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

+ CRL.REV.P 543/2009

STATE

..... Appellant

Through: Mr. Manoj Ohri, APP for the State.

versus

DATTA RAM

..... Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

21.11.2011

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Crl.M.A. No.11654/2011 (Delay)

For the reasons stated in the application, the delay in filing the present revision petition is condoned.

The application stands disposed of.

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1. In this matter notice was issued to the Respondent initially on the 8th October, 2009. However, despite repeated adjournments notice could not be issued for want of steps to be taken or service report was awaited. Thus, this court thought it fit to consider whether there was any merit in the revision petition warranting this court to issue further notice to the Respondent.

2. The present petition has been filed by the State against the judgment

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dated 24th April, 2009 passed by the learned Addl. Sessions Judge acquitting the Respondent on an appeal filed by him against the judgment of conviction and sentence for offences punishable under Section 16 read with Section 7 of the Prevention of Food Adulteration Act (in short PFA Act). At the outset it may be noted that against the order of acquittal by the learned Additional Sessions Judge a leave to appeal petition would have been maintainable, however, the State has filed a revision petition. Thus, the scope in this petition is confined to considering whether there is any illegality in the impugned order warranting setting aside of the impugned order.

3. Learned APP for the State contends that the impugned Judgment is erroneous and illegal. The finding of the learned Additional Sessions Judge that since the milk fat contents were more than prescribed standards though SNF were less than prescribed standard, the cow milk sample in question cannot be said to be adulterated is perverse. Learned Additional Sessions Judge has erred in appreciating the facts of the case and there was no documentary proof on record which would state that there is no known method whereby non-fatty solids could be extracted from milk without disturbing the fat contents. Thus the impugned order is erroneous and liable

to be set aside.

4. Briefly, the case of the prosecution is that on 30th March, 1989 Food Inspector Sh. V.P.S. Chaudhary purchased a sample of cow's milk for analysis from Datta Ram who was carrying business in the name and style of M/s Chaudhary Dairy, WZ 470, Shiv Nagar, where it was lying in a drum for sale exposed for human consumption. The sample was taken after proper homogenization with the help of clean and dry plunger. The samples were divided into three equal parts and each part was put in a separate clean and dry bottle and 20 drops of formalin were added to each sample bottle by Food Inspectors. Each of it was packed separately, fastened and sealed as per the provisions of 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 samples were taken under the supervision of local health authorities. One of the three samples was got deposited with the public analyst with seals intact. The other two counterparts of the samples were deposited with the local health authority. On analysis of the sample, the Public Analyst found that the samples do not

conform to the standards because the sample milk contained SNF(milk solids not fat) at 6.36 % which fell below the minimum requirement of 8.5% and milk fat at 5.5%. The Respondent exercised his right under Section 13(2) of the PFA Act and requested to get the second counterpart samples to be analysed from the Director CFL. In the certificate given by the Director, CFL, it was opined that the sample of cow's milk is adulterated having milk fat content at 5.1% and the SNF content were found at 6.4 % which was also below the minimum specified limit of 8.5 % thus not conforming to the standards laid down under the provisions of PFA Act, 1954 and Rules.

5. After recording the prosecution evidence and the statement of the accused person, Learned Metropolitan Magistrate after perusing the record convicted the Respondent. Aggrieved by the decision of the learned Metropolitan Magistrate Respondent filed an appeal before the learned Addl. Sessions Judge. The learned Addl. Sessions Judge after perusing the record and appreciating the evidence placed on record acquitted the Respondent. Relying upon *Administrators of City of Nagpur vs. Laxman and Anr.*, 1996(2) FAC 297 SC and *MCD vs. Jawahar Lal*, 1980(2) it was observed that the milk fat contents were more than the prescribed standards though SNF were less than prescribed standard. The cow's milk sample in

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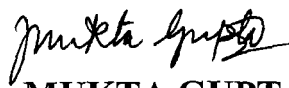
question cannot be said to be adulterated. Therefore, the Respondent was granted the benefit of doubt.

6. Hon'ble Supreme Court in *Administrators of City of Nagpur* (supra) has held as under: -

“This appeal against acquittal arises under Prevention of Food Adulteration Act. The whole question is whether the sample of cow milk is adulterated so as to attract the penal provision of the act. Learned Magistrate who acquitted the Respondent who was a small vendor noted that the fat percentage is 6% as against 3.5. which is more than the standard prescribed for cow milk. The only shortfall was that SNF was 7.3% where it ought to have been 8.5%. Further, it noted that the total solids are 13.37 which is again more than the satisfying standard of cow milk. Under these circumstances, we cannot say that courts below have erred in acquitting them giving the benefit of doubt to the Respondent. The appeal, is therefore, dismissed”.

7. In the present case, the report of Director, CFL has opined the milk fats to be 5.1% as against the requirement of 3.5%. The shortfall in the sample was of SNF content which was 6.4% as against the required standard of 8.5%. Hence, keeping in view the decision rendered by Hon'ble Supreme Court, the learned Addl. Sessions Judge has rightly extended the benefit of doubt to the Respondent. Thus, I find no ground to interfere in the impugned judgment of the learned Addl. Sessions Judge. Revision petition is dismissed being devoid of any merit.

NOVEMBER 21, 2011'dk'
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