

JAGDEO PRASAD v. BOARD OF HEALTH

[Appellate Jurisdiction (Hyne, C.J.) July 22nd, 1954]

S. 23—Pure Food Ordinance—power to cancel licence of dairy for limited period.

The appellant was convicted twice by the Magistrate's Court, Suva, of the offence of selling milk deficient in fat.

The Court fined the appellant and cancelled his dairy registration for six months in each case.

On appeal against sentence, both appeals being heard together.

HELD.—Under the provisions of the Pure Food Ordinance, registration of a dairy cannot be cancelled for a limited period.

A. I. N. Deoki for the appellant.

W. G. Bryce, Solicitor-General, for the respondent.

HYNE, C.J.—The appeals are only against the cancellation of the dairy registration.

Counsel for appellant submitted that the fines of £50 and £10 were adequate punishment and that to add to these fines the cancellation of the dairy registration was harsh and excessive. He submitted further that to cancel the registration for a limited period is contrary to law.

Counsel read section 23 of the Pure Food Ordinance as amended by the Pure Food (Amendment) Ordinance, No. 22 of 1953. The section is as follows:—

“(1) Any person guilty of an offence under this Ordinance shall, unless a special penalty is provided by this Ordinance, be liable in the case of a first offence to a fine not exceeding ten pounds, in the case of a second offence to a fine not exceeding twenty pounds or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

(2) Where any person convicted of an offence of selling adulterated milk is the proprietor of a dairy registered in accordance with any regulations made under the Public Health Ordinance, the Court may on a second or subsequent occasion in addition to any other penalty cancel the registration of the dairy.”

Learned Counsel submitted that the Magistrate erred in cancelling the registration for a period. In his view, sub-section (2) provides for cancellation outright, and there is no power conferred by which cancellation for a limited period can be ordered.

The learned Solicitor-General submitted that, at first glance there was an air of finality about this sub-section, namely that it meant cancellation out and out.

He invited attention, however, as a matter of interest, to the Public Health (Amendment) (Dairies) Regulations, 1948, at p. 103 of the Laws of Fiji, 1948, and particularly to regulation 84 (9) on p. 104. This Regulation provides that on conviction of an offence against the Public Health Ordinance (Cap. 107) or against any Regulations made thereunder, the Court may order the registration of the dairy to be cancelled or suspended for a stated period.

At the same time he doubted whether the Court could suspend or cancel for a stated period under section 23 (2) of the Pure Food Ordinance Cap. 114.

In my opinion the language of section 23 (2) leaves no room for doubt. If it had been the intention of the Legislature that cancellation might be for a stated period, then I think it would have said so. One must take the words in their natural meaning, and as I understand the words of the sub-section in their natural meaning, they mean outright cancellation and nothing else, and that there is a power conferred so to cancel if the Court in its discretion thinks it right and proper in any case to exercise such a power.

It has been urged by Counsel for the appellant, while he admits that this Court has power to substitute another sentence for that passed by the Magistrate, that to cancel outright would be a more severe sentence than that imposed by the Magistrate. Section 352 (2) of the Criminal Procedure Code, however, empowers the Appellate Court to substitute a sentence either more or less severe.

Counsel also referred to section 31 of the Pure Food Ordinance (Cap. 114), and urged that if appellant had obtained a certificate of warranty from the Rewa Dairy Company from which he obtained the milk, he would have been entitled to be discharged from prosecution on payment of costs. He did not, however, have such a warranty, and in any event, as the learned Solicitor-General said, appellant would, in such a case, have to prove in addition that he sold the milk in the same state in which he purchased it.

Counsel for appellant submitted that there were certain mitigating circumstances surrounding these cases. The learned Magistrate did, however, take these into consideration, sentencing the appellant as he did and not sending him to prison.

I have given careful consideration to the grounds of appeal that appellant has a large family, that the dairy is his means of livelihood, that three brothers are dependent on the earnings of the farm and that certain members of the public of Suva will be inconvenienced. I am unable to regard these grounds as sufficient justification for not cancelling the registration.

It has been urged that appellant was ignorant of the law, and that this is in itself a ground for mitigation of punishment. I may have been disposed to regard it as such, were it not for the fact that the appellant has three previous convictions for similar offences, and that two offences, the subjects of these appeals, were committed within six days of each other.

In view of this I feel that nothing but a serious view can be taken of the offences of which the appellant was convicted. That the Legislature takes a serious view also is, I think, clear from section 23 (2) of the Ordinance, for cancellation may be ordered even on a *second* offence. These present offences are the fourth and fifth offences of the one kind so far as the appellant is concerned.

The appeals are dismissed. The sentence of cancellation of the dairy registration for six months in each case is quashed and there is substituted for the words "cancel the defendant's dairy registration for a period of six months" in Criminal Appeal Case 24 of 1954 (Magistrate's Court Case 1345/54) and for the words "dairy registration cancelled for six months" in Criminal Appeal Case 25 of 1954 (Magistrate's Court Case 1224/54) respectively, the words—

"and defendant's dairy registration is cancelled."