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

+ CRL.REV.P. 107/2012

% Judgment delivered on: 28<sup>th</sup> February, 2012

STATE

..... Petitioner

Through: Mr. Navin Sharma, APP for State.

versus

PRAVEEN AGGARWAL

..... Respondent

Through: NEMO.

**CORAM:**

**HON'BLE MR. JUSTICE SURESH KAIT**

**SURESH KAIT, J. (Oral)**

**Crl. M.A. 2626/2012 (exemption)**

Exemption is allowed subject to just exceptions.

Criminal M.A. stands disposed of.

**Crl. M.A. 2625/2012 (Delay)**

For the reasons explained, delay of 110 days stands condoned.

Criminal M.A. stands disposed of.

+ **Crl. Rev. P. 107/2012**

1. Vide the instant petition, the petitioner/State has assailed the impugned judgment dated 30.07.2011, whereby Id. Special Judge, NDPS has set aside the judgment dated 21.12.2010 and order on sentence dated 24.12.2010 passed by Id. ACMM-II, New Delhi District and respondent has been acquitted from all the charges.

2. Mr.Navin Sharma, learned counsel for the petitioner has stated that Id. Special Judge has got swayed away by the fact that according to the report of public analyst that the fat content was found to be 43.69% and according to CFL Report the same was found to be 45.26% and such minor variation ought not to have been fatal to the prosecution.
3. It is further submitted by the Id. APP that non-joining of the independent witnesses is not fatal to the case of prosecution and minor contradictions in the testimony of the Food Inspector and the SDM do not disprove the prosecution case. Minor contradictions had to be ignored.
4. It is further submitted that Id. ASJ has completely ignored the report of CFL dated 12.08.2005 as well as the public analyst and has reached on a conclusion on the basis of conjectures and surmises.
5. The case of the prosecution in brief as put up before the Id. Trial Court is as under:-

*“(a) On 19.03.2005 at about 8 p.m., Food Inspector Sh.Hukum Singh purchased a sample of Paneer, against a payment of Rs.57/- a food article for analysis from the shop of the appellant i.e. M/s. Aggarwal Sweets, Sweets India, 2/80B, Club Road, West Punjabi Bagh, New Delhi – 110026 where the said article was found stored for sale in an open tray bearing no legal declaration and the appellant was found to be owner of the shop.*

*(b) It was the case of the complainant before the Id. Trial Court that the sample was taken after properly cutting the*

*Paneer it into smallest possible pieces with the help of a clean and dry knife, then mixed properly and thereafter divided into three equal parts. One of the counterparts of the sample was sent to the Public Analyst for analysis and as the report the sample was not upto the standards laid down, because milk fat of dried matter was found to be only 43.69% which is less than the prescribed minimum limit of 50%.*

*(c) As per the appellant herein had desired to get the sample to be analysed by the Central Food Laboratory by invoking the provisions of Section 13(2) of the PFA Act, the same was sent to the CFL, Pune for analysis. Certificate NO. CFL/379/426/2005 issued by the Director, CFL, Pune dated 12/08/2005 also indicates that the sample does not conform the standards of Paneer, as per the PFA Rules, 1955, as the dried matter only contained 45.26% of Milk fat which is less than the prescribed minimum limit 50.0% of dry matter.*

*(d) On the basis of the entire evidence led before the ld. Trial Court before him, the ld. ACMM-II found the accused guilty of adulteration of food article and hence, convicted him, accordingly.”*

6. Being aggrieved, the judgment of ld. ACMM was assailed before the court of Sessions on the ground that evidence of complainant proved that the sample of paneer was not properly mixed and homogenized and that, therefore, the evidence shows that the sample taken from the shop of the appellant was not a representative

sample. As argued by the respondent that the SDM, who appeared as PW-1 before the Id. Trial Court admitted in his cross-examination that sample of Paneer after being cut into small pieces was mashed with the help of hands and knife due to which some quantity of fat had stuck on the hands of the Food Inspector. He further argued that this testimony not only shows that the sample was taken in an improper manner, but it also falsifies the testimony of the Food Inspector Hukum Singh, PW-2, who in his cross-examination has denied that Paneer was mashed with the hands.

7. It is also argued by the respondent that if it is taken that 100 gm. of Paneer was analyzed in CFL then as per the report dated 12.08.2005, the dried material therein was found to be 37% i.e. 37 gms., out of which milk fat was found to be 45.26% of the dried material which translates into 16 gms. Approximately and it shows that Milk fat was less than permissible prescribed limit of 50% i.e. 18.5 gms, only to the extent of 2 gms.

8. The sample taken was not representative, is also apparent from the fact that though the report of the public analyst indicted the Fat content was found to be 43.69%, CFL Report found the same as 45.26%, though it is scientifically proven fact that over the passage of time, the milk fat content in a sample of Paneer decreases.

9. I note that the Id. ASJ has recorded the submission of Id. Counsel for the State that once the director of CFL has examined the sample and has given his certificate the said Certificate, that is final and conclusive evidence of the facts, as stated therein the present case. Once the Director, FSL has given a report that the Fat contents in the

sample Paneer was found less than the permissible limit, the same cannot be questioned by the accused.

10. Ld. Spl. Judge after considering the submissions of both the counsels of the parties carefully, while relying upon the case of **MCD vs. Bishan Sarup, Crl. 1972, PFA Cases (Delhi) 273** of this court has clearly held that the presumption attaching to the Certificates issued by the Directorate of CFL is only in regard to what is stated in it, as to the contents of the sample actually examined by the Director and nothing more. It has been further observed in the said judgment that even after this certificate, it is open to the accused to show that the sample sent for analysis could not have been taken to be representative sample of the article of food, from which it was taken. Thus, in view of this clear judicial dicta, contention of the the accused, in view of the report of the Director, CFL is not allowed to raise objection that the sample was not representative, cannot be upheld at all.

11. I note Id. Special Judge was of the considered opinion as under:-

*“In my considered opinion, in the present case in view of the material contradiction between the testimony of the Public Analyst and Food Inspector with respect to the manner of taking the sample, the accused is entitled to the benefit of doubt for the said contradiction itself shows that the benefit of doubt for the said contradiction itself shows that the testimony of the Food Inspector is not trustworthy and therefore, non-joining of Public Witnesses does appear to have an effect in the facts of the present case. Further in my considered opinion, the accused is also entitled to the benefit of doubt in view of the deposition of the SDM that during the process of sampling, the Paneer was mashed by hand and some of it did get stuck to the hands of the Food Inspector. In view of such kind of deposition it cannot be ruled out that some of the dried matter*

*of the Paneer without the moisture had got stuck to the hands of the Food Inspector which made the sample unrepresentative. Further it has been rightly pointed out by the ld. Counsel for the appellant that the scientific evidence is to the effect that with passage of time the fat content in Paneer decreases and since in the present case the reports of the Public Analyst and the CFL report seem to suggest that the fat content in the sample increased with passage of time, the accused is entitled to acquittal. In all judgments relied upon by the ld. Counsel for the appellant, it has been consistently held that if there is a variation between the report of the public analyst and CFL, which is beyond the accepted norms, the accused would be entitled to the benefit of doubt. In the present case, it is not scientifically acceptable that fat content in the sample of paneer was found to increase with passage of time. In view of my discussion herein above, I am of the considered opinion that the order of conviction in the present case cannot be upheld and that the appellant should have been given the benefit of doubt by the ld. Trial Court. Accordingly, the judgment dated 21.12.2010 and the order on sentence dated 24.12.2010 passed by the ld. ACMM-II are hereby set aside. The appellant stands acquitted. His bail bond stands cancelled. Surety stands discharged. A copy of this order be sent to the ld. Trial Court for record. Trial Court Record be also sent back. Appeal file be consigned to Record Room.”*

12. In view of the material contradictions in the testimony of Public Analyst and Food Inspector with respect of the manner of taking sample, and in view of the deposition of SDM that during the process of sampling, the Paneer was mashed by hand and some of it did stick to the hands of Food Inspector, the respondent is entitled to benefit of doubt. Even otherwise, the scientific evidence to the fact that with the passage of time, the fat content in Paneer decreases and since in the present case, the report of the Public Analyst and the CFL report has

suggested that the fat content in the sample increased with the passage of time, which is scientifically incorrect.

13. I find no discrepancy in the order dated 30.07.2011 passed by Id. Special Judge, rather it is a reasoned order. Therefore, I am not inclined to interfere with the order.

14. Accordingly, Crl. Rev. P. No. 107/2012 is dismissed.

15. No order as to costs.

**SURESH KAIT, J**

**FEBRUARY 28, 2012**

*jg*