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THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on : 02.09.2009

Crl.L.P. 161/2009

STATE

versus

..... Petitioner

..... Respondent

MUKESH KUMAR

Advocates who appeared in this case:

For the Petitioner

:

Mr R N Vats, Addl. Public
Prosecutor

For the Respondent

:

CORAM :-

HON'BLE MR JUSTICE RAJIV SHAKDHER

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

RAJIV SHAKDHER, I (ORAL)

This is a petition under Section 378(4) of the Code of Criminal Procedure, 1973 (in short the 'Cr.P.C.') for leave to appeal against the judgment dated 27.02.2009 passed in Crl. A. No. 94/1994 by Shri S K Sarvaria, ASJ, Delhi. By the impugned judgment, the learned ASJ has overturned the judgment of conviction passed by the learned Magistrate. The fundamental premise on the basis of which

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the learned ASJ has come to a conclusion that the accused deserved to be acquitted, is that, there is a wide variation between the results arrived in the report of the Public Analyst, as against that, of the Central Food Laboratory. The reasoning of the learned Judge is captured to the following paragraph of the impugned judgment:-

"In the light of the above case law it is clear that the consistent view of our Hon'ble Court is that the noticeable difference between the report of Public Analyst and analysis report of the counterpart of the same sample as given in the Certificate of Director CFL indicates that the sample taken by the Food Inspector was not of representative character. The fact that the Food Inspector should take a representative sample is a settled legal position and another settled legal position is that, if the sample taken was not of representative character the accused in such a case is entitled to be acquitted of the charges pertaining to adulterated food item. In the backdrop of this legal position it would be appropriate to look into and compare the report of the Public Analyst Ex PW1/F and the Certificate issued by Director CFL Ex PX which is as follows:

Sr. No	Item	Value as per Public Analyst Report	Value as per Central Food Laboratory Report
1	Moisture	6.7%	6.03%
2	Total ash	6.2%	6.89%
3	Ash insoluble in dil Hcl	1.40%	1.93%
4	Nonvolatile ether extract	13.1%	12.05%
5	Crude fibre	20.4%	21.37%

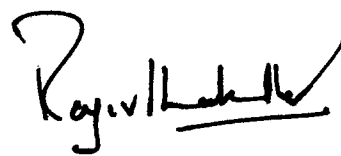
The above table shows the noticeable and substantial difference between the values given to different items in the two counter parts of the same sample in the report of the Public Analyst Ex PW1/D and the Certificate issued by Director CFL Ex PX leading to the inference that the sample taken by the Food Inspector of the food article in question was not of representative character. Therefore, it is not necessary to go into the other arguments raised pertaining to TLC test, violation of Section 10(7) of the PFA Act, the validity of consent for prosecution and the mistaken identity of the appellant/convict by the Food Inspector raised in the written arguments filed on behalf of the appellant. The appellant is entitled to be acquitted on the ground that representative sample of food article was not taken by the Food Inspector."

Upon perusal of the record, I find that the learned ASJ has applied the correct test. There is no quibbling with the proposition that in case there are on record both the report of Public Analyst and the Central Food Laboratory, then in terms of Section 13(3) of the Prevention of Food Adulteration Act, 1954, the report of the Central Food Laboratory, shall supersede. The learned ASJ has accepted this proposition. However, he has given benefit of doubt to the accused solely on the ground that there is a wide variation between the results as arrived at by the Public Analyst as against those by the Central Food Laboratory. This is in consonance with the view of this Court in ***State vs Mahender Kumar and Ors.: 2008 (1) 177 FAC (Del)***. It is well settled that when two views are possible,

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an appellate court is empowered to reject a petition for leave to appeal against acquittal by giving the benefit of doubt to the accused. The appellate court ought not to interfere only on the ground that if it were the original court it would have had a different view. (See *State of UP vs Gambhir Singh & Ors. (2005) 11 SCC 271*). I find no infirmity in the impugned judgment. The petition is dismissed.

SEPTEMBER 02, 2009
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RAJIV SHAKDHER, J