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% 08.02.2011

Present: Mr. Sanjeev Bhandari, Additional Standing Counsel for the petitioner.

+ Crl. L.P. Nos. 51-57/2011

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For orders see Crl. L.P. No. 50/2011.

A.K. PATHAK, J.

FEBRUARY 08, 2011

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% 08.02.2011

Present: Mr. Sanjeev Bhandari, Additional Standing Counsel for the petitioner.

Crl. M.A. Nos. 1159/2011, 1161/2011, 1163/2011, 1165/2011, 1167/2011, 1169/2011, 1171/2011 and 1173/2011 (exemption)

Allowed, subject to all just exceptions.

Applications stand disposed of.

Crl. M.A. Nos. 1158/2011, 1160/2011, 1162/2011, 1164/2011, 1166/2011, 1168/2011, 1170/2011 and 1172/2011 (condonation of delay)

Delay condoned. Applications stand disposed of.

+ Crl. L.P. Nos. 50-57/2011
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1. Petitioner seeks leave to Appeal against the common judgment dated 20th February, 2010 passed by the Additional Sessions Judge, New Delhi in Criminal Appeals bearing CA Nos. 58/2009 to 65/2009, whereby respondents Laxman Prasad and Atul Kumar Gupta have been acquitted of the charges under Sections 7 and 16(1A) of the Prevention of Food Adulteration Act, 1954 (for short hereinafter referred to as "the Act").

2. Factual matrix as unfolded is that on 2nd September, 1986 Food Inspector R.K. Ahuja visited M/s. Gupta Powder Mills, 3057,

Bahadur Garh Road, Delhi at about 5:30 PM and purchased sample of 'skimmed milk powder'. He again visited the same premises at about 6:20 PM and purchased another sample of 'skimmed milk powder'. On the same day, Food Inspector Arun Kumar visited the said premises at about 7:00 PM and purchased third sample of 'skimmed milk powder'. Subsequently, Food Inspector Virendra Singh also visited the said premises at about 7:45 PM and purchased fourth sample of 'skimmed milk powder'. Respondent Atul Kumar Gupta was the proprietor of M/s. Gupta Powder Mills. He was grinding and storing the aforesaid food article for sale. On enquiry, it was further revealed that Laxman Prasad, who was proprietor of M/s. Golden Enterprises, 1871, Kucha Chellan, Khari Baoli, had given more than 300 bags of 'skimmed milk powder' to respondent Atul Kumar Gupta for grinding and storing. Respondent Laxman Prasad used to deal in the dairy products. Around 330 bags of rejected 'skimmed milk powder' were found lying in the premises of M/s. Gupta Powder Mills and the same were seized. All the four samples were sent to Public Analyst on 5th September, 1986. On analysis, these were found adulterated. In the first sample, lactic acid was found to be exceeding the prescribed maximum limit of 1.5%, besides there being disagreeable smell making the same unfit for human consumption. In respect of

this sample, complaint case No. 52/1987 was filed before the Metropolitan Magistrate. Second sample was found insect infected and unfit for human consumption, accordingly, complaint case No. 53/1987 was filed. Third sample was also found unfit for human consumption on account of development of rancidity and disagreeable smell, accordingly, complaint case No. 54/1987 was filed. Fourth sample was also unfit for human consumption on account of insect infestation and a complaint case bearing No. 55/1987 was filed in this regard. It was alleged that respondent Laxman Prasad used to deal in sale of milk products. He used to purchase 'waste skimmed milk powder' for blending it with 'fresh skimmed milk powder'.

3. After the trial, Trial Court came to the conclusion that 'waste skimmed milk powder' as stored for grinding in the premises of Atul Kumar Gupta by Laxman Prasad was meant for the purpose of adulteration, i.e., blending the same with 'fresh skimmed milk powder', consequently, convicted the respondents under Section 16(1A) read with Section 7 of the Act.

4. In the Appeals filed by the respondents, Additional Sessions Judge scrutinized the evidence adduced before the Trial Court in detail and came to the conclusion that petitioner had failed to prove beyond the shadow of reasonable doubt that 'waste skimmed milk

