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

+ CRL.L.P. 549/2011

LOCAL HEALTH AUTHORITY/
DESIGNATED OFFICER

..... Petitioner

Through: Mr. Manoj Ohri, APP.

versus

OM PRAKASH & ANR

..... Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

21.11.2011

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Crl. M.A. No. 18119/2011 (Exemption)

Allowed, subject to all just exceptions.

Crl. M.As.18118/2011 (Delay in filing) and 18120/2011 (delay in refiling)

For the reasons stated in the applications, the delay in filing and re-filing is condoned.

Applications are disposed of.

Crl. L.P. No. 549/2011

1. This leave to appeal petition has been filed by the State against the judgment dated 30th November, 2010 passed by the learned Special Judge acquitting the Respondent on an appeal filed by him against the judgment of

CRL.L.P. NO. 549/2011

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conviction and sentence for offences punishable under Section 16 read with Section 7 of the Prevention of Food Adulteration Act (in short PFA Act).

2. Learned APP for the State contends that the learned Special Judge while passing the impugned order failed to appreciate the fact that the sample was found to be adulterated by both the public analyst and the Director, CFL. Thus, the impugned judgment is erroneous and learned Special Judge while acquitting the Respondent has ignored the factual matrix of the case.

3. Briefly, the case of the Petitioner is that on 25th January, 1994 Food Inspector D.P. Singh purchased a sample of 'Rai Whole', a food article for analysis from Sh. Om Prakash Jain who was carrying on the business in the name and style of M/S. Chandi Ram Ramesh Chand Jain shop No. 5117, Harphool Singh Building, Sabzi Mandi, Ghantaghar, Delhi – 110007 where the said food article was stored for sale of human consumption. The sample consisted of 600 grms. of Rai Whole which was taken from an open gunny bag having no label declaration. The sample was taken after mixing the same from the clean and dry jhaba. The sample was divided into three equal parts and each part was put in separate clean and dry bottle and each part was packed, fastened and sealed separately as per the provisions of the PFA

Act and Rules. Vendor's signatures were obtained on the LHA slip and the wrapper of the sample bottles. It is alleged that before starting the proceedings, efforts were made to join the public witnesses but none came forward. All the documents were got signed from the Respondent and other witnesses. The sample was taken under the supervision of local health authorities. One of the three samples was sent to the Public Analyst with the seals intact. The other two counter-parts of the sample were deposited with the local health authority. On analysis of the sample, the Public Analyst found that the sample did not conform to the standards because the sample contained extraneous organic and inorganic matter to be 0.025% and 2.02% respectively and it was opined to be coloured with an unpermitted oil soluble coaltar dye.

4. The Respondent exercised his right under Section 13(2) of PFA Act to get the second counter part of the sample to be analyzed from the Director CFL who vide its certificate dated 11th April, 1995 concluded that the food article was adulterated as the proportion of extraneous matter were found to be 1% by weight and it was opined that on test for presence of colouring matter, it gave positive and a pink orange added colouring matter was found in the sample commodity. Learned Metropolitan Magistrate after perusing

the record convicted the Respondent. Aggrieved by the decision of the learned Metropolitan Magistrate, the Respondent filed an appeal before the learned Sessions Judge.

5. The learned Special Judge after perusing the record and appreciating the evidence placed on record acquitted the Respondent observing that there was a difference in the reports of public analyst and Director CFL in regard to the extraneous and inorganic matter to the extent more than 0.3% but the same could be due to presence of dirt/chaff at the time of packing. It was further observed that the question to be determined was whether the colour as observed in the CFL report was an artificial colour or could be a natural one. In the present case the sample has been analyzed in the CFL by the TLC method. The TLC test performed by CFL could only detect the presence of colour and not whether the colour is inherent or added one. To distinguish between the two, further chemical tests were required to be performed. All colours in vegetable oils are the result of presence of carotenoid pigments in their respective seeds otherwise all the oil would be colourless. Further the Certificate issued by the Director, CFL does not show whether besides the test of TLC method, any further test was conducted to know whether the oil soluble colour present in the sample was natural or

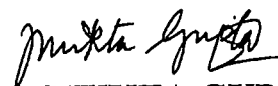
added one. It was further observed that the Rai contains Carotenoids which have the colour of pink and orange besides it also contains riboflavin and thiamine which are vitamins naturally present in the rai and have the natural colour as pink and orange. These pigments are lipid or oil soluble pigments which naturally occur in the seeds. Rule 26 of PFA Rules permits Carotenoids pigments as colouring matter in food. Inherent colour of Rai is oil soluble which is responsible for yellow colour of mustard oil. Thus keeping in view the circumstances of the case benefit of doubt was extended to the Respondent.

6. A perusal of the judgment shows that the learned Special Judge after appreciating the evidence placed on record has rightly come to the conclusion that in absence of any other test apart from the TLC test of the food sample, it would not be sufficient to sustain the conviction of the Accused/Respondent. In *Mayaram vs. State of Punjab 1987(II) FAC 320 (P&H)* it was held that public analyst should have excluded in his opinion the possibility of all the five permitted coal tar dyes pertaining to red colour and as he is an expert, his opinion should normally be clear and unambiguous. In the case at hand only TLC test was conducted evidencing the presence of artificial colour and no other test was conducted to determine

whether the same was the natural colour of the food article or added one.

7. In view of the fact that the only test conducted was TLC test and no other chemical test has been conducted, the nature of colour present in the sample could not be ascertained, the benefit of doubt should have been extended to the Respondent. Thus the learned Special Judge was justified in acquitting the Respondent. I find no ground to interfere in the impugned judgment of the learned Special Judge.

8. Leave to appeal petition is dismissed.


MUKTA GUPTA, J.

NOVEMBER 21, 2011
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