

UNREPORTED

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

DATE OF DECISION: January 07, 2009

+ CRL. L.P. 293/2008 and Crl. M.A. 14150/2008

STATE (DELHI ADMINISTRATION) ..... Appellant

Through: Mr. Manoj Ohri, APP for the State

versus

SUBHASH CHAND ..... Respondent

Through: Nemo

**CORAM:**

**HON'BLE MS. JUSTICE REVA KHETRAPAL**

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

: **REVA KHETRAPAL, J. (ORAL)**

1. By way of the present criminal leave petition, the State seeks leave to appeal against the order of acquittal contained in the judgment dated 07.07.2008 passed by Shri S.K.Sarvaria, learned Addl. Sessions Judge, New Delhi in respect of Criminal Appeal No.03/2004 under Section 16 read with Section 7 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the 'PFA Act').

2. The prosecution's case stated in brief is that on 30.12.1998, at about 4 p.m., Shri Jeet Ram, Food Inspector purchased a sample of buffalo milk, a food article, for analysis from the respondent at M/s. Subhash Dairy, C-6/26 Hanuman Market, Yamuna Vihar, Delhi, where the said food article was found

stored for sale. The respondent was found conducting the business of sale of said food article at the time of sampling. A sample of 750 ml of buffalo milk was taken from an open container bearing the declaration 'Buffalo Milk' by following the procedure under PFA Act and Rules, under the supervision of the LHA/SDM. The said sample was sent to the Public Analyst on 31.12.98. The public analyst after analysing the sample found the same to be adulterated and opined that "The sample does not conform to the standards laid down under item No.A.11.01.11 of Appendix 'B' of the PFA Rules, 1955 because solids-not-fat content were found to be less than prescribed limit of 9% and Milk fat was also less than the minimum prescribed limit of 6%". In view of the fact that the respondent was the vendor-cum-proprietor of M/s. Subhash Dairy and also in-charge of the day-to-day business and had violated the provisions of Section 16(1) read with Section 7 of the PFA Act, a complaint was filed in the Court of the Ld. MM on 27.10.99 under the aforesaid sections. The respondent was convicted by the Ld. MM in C.C. No.142/99 vide judgment dated 13.12.03 for the offences under Section 16 read with Section 7 of PFA Act, and vide order dated 5.2.04 was sentenced to undergo RI for six months and to pay a fine of Rs.3,000/-, in default to undergo SI for three months.

3. The respondent challenged this conviction by filing an appeal in the Sessions Court. The learned Addl. Sessions Judge disagreed with the view

taken by the Ld. Magistrate and set aside the order of conviction and sentence passed by him vide his order dated 7.7.08. The appellant/State seeks leave to institute appeal of the said order.

4. For the purpose of deciding whether leave to appeal deserves to be granted, a few vital facts which weighed with the learned Additional Sessions Judge in acquitting the respondent, need to be noted. The sample of buffalo milk, a perishable item, was lifted by the Food Inspector on 30.12.98. The sample was sent to Public Analyst on 31<sup>st</sup> December, 1998. The Public Analyst gave his report dated 14.01.1999 which is Ex.PW-1/F. The complaint was filed in the court of learned Metropolitan Magistrate against the respondent on 27.10.1999, i.e., after about 10 months of lifting the sample of buffalo milk from the appellant. The Local Health Authority viz., PW2 Shri Prakash Chandra is alleged to have issued the letter Ex.PW-2/B to the respondent intimating him that the sample of milk was found adulterated by the Public Analyst. The copy of the report of the Public Analyst was also enclosed and it was also intimated to the respondent that he can get the sample sent to be analyzed by CFL by making an application in the Court of the Metropolitan Magistrate, New Delhi within 10 days.

5. On going through the evidence on record I find that to prove the service of the intimation sent to the respondent, which is Ex.PW-2/B, no A/D Card has been filed to show that this letter was received by the respondent. The Hon'ble

Supreme Court has clearly held in ***State of Orissa Vs. Gauranga Sahu, (2004) 3, SCC 80*** that mere despatch of report of analyst is not enough, prosecution is obliged to prove that letter so despatched had reached the addressee. Even assuming that the report of the Public Analyst was received by the respondent vide letter dated 03.11.1999 (Ex.PW-2/A), the item being a perishable one, would have lost its value on account of deterioration and decomposition and would have become useless and unworthy of analysis. Therefore, the learned Addl. Sessions Judge was right in holding that the right of the respondent under Section 13(2) of the PFA Act stood frustrated on account of the delay in sending intimation in launching prosecution against the respondent.

6. Reference may be made in this regard to the judgment of the Hon'ble Supreme Court in the case of ***Municipal Corporation Vs. Ghisa Ram reported in AIR 1967 SC 970***. In paragraph-7 of its said judgment, the Apex Court has held as under:-

*“7. It appears to us that when a valuable right is conferred by Section 13(2) of the Act on the vendor to have the sample given to him analyzed by the Director of the Central Food Laboratory, it is to be expected that the prosecution will proceed in such a manner that right will not be denied to him. The right is a valuable one, because the certificate of the Director supersedes the report of the Public Analyst and is treated as conclusive evidence of its contents. Obviously, the right has been given to the vendor in order that, for his satisfaction and proper defence, he should be able to have the sample kept in his charge analyzed by a greater expert whose certificate is to be accepted by court as conclusive evidence. In a case where there is denial of this right on account of the deliberate conduct of the prosecution, we*

*think that the vendor, in his trial, is so seriously prejudiced that it would not be proper to uphold his conviction on the basis of the report of the Public Analyst, even though that report continues to be evidence in the case of the facts contained therein.”*

7. In **M.Chinnachamy and Ors. Vs. R.Satyanarayanan 2001 Cri L J**

**4443**, it has been further held as follows:-

*“22. When a valuable right is conferred by Section 13(2) of the Act on the vendor to have the sample given to him analyzed by the Director of Central Food Laboratory, it is to be expected that the prosecution will proceed in such a manner, so that the right conferred on the accused will not be denied to him. The right is a valuable one, because the certificate of the Central Food Laboratory supersedes the report of the Public Analyst. In a case, where there is a denial of the right on account of the deliberate conduct of the prosecution i.e. delay in prosecution, as a result of which the sample is highly decomposed and could not be analyzed, the vendor, in his trial, will be so seriously prejudiced.*

*23. The above principles have been laid down by the Supreme Court in Municipal Corporation of Delhi Vs. Ghisa Ram, 1967 Crl.L.J. 939 and State by Food Inspector V. Arumugam, 1990 L.W.(Cro.) 18. On a similar ground, the proceedings have been quashed by the Allahabad High Court in R.P.Patel Vs. State of Punjab, 1998 Crl.L.J. 703”.*

8. Having regard to these facts and circumstances, it is not possible for me to interfere with the findings of the learned Sessions Judge. Leave to appeal as also Crl. M.A. 14150/2008 are accordingly dismissed.

**REVA KHETRAPAL, J.**

**JANUARY 07, 2009/dc**