

APPELLATE CRIMINAL.

Before Mr. Justice Ayling and Mr. Justice Hannay.

1914
November
30 and
December 4

THE CROWN PROSECUTOR (APPELLANT IN BOTH),
APPELLANT.

v.

P. R. GANAPATHY IYER AND ANOTHER (ACCUSED),
RESPONDENTS.*

Madras City Municipal Act (III of 1904), by-law 169—Exposing for sale unwholesome drink (aerated waters)—“Food” in by-law not covering “drink.”

The word “food” in by-law 169 framed under the Madras City Municipal Act (III of 1904) which prohibits the exposing or keeping for sale any article intended for human food which is unwholesome or unfit for human consumption does not include “drinks” such as aerated waters.

APPEALS under section 417 of the Code of Criminal Procedure (Act V of 1898) against the acquittal of the accused by P. NARAYANA MENON, the Fourth Presidency Magistrate, Egmore, Madras, in Calendar Cases Nos. 15569 and 15570 of 1914 on his file.

The facts of the case appear from the judgment.

The Crown Prosecutor for the Crown.

C. V. Ananthakrishna Ayyar for the accused in Criminal Appeal No. 549 of 1914.

The accused in Criminal Appeal No. 550 of 1914 neither appeared in person nor was represented by pleader.

AYLING AND
HANNAY, JJ.

The judgment of the Court was delivered by HANNAY, J.—
In these cases the local Government appeals against an order of acquittal in Calendar Cases Nos. 15569 and 15570 of 1914 on the file of the Presidency Magistrate. In both cases the charge against the accused was that they had exposed for sale aerated waters unwholesome and unfit for human consumption contrary to by-law 169 framed under section 409 (19) of the Madras City Municipal Act (III of 1904), an offence punishable under by-law 177.

By section 409, clause (19) of the Act, the Corporation is authorized to make by-laws to provide for the prevention of the

* Criminal Appeals Nos. 549 and 550 of 1914.

sale or exposure for sale of unwholesome meat, fish or provisions ; and securing the efficient inspection and sanitary regulation of shops in which articles intended for human food or drugs are kept or sold. The by-law in question (No. 169) has evidently been framed with reference to the first part of clause (19), as the second part of that clause relates to inspection and the sanitary regulation of shops.

THE
CROWN
PROSECUTOR
v.
GANAPATHY
IYER.
—
AYLING AND
HANNAY, J.J.

The by-law is as follows : " No person shall expose for sale or keep for the purposes of sale any article intended for human food which is unwholesome or unfit for human consumption." The decision of the cases before us turns on the question whether word " food " in the by-law includes drink or not. The Magistrate has held that it does not. The learned Crown Prosecutor contends that the word " food " does include " drink " and in support of his contention refers to the definition of " food " given in the Standard and Century Dictionaries, in the English Sale of Food and Drugs Acts and in section 251 of the Bengal District Municipalities Act (III. of 1884). Admittedly the word " food " in ordinary parlance would not include " drink " and there is nothing in the dictionaries referred to which would support a contrary view. It is argued, however, that in law the word " food " does include every article used for food or drink by man, other than drugs or water. This, no doubt, is the definition of the term " food " in the English Sale of Food and Drugs Acts (See Halsbury, Volume 15, page 5) ; but it is evident that that definition was made for the purposes of those Acts and it is so stated in the passage in Halsbury which is above referred to. Similarly with regard to section 251 of the Bengal District Municipalities Act. By that section " food " is defined to include every article used by man for food or drink, except drugs or water. But there again, the definition was introduced into the Act by an amendment in 1886 and has special reference to that Act alone. The fact that it was found necessary to introduce the definition by subsequent amendment of the Act is, of course, a point against the contention of the learned Crown Prosecutor. It is also pointed out by the learned vakil for the accused that the Madras City Municipal Act can hardly be construed by reference to a mufassal Act of Bengal.

There is no definition of the term " food " either in the Madras City Municipal Act, or, apparently in the corresponding Acts

THE
CROWN
PROSECUTOR
v.
GANAPATHY
IYER.

AYLING AND
HANNAY, JJ.

in Calcutta or Bombay. The point which militates most strongly against the meaning which the learned Crown Prosecutor seeks to apply to the term "food" is the fact that in the body of the Madras Act itself in several places the words "food and drink" occur, indicating that it was not intended that the latter term should be included in the former (see sections 357 and 358). It is difficult in the face of these sections to hold that the term "food" in the by-law in question does include "drink." It is immaterial for the purposes of these cases that the Magistrate has held that aerated water and lemonade are not "provisions" within the meaning of section 409 (19) as the word "provisions" does not occur in the by-law under which the prosecutions were brought. It may be mentioned that in the dictionaries referred to by the learned Crown Prosecutor the word "provisions" is given as a synonym of "food."

The Municipal Council has special powers with reference to the manufacture of aerated water under section 328 of the Act. Possibly this may have been thought a sufficient safe-guard by the legislature for securing the purity of aerated waters. However that may be, as there is nothing in the Act or by-laws to support the view for which the Crown Prosecutor contends, namely that the term "food" includes "drinks" other than drugs or water, the conclusion at which the lower Court has arrived on that point must be upheld. The acquittals are right and these appeals are accordingly dismissed.

N.R.
