

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.L.P. No.260/2008

Date of Decision : 26.07.2011

STATE

..... Petitioner

Through: Mr.Naveen Sharma, APP
for Mr.Pawan Sharma,
standing counsel for the
State.

Versus

SUNIL DUTT

..... Respondent

Through: None.

**CORAM :
HON'BLE MR. JUSTICE V.K. SHALI**

1. Whether Reporters of local papers may be allowed to see the judgment? YES
2. To be referred to the Reporter or not ? YES
3. Whether the judgment should be reported in the Digest ? YES

V.K. SHALI, J. (Oral)

1. This is a leave to appeal filed by the State against the judgment dated 03.07.2008 passed by Shri S.K. Sarvaria,

learned Additional Sessions Judge, New Delhi, acquitting the respondent-accused of an offence under Section 7 of the Prevention of Food Adulteration Act, in respect of which he was held guilty by the learned Metropolitan Magistrate.

2. Briefly stated, the facts of the case are that the appellant Food Inspector is alleged to have taken a sample of 18 sticks of ice candy from the freezer of the respondent accused on 06.04.1989 at about 5 PM with the help of Food Inspector Rajesh Kumar. The samples of ice candies were taken with the help of clean and dry 'patilas' and spoons, and thereafter divided in three equal parts. They were separately sealed after adding 24 drops of formalin in each counterpart. Statutory documents are alleged to have been prepared on the spot and one sample was sent to the Public Analyst for the purpose of examination. The Public Analyst after examination, opined that the sample contained dye content to the extent of 0.27gms/Kg. which was beyond the

permissible limit of 0.20 gms/Kg which was, the fixed standard under the Prevention of Food Adulteration Act. Accordingly, after obtaining necessary sanction from Director (PFA), a complaint under Section 7 read with Section 16 of the Prevention of Food Adulteration Act was filed in the Court of Metropolitan Magistrate on 07.06.1989.

3. The accused has put in his appearance and exercised his right under Section 13(2) of the Prevention of Food Adulteration Act to get the second sample of the article of food examined from the Director, CFL, Mysore. Accordingly, a second sample of the ice candy was sent to Director, CFL, Mysore who gave a certificate of examination dated 27.07.1989 and confirmed the finding that the sample was not conforming to the standard so far as the total dye content is concerned. It was opined that the total dye content was 0.310 gms/Kg. whereas the maximum permissible limit was 0.20 gms/Kg. Accordingly, a notice

under Section 251 of Cr.P.C. was given to the respondent-accused.

4. The prosecution in support of its case examined three material witnesses, namely, PW1 Gopal Singh, complainant, PW-2 Food Inspector Rajesh Kumar and PW3 R.K. Ahuja attesting witness.
5. The accused in his statement under Section 313 Cr.P.C. admitted that he had sold the ice candy of which the sample was taken. However, he took the plea that at the time when the sample of the ice candy was taken, there was no electricity supply and, therefore, some of the ice candy stock were in a solid state while as the other was melting. He also took the plea that the sample which was taken was not representative in character because of the lack of homogeneity in the food article that was obtained.
6. The respondent-accused in support of his case examined DW-1 Harbhajan Singh and DW-2 Shri S. Mahendru. The

learned Magistrate vide judgment dated 10.08.1999 convicted the accused for an offence under Section 7 of the Prevention of Food Adulteration Act and by order dated 20.08.1999, sentenced him to undergo simple imprisonment for one year along with a fine of Rs.2000/-.

7. The appellant, feeling aggrieved by the said conviction and sentence, preferred an appeal bearing No. 54/1999 titled Sunil Dutt versus State (Delhi Administration), which was disposed of on 03.07.2008. thereby acquitting the appellant of all the charges. The reason for acquittal handed down by the learned Additional Sessions Judge was that the sample which was obtained by the Food Inspector PW-2 was not homogeneous and consequently not representative in character. For arriving at this conclusion, the learned Additional Sessions Judge relied upon the values of the edible article given in the two reports i.e. of Public Analyst and that of the Director, CFL, Mysore. It was observed by

the learned Additional Sessions Judge that the report of the Public Analyst showed that the total sugar found in the sucrose in the sample was 21.2% and the dye content was 0.27 gm/kg. In contrast to this, the certificate given by the Director, CFL, Mysore showed that the total sugar was found to be 19.95% by weight while as the total quantity of artificial colouring was found to be 0.310 gms./Kg. It was observed by the learned Additional Sessions Judge that though both the samples had failed so far as the dye content is concerned, but the sugar content had also reduced from 21.2% to 19.95%, therefore, there was a variation in the values and the benefit of the same has to be given to the accused, as he had taken the plea that the sample was not representative in character. The learned Additional Sessions Judge in arriving at such a finding has taken note of the fact that although statutorily the report of the Director, CFL supersedes the report of the Public Analyst, but at the same time, the learned Additional

