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

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+ CRL.REV.P. 568/2005

M/S RAJA RAM SETH & SONS & ANR

..... Petitioners

**Through: Mr. D.C. Mathur, Senior Advocate with
Mr. Mohit Mathur, Mr. Shardul Singh and Mr.
Devender Dedha, Advocates**

versus

DELHI ADMN.

..... Respondent

Through: Mr. Manoj Ohri, APP for State

AND

14.

+ CRL.REV.P. 572/2005 & CrI.M.A. 7366/2005

K.D.YADAV (IN J.C.)

..... Petitioner

**Through: Mr. Arjun Bhandari with Mr. Aman
Gupta, Advocates**

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Manoj Ohri, APP for State

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Date of Decision: 12th October, 2012

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J : (Oral)

1. The present two revision petitions have been filed by the dealer M/s. Raja Ram Seth & Sons as well as by nominee of the manufacturer, Mr. K.D. Yadav, challenging the judgment dated 23rd July, 2005 passed by Additional Sessions Judge, New Delhi in Crl. Appeal