powder' seized by petitioner was meant for human consumption, inasmuch as, it was to be used for blending with 'fresh skimmed milk powder'. Appellate Court has held that respondent Atul Kumar Gupta was running an "*atta chakki*" in the name of M/s. Gupta Powder Mills, where 'waste skimmed milk powder' belonging to Laxman Prasad was sent for grinding purpose only. Neither any evidence was collected by the Food Inspector nor produced during trial to indicate that Atul Kumar Gupta was engaged in the business of sale and purchase of 'skimmed milk powder'. Atul Kumar Gupta had given in writing that 'waste skimmed milk powder' was sent by Laxman Prasad for grinding purposes. No 'fresh skimmed milk powder' was recovered from the premises of Atul Kumar Gupta. There was nothing to suggest that Atul Kumar Gupta was selling 'skimmed milk powder' and for that purpose he had kept the 'waste skimmed milk powder' as an adulterant for blending it with the 'fresh skimmed milk powder'. Even the bags recovered from his "*atta chakki*" were old bags. PW2, PW4, PW5 and PW6 had admitted that Atul Kumar Gupta had disclosed that the articles lying in his premises did not belong to him. The customer used to give the articles to him for grinding purposes only. Even challan was produced by Atul Kumar Gupta to show that material belonged to Laxman Prasad. Petitioners' witnesses

admitted that they had not seen any document to show that Atul Kumar Gupta had ever sold 'skimmed milk powder' to anyone till the filing of complaints. "A*tta chakki*" was being run by Atul Kumar Gupta pursuant to a license issued by the Municipal Corporation which itself indicated that he was engaged only in grinding work. Petitioner had, thus, failed to prove that Atul Kumar Gupta had stored the 'waste skimmed milk powder' as an adulterant. As regards Laxman Prasad is concerned, Appellate Court has observed that he had not disowned the bags of 'waste skimmed milk powder' seized from the premises of Atul Kumar Gupta. He had stated that he had sent the same to Atul Kumar Gupta on 30th August, 1986 for grinding purposes only. The stand taken by Laxman Prasad that the 'waste skimmed milk powder' was not meant for human consumption, but was for manufacturing the "animal/poultry feed" was fortified from the evidence adduced by the parties. Appellate Court also noted that PW5 had himself admitted that during the investigation, Laxman Prasad had produced some bills showing the purchase of 'waste skimmed milk powder'. PW5 had further admitted that Laxman Prasad used to deal in 'waste skimmed milk powder'. PW6 had also admitted that he had visited the premises of Laxman Prasad but did not see any record to show that he used to sell 'skimmed milk powder' for human consumption. Laxman

Prasad had also produced bills indicating that 'waste skimmed milk powder' was used for poultry purpose.. Appellate Court has returned a finding that the evidence led by the petitioner rather corroborates the defense of the respondent that he used to sell 'waste skimmed milk powder' and used to sell it for manufacture of "poultry feed". It was further held that the Food Inspectors had not seized any 'fresh skimmed milk powder' from the premises of Laxman Prasad in order to support the allegations in the complaints that he had been using the 'waste skimmed milk powder' for blending it with 'fresh skimmed milk powder'. It was held that initially burden was upon the prosecution to prove that the respondent had been using the seized 'waste skimmed milk powder' as an adulterant which it had failed to discharge.

5. I do not find the view taken by the Appellate Court to be perverse or suffering from any manifest error, inasmuch as, after meticulously scrutinizing entire evidence on the record Trial Court, Appellate Court has taken a view which cannot be interfered with by the High Court by re-appreciating the evidence in detail. It is well settled that an order of acquittal cannot be interfered with unless it is shown that the same is perverse, suffers from manifest error and has resulted in flagrant miscarriage of justice.

6. In the facts of this case, the view taken by the Appellate Court cannot be said to be not a possible view. It is not in dispute that more than 300 bags of 'waste skimmed milk powder' were seized from the "*atta chakki*" of Atul Kumar Gupta. Respondent Laxman Prasad has not disowned the materials so seized. In fact, he stated that the same belonged to him and was kept by him in the "*atta chakki*" *of* Atul Kumar Gupta for grinding purposes only. He used to sell the 'waste skimmed milk powder' used for manufacturing of "poultry feed". Even the prosecution witnesses have admitted that all along Laxman Prasad had taken a stand that he was dealing in 'waste skimmed milk powder', which was used for manufacturing poultry feed. Photocopies of certain bills were even taken in possession by the Food Inspector in this regard. No 'fresh skimmed milk powder' was seized either from the premises of Laxman Prasad Gupta or Atul Kumar Gupta. In absence of the same, there was no basis for the petitioner to allege that the seized material was used as an adulterant to be mixed with the 'fresh skimmed milk powder' and used to be sold in the market for human consumption. No evidence in this regard had been led during the trial.

7. For the foregoing reasons, I am of the view that petitioner has

failed to make out an arguable case for seeking leave to Appeal against the acquittal of the respondent. Petitions are accordingly, dismissed.

A.K. PATHAK, J.

FEBRUARY 08, 2011
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