Sessions Judge considered the Full Bench decision of the Delhi High Court in ***MCD and R.N. Gujral versus Bishan Sarup 1972 FAC 273 (Del) (FB)***, and observed that the report of the Director, CFL, Mysore, is obtained by the accused himself and it gets superimposed on the report of the Public Analyst. But it has been observed that the report of the Public Analyst and the Director, CFL can be looked into for the purpose of arriving at a conclusion as to whether the sample was representative in character or not. This will be evident from the variation not only in the values of the two reports but also the content of the adulterant or the offending article which has made such edible article adulterated.

8. The State, feeling aggrieved by the acquittal, has assailed the judgment passed by the learned Additional Sessions Judge. However, it must candidly be stated that the learned counsel for the State was not able to show any

authority contrary to the Full Bench decision in Bishan Sarup's case (supra), which has been referred to by the learned Additional Sessions Judge in his judgment in order to arrive at such a conclusion.

9. I have gone through the judgment passed by the learned Additional Sessions Judge, which is quite exhaustive and has referred to a number of judgments of this High Court and that of the Apex Court. They sum up the legal position very succinctly. In all such cases, it has been held that once the accused exercises his right under Section 13(2) of Prevention of Food Adulteration Act and voluntarily gets the second sample examined from Director, CFL, he does so at his own risk. The report in this regard, statutorily supersedes the report of the Public Analyst for all practical purposes. However, there have been judgments including the Full Bench decision in Bishan Sarup's case (supra) where this Court has observed that although the finality and

conclusiveness is attached to the report of the Central Food Laboratory, however, the report will still be open to challenge by the party and it may still have to be ascertained by the Court as to whether the adulteration is established in the report or not. It was also observed that it is open to the accused to show that in the facts of the given case, the sample which was sent for analysis to the Director, CFL, could not be taken to be a representative sample of the food articles that were sent for examination. Such a defence has been taken by the respondent-accused in his statement under Section 313, Cr.P.C. and he has also examined DW-1 who has stated in his statement that at the time when the sample was taken, there was no electricity and consequently, some of the ice candies were frozen whereas others were semi-solid. Similar statement was given by the other defence witness, though they were not as favourable to the respondent-accused as DW-1.

10. The learned Magistrate has disbelieved their testimony by observing that since the witness himself has observed that some of the ice candies were frozen and some were melting, there is a contradiction in the statement of fact itself. The learned Magistrate reasoned that if there was no light, then all the ice candies ought to have melted. I find this reasoning to be illogical because when the samples were taken from the deep freezer, and assuming that there was no electricity, it is not necessary that all the ice candies will melt in a uniform manner. The ones which were kept at the bottom of the freezer would still be slightly frozen whereas the ones near the opening would start melting much faster, even if all the ice candies were taken out simultaneously.

11. The valuation of the two parameters, namely, sugar content and the content of dye are at a variance in the two reports, i.e. of the Public Analyst and of the Director, CFL. This has

not been explained by the prosecution anywhere as to why it has happened so. It is not clear whether this is because of the lapse of time or because of some other reason. In such a contingency, the plea of the respondent-accused that the sample was not homogeneous cannot be said to be without any merit and hence, cannot be brushed aside. In a criminal trial when there are two possible views, one in favour of the accused and the other against him. The court would invariably lean in favour of the view favouring the accused. The learned Additional Sessions Judge in my considered opinion has rightly relied on the view favouring the accused. Moreover, one must also be pragmatic to the realities of life. The sample was purported to have been taken almost 22 years back and, therefore, I feel that simply by granting the leave to appeal, the final adjudication of the matter will still kept under suspense. It is not a case where some adulterant has been mixed from

outside and, therefore, it is better to give quietus to the matter.

12. For the reasons mentioned above, I am of the considered opinion that no ground is made out by the State for grant of leave to appeal against the impugned order dated 08.07.2008 acquitting the respondent accused. Accordingly, the leave to appeal is dismissed.

V.K. SHALI, J.

July 26, 2011
MA