

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

+ CRL.REV.P. 127/2005

Date of Decision: 07.03.2012

RAJ KUMAR & ANR.

.... PETITIONER

Through: Mr.M.L.Yadav, Advocate.

Versus

STATE OF DELHI

.....RESPONDENT

Through: Ms. Fizani Husain, APP.

**CORAM:
HON'BLE MR. JUSTICE M.L. MEHTA**

M.L. MEHTA, J.

1. This revision petition is directed against the order dated 21st February, 2005 of learned ASJ passed in Criminal Appeal No. 55/2004 against the judgment and order of conviction dated 15th January, 2004 & 04th February, 2004 of learned M.M. under Section 7/16 of the Prevention of Food Adulteration Act, 1954 (for short the 'Act').

2. The petitioner No. 1 Raj Kumar being a partner of petitioner No. 2 M/s. New Ashoka Vasihnav Hotel was found present at his hotel on 16.2.1995 when the Food Inspector visited there and took a sample of *Paneer*, which on analysis by Public Analyst was found to be adulterated for not conforming to the standards laid down

because the milk fat of dry matter was reported less than the minimum prescribed limit of 50%.

3. After trial, the Metropolitan Magistrate recorded finding of guilt and consequently convicted the petitioner Raj Kumar and sentenced him to RI for a period of one year with fine of Rs. 5000/-. The orders of conviction and sentence were maintained in appeal by the learned ASJ vide the impugned order.

4. The impugned order of ASJ as also the judgment of conviction and sentence of M.M. have been assailed in the present revision petition mainly on the ground that the *Paneer*, out of which, the sample in question was taken by Food Inspector was purchased by the petitioner on the same day from Narinder Kumar of M/s. Narinder Paneer and that this fact was disclosed by the petitioner to the Food Inspector at the time of taking of sample. The said Narinder Kumar of Narinder Paneer was also arrayed as accused in the complaint before the M.M.. However, the learned M.M. did not believe this version of the petitioner and acquitted the co-accused Narinder Kumar, observing as under:

“The complainant has failed to show that accused No. 3 had supplied the Paneer in question to accused No. 1 from 99, Nehru Bazar, Pahar Ganj, New Delhi-55 or that accused No. 3 has been operating from this address. As accused No. 3 has denied his handwriting and signatures on Ex.PW1/G i.e. the cash memo, it was the bounden duty of the complainant to prove the same which has not been done as neither any expert hand writing expert has been examined nor any other evidence to the same effect has been led. The complainant has also failed to lead any positive evidence that accused No. 3 was operating from 99, Nehru Bazar, Pahar Ganj, New Delhi-55 or that he was the supplier of Paneer to accused No. 1 or that accused No. 3 has any concern with 99, Nehru Bazar, Pahar Ganj, New Delhi-55”.

5. In appeal also, the submission made by the petitioners of their having purchased the *Paneer* in question from Narinder Kumar vide receipt Ex.PW1/G, was repelled by the learned ASJ.

6. In the present petition also, similar plea has been raised and findings recorded by the M.M. and maintained by the ASJ in this regard have been assailed. It is submitted that the petitioners, at the time of taking of sample, not only disclosed to the Food Inspector about having purchased the *Paneer* from Narinder Kumar, but also made an endorsement to that effect on the notice Form VI (Ex.PW1/D). It was submitted that the address of Narinder Paneer was subsequently shifted from Nehru Bazar, Paharganj to Sita Ram Bazar and therefore, the petitioners could not prove that Narinder Kumar was operating from Nehru Bazar premises.

7. I have heard learned counsel for the petitioners and learned APP and perused the record. Since on having gone through the testimony of PW1 Food Inspector I found there to be some error in the appreciation of the evidence by learned M.M., I chose to critically examine the testimony of Food Inspector PW1. It was desired as the provision is punitive and penal and requires strict interpretation.

