's rigorous imprisonment and a fine of Rs. 2,000 or in default six months' further imprisonment.

The prosecution story is that on the 22nd of July, 1960, a Food Inspector at Tarn Taran purchased a sample of milk from the petitioner which he was carrying for purposes of sale as Cow's milk. The usual formalities were followed regarding the taking of the sample, which was divided into three parts, one of which was left with the accused. The sample which was sent to the Public Analyst was found to be adulterated with separated milk to the extent of 42 per cent.

The accused denied his guilt and denied that any sample as taken from him or that he executed

(1) A.I.R. 1960 Kerala 356,

the formal receipt Ex. P.B. which the Food Inspector took from him for the price of the milk. He examined two witnesses in defence who said that he was taken from the shop of Dalip Singh D.W. 1 on the pretext that his thumb-impression was required for some purpose by the Food Inspector. This evidence was obviously rightly rejected by the Courts below and in my opinion there is no reason whatever, for not holding that the sample of milk was duly purchased from the petitioner in accordance with the regulations.

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The main question raised in revision was whether there was any proper sanction for prosecution of the petitioner as required by section 20 of the Act. The relevant portion of sub-section (1) reads—

“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.”

It is not disputed that Food Inspectors generally and the present complainant in particular have been delegated with powers to institute prosecutions under this section, but it was argued that some consent was necessary by some authority for the prosecution of any particular individual. Reliance was placed on a decision of a Division Bench in *City Corporation of Trivandrum v. V.P.N. Arunachalam Reddiar and another* (1), in which it was held that a general sanction authorising the Food Inspector to prosecute all offenders under the Act before a particular Court is invalid as not satisfying the requirements of section 20.

With due respect it seems that this decision is based on a misunderstanding of the purport of the section which has been interpreted by the learned Judges as if the words “by or with the written consent of the State Government...” were by and with the written consent of the State Government...”. In my opinion the written

(1) A.I.R. 1960 Kerala 356.

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consent is only necessary where the prosecution is being instituted by some person who has not already been given powers to institute such prosecutions. The learned counsel for the petitioner was quite right in suggesting that it would be meaningless for a person authorised to institute prosecutions under the Act to give himself written consent to institute a particular prosecution, but in my opinion as far as persons who have been duly delegated with authority to institute prosecutions under the Act are concerned the section can be read as if the words "or with the written consent of" were omitted altogether, and what the section means in my opinion is that the prosecution must be instituted either by some person duly authorised with delegated power or else by some person not so authorised but with the written consent of an authorised person. I am, therefore, of the opinion that there is no defect in the institution of the prosecution in the present case.

There remains the question of sentence regarding which the relevant facts are that the petitioner has been given the minimum sentence permitted by section 16(1)(g)(ii) for a second offence. The section provides for enhanced penalties for second and further convictions. The relevant portion reads—

- “(i) for the first offence, with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees, or with both;
- (ii) for a second offence with imprisonment for a term which may extend to two years and with fine:

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court, such imprisonment shall not be less than one year and such fine shall not be less than two thousand rupees;

- (iii) for a third and subsequent offences, with imprisonment for a term which may extend to four years and with fine:

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court, such imprisonment shall not be less than two years and such fine shall not be less than three thousand rupees."

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Falshaw, J.

The relevant facts in this case are that the present petitioner at the time of his conviction in the present case had six previous convictions for offences under the Act between 1957 and 1960. He was, however, treated as if this was only his second conviction simply on account of the fact that apparently on his second, third, fourth, fifth and sixth convictions for some reason or other it had not been brought to the notice of the Courts dealing with the cases that he had any previous convictions and therefore on each of these convictions he was dealt with as a first offender. In these circumstances the learned trial Magistrate felt that it would only be fair to deal with him as if this his seventh conviction was his second conviction. Such being the case it is difficult to make out any case for reducing the sentence which could be covered by the words "special and adequate reasons to the contrary to be mentioned in the judgment of the Court", and I, therefore, do not consider that it is possible for me to interfere in the matter of sentence. I accordingly dismiss the revision petition.

**B.R.T.**

REVISIONAL CIVIL

*Before D. Falshaw, J.*

**KUNDAN LAL,—Petitioner.**

*versus*

**AMAR NATH,—Respondent.**

**Civil Revision No. 477 of 1961.**

*East Punjab Urban Rent Restriction Act (III of 1949)—  
Section 13(2)(iv)—Meaning and scope of—Conduct which  
amounts to nuisance in the eyes of the landlord alone—  
Whether sufficient to eject the tenant.*

1961

Dec., 13th