

Bombay at all. Reference may also be made to section 182 of the Code of Criminal Procedure under which when it is uncertain in which of several local areas an offence was committed, or where an offence is committed partly in one local area and partly in another, or where an offence is a continuing one, and continues to be committed in more local areas than one, or where it consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas. In *Emperor v. Mahadeo*⁽¹⁾ in which the facts were very similar to those before us it was held that section 182 would apply to such a case. The view taken by the learned Magistrate that he had no jurisdiction is, therefore, in my opinion, wrong. I agree with the order proposed to be made.

Per Curiam. Rule absolute. Order of discharge set aside. Case to be proceeded with according to law.

Rule made absolute.

Y. V. D.

⁽¹⁾ (1910) 32 All. 397.

APPELLATE CRIMINAL.

Before Mr. Justice Broomfield and Mr. Justice N. J. Wadia.

HARIDAS VALLABHDAS (ACCUSED), PETITIONER v. THE BOMBAY MUNICIPALITY (HEALTH DEPARTMENT), OPPONENT.*

1937
March 30

Bombay Prevention of Adulteration Act (V of 1925), sections 14, 16—Certificate of public analyst—Rule of evidence—Right of accused to call public analyst as witness—Interpretation.

There is nothing in the language of section 14 or of section 16 of the Bombay Prevention of Adulteration Act, 1925, to support the view that before the accused can ask the Court to summon the public analyst, he must prove by other evidence that the certificate of the public analyst is not correct.

*Criminal Application for Revision No. 47 of 1937.

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CRIMINAL REVISIONAL APPLICATION from an order made by D. N. D. Khandalawala, Presidency Magistrate, Third Court, Bombay, in case No. 1633 of 1936.

Prosecution under the Bombay Prevention of Adulteration Act, 1925.

Haridas Vallabhdas (petitioner) and his son carried on business as wholesale ghee merchants, having a shop at Moody Bazar, Bombay. On July 13, 1936, a Medical Inspector visited the shop and purchased from the petitioner two samples of ghee.

On August 6, 1936, Dr. R. K. Mhatre, Assistant Health Officer, filed an information alleging that the petitioner had committed an offence under section 4 of the Bombay Prevention of Adulteration Act, 1925, in that the ghee in the petitioner's shop was not in fact ghee inasmuch as it contained 38 per cent. of foreign ingredients.

The case which was originally filed in the Court of the Honorary Presidency Magistrate was, on the petitioner's application, transferred to the Presidency Magistrate, Third Court. Thereafter on January 15, 1937, the petitioner's counsel requested the Court to call the public analyst who had examined the sample and had reported the alleged adulteration. On January 28 following, the request was repeated and the petitioner offered to deposit in the Court the necessary amount to meet the expenses of the attendance of the public analyst. The application was opposed by the Municipal Solicitor who contended that the public analyst's certificate should be accepted until it was shown that the facts therein stated were erroneous.

The learned Magistrate agreed with the above contention and refused the petitioner's application, observing as follows :—

“ Mr. Chhatrapati wants that the public analyst should be called as a prosecution witness under section 16 of the Act before he is called upon to enter upon his defence.

The Municipal Solicitor in reply says that he may be called under section 16, but not 'until the contrary is proved' under section 14 of the Act. I think the contention of the Municipal Solicitor is right. The Municipal Solicitor at this stage need only put in the certificate of the public analyst and this is enough to satisfy the requirements of section 14."

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The accused applied to the High Court.

Daphtary, with *Dixit, Maneklal and Co.*, for the petitioner accused.

Vimadatal, with *Crawford, Bayley & Co.*, for the opponent.

Dewan Bahadur P. B. Shingne, Government Pleader, for the Crown.

N. J. WADIA J. This is an application in revision against an order made by the Presidency Magistrate, Third Court, Bombay. The applicant is a dealer in ghee. On July 13, 1936, an Inspector of the Bombay Municipality visited his shop and purchased from him two samples of ghee bearing a certain trade-mark. On August 6, 1936, the Assistant Health Officer of the Municipality filed an information before the Honorary Presidency Magistrate alleging that the petitioner had committed an offence under section 4 of the Bombay Prevention of Adulteration Act (Bom. V of 1925) by having sold or caused to be sold or offered for sale a certain article of food under the description of ghee, which was not in fact ghee as it contained over thirty-eight per cent. of foreign ingredients.

The petitioner had applied that the public analyst, whose certificate was to be put in, should be called as a witness as the petitioner wanted to test the accuracy of the certificate given by him before he entered upon his defence. The application was opposed on behalf of the Municipality, and the learned Magistrate disallowed it holding that the public analyst could be called under section 16, but not until the contrary was proved under section 14 of the Act. He

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apparently took the view that section 16 does not begin to operate until the contrary has been proved within the meaning of section 14. Section 14 of the Act provides that the production in any proceedings under the Act of a certificate of a public analyst in the form specified in Schedule A shall, until the contrary is proved, be sufficient evidence of the facts therein stated. Section 16 provides that when any person is accused of an offence under the Act he may require the Court to summon as a witness the public analyst who analysed the article or sample of food in respect of which he is accused of an offence and the Court may, and shall in every case in which the accused deposits in the Court such sum of money in accordance with the scale prescribed as would be sufficient to meet the expenses of the attendance of the analyst before the Court, summon the analyst. There is, in our opinion, nothing in the language of sections 14 and 16 to suggest that the ordinary rule with regard to the burden of proof in a criminal trial is to be departed from. Section 14 does not deal with the procedure to be followed in a trial under the Act; it merely lays down a rule of evidence and allows a presumption to be drawn. The certificate of a public analyst is to be accepted as correct without further proof until the contrary is proved. There is nothing in the language of this section or of section 16 to support the view which the learned Magistrate apparently took that before the accused can ask the Court to summon the public analyst, he must prove by other evidence that the certificate of the public analyst is not correct. If there had been no provision in the Act corresponding to section 14, it would have been necessary for the prosecution in each case to prove the certificate of the public analyst by examining the public analyst as a prosecution witness. All that section 14 does is to relieve the prosecution of the obligation to examine the public

analyst in cases in which the correctness of the certificate is not challenged, and to enable the Court to accept the certificate without further proof of the facts stated in it. But the section expressly states that the certificate can only be accepted as sufficient evidence of the facts stated in it until the contrary is proved, and it is open to the accused to prove the contrary in any one of several ways. He can do it in the manner provided in section 14 (2) by asking the Court to cause a sample of the article to be sent for analysis to the Chemical Analyser to Government. He can also challenge the correctness of the certificate by producing a certificate of analysis by a private analyst. But it is obvious that the easiest and probably the best method of challenging the correctness of the public analyst's certificate might, in many cases, be by cross-examining the public analyst and showing that the method of analysis adopted by him was wrong. Section 16 nowhere says that the accused's right to insist upon the public analyst being summoned and examined as a witness is to be exercised only after the accused has led evidence in his own defence challenging the correctness of the public analyst's certificate. The language of the section on the contrary appears to us to show clearly that it is open to the accused at the commencement of the trial, as soon as he is accused of the offence, to require the Court to summon the public analyst as a witness, and the section provides that if the accused deposits the requisite amount in Court, he is entitled as of right to have the public analyst called as a witness.

In our opinion, the view taken by the learned Magistrate was clearly wrong. The rule will be made absolute and the order made by the learned Magistrate set aside.

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BROOMFIELD J. I agree and have only to add this that section 14 (I) of the Act applies to any certificate of a public analyst and not only to a certificate on which the prosecution is based. There is no necessary connection between it and section 16. The rebuttable presumption under section 14 (I) will equally apply to a certificate of a public analyst produced by the accused himself. That seems to be a further indication that the provision merely lays down a rule of evidence and has nothing to do with the order of proceedings at the trial.

Rule made absolute.

Y. V. D.

PRIVY COUNCIL.

J. C.*
1937
June 17

GOSWAMINI SHRI KAMALA MAHARAJ OF KUTCH MANDVI,
APPELLANT v. THE COLLECTOR OF BOMBAY, RESPONDENT.

[On Appeal from the High Court at Bombay]

Bombay City Land Revenue Act (Bom. II of 1876), section 8—Assessment of lands in the Fort—Limitation of right to assess—Regulation XVII of 1827—Exemptions—Prescription—Presumption as to lost grants.

Land within the Fort of Bombay dedicated to charitable purposes was held rent-free for 100 years prior to 1926 when it was assessed to revenue under the Bombay City Land Revenue Act, 1876.

In a suit for a declaration that there was a right, in limitation of the right of Government, to hold the land free from assessment to land revenue or alternatively that the land should be assessed as land of Pension and Tax or Quit and Ground Rent tenure:—

Held, that the onus was on the plaintiff to show that as superior owner of the property she had a right in limitation of the right of Government in consequence of a specific limit to assessment having been established or preserved.

Regulation XVII of 1827 (Bombay) was not applicable to the lands in question. Regulation XIX of 1827 which does apply contains no provision for recognising a prescriptive right to exemption from land revenue. The plaintiff, therefore, could not rely on any statutory prescriptive title to exemption. The plaintiff was unable to produce any deed or grant conferring the exemption claimed.

*Present : Lord Macmillan, Sir Shadi Lal and Sir George Rankin.