8. The Food Inspector PW1 R.P.Singh, in his statement had stated that the petitioner Raj Kumar disclosed at the spot that the said *Paneer* was purchased by him from Narinder Paneer, 99, Nehru Bazar, Paharganj. A separate notice in Form VI addressed to Narinder Paneer was prepared. Copy of the said notice was placed on record as Ex.PW1/D. On this, endorsement was made by petitioner Raj Kumar at the spot to the effect that *Paneer* was purchased by him from Narinder Paneer. At that time, he was not in possession of the original bill, but he had stated that the same will be produced by him later on. He stated that during investigation, it came to be known that the business of *Paneer* being carried at 99, Nehru Bazar, Paharganj was shifted to new address at Sita Ram Bazar and that, Narinder Kumar was also found present and doing *Paneer* business there. He further stated that

Narinder Kumar admitted his signatures on the receipt Ex.PW1/G and also further admitted that he had supplied the *Paneer* to petitioners on 16.2.1995 vide the said cash memo/receipt Ex.PW1/G. In his cross examination on behalf of the petitioners, he admitted that the petitioner Raj Kumar had disclosed at the spot about having purchased the *Paneer* from Narinder Kumar and also produced a photocopy of the cash memo and that the original of the same was also shown to him later on. He further admitted that Narinder Kumar never disputed the supply of *Paneer* to the petitioners, but rather he admitted Ex.PW1/G to be in his hand writing. In his cross examination on behalf of the accused Narinder Kumar, he maintained that this accused refused to give in writing that Ex.PW1/G was in his hand and bears his signatures and that he had supplied the *Paneer* to the petitioners. He denied the suggestions put to him that Narinder Kumar never stated as deposed by him or that in fact, he had denied Ex.PW1/G as issued by him. He also maintained that original of Ex.PW1/G was not given to him by the petitioner, though it was shown to him. He also maintained that Narinder Kumar had also stated to him that he has been regularly supplying *Paneer* to petitioners.

9. It would be seen that when according to the prosecution own case, the petitioners had disclosed that the *Paneer* was purchased from Narinder Paneer and had produced a copy of the receipt Ex.PW1/G and also shown the original thereof later on, mere denial or refusal to give in hand writing by Narinder Kumar would not be enough to exonerate him. The Ex.PW1/G is a copy of the cash memo of the same day i.e. 16.2.1995 showing purchase of 5 Kgs. of *Paneer* by the petitioners from M/s. Narinder Paneer, 99, Nehru Bazar, Paharganj. According to PW1, a notice in Form VI in the name of Narinder Paneer was prepared at the spot and endorsement thereon to the effect of the *Paneer* having been purchased from Narinder Paneer was made by the petitioners. If during the investigation, the Food

Inspector, as stated by him, had come to know that the address of Narinder Paneer was shifted from Nehru Bazar, Paharganj to Sita Ram Bazar and he had seen Narinder Kumar present there and selling *Paneer*, the notice could have been issued to him at the changed address. Admittedly, no notice was issued to him at the new address. Further, if according to the Food Inspector PW1, Narinder Kumar had admitted before him the issue of Ex.PW1/G and his signatures thereon, but has refused to give in writing in this regard, he could have taken steps for taking of his hand writing and signatures for comparison with Ex.PW1/G. In a situation like this, how it could be expected from the petitioners to prove Ex.PW1/G, which, on the face of it, was taken by the Food Inspector as an acceptable and admissible document. The petitioners remained satisfied with Narinder Kumar being made an accused on the basis of Ex.PW1/G. When Narinder Kumar had shifted his business address to Sita Ram Bazar, not known to the petitioners, and which only came to be known to Food Inspector during investigation, how petitioners could be burdened to prove the running of *Paneer* business by Narinder Kumar from Nehru Bazar, Paharganj. In this regard also, when the Food Inspector had taken and accepted the receipt showing the address of Narinder Paneer of Nehru Bazar, Paharganj, and the said receipt was never doubted by the complainant department, the petitioners could not be further burdened to prove the running of *Paneer* business by Narinder Kumar from Nehru Bazar premises.

10. In view of my above discussion, I find that the learned M.M. has erred in appreciating testimony of PW1 in its right perspective and so was the mistake committed by the learned ASJ. Thus, I am unable to sustain the impugned order as also the aforesaid judgment and order of conviction and sentence passed by M.M.

Consequently, both the judgments and orders of court below are set aside. The petitioners are accordingly acquitted of the offences for which they are convicted.

11. Revision petition stands disposed of.

M.L. MEHTA, J.

MARCH 07, 2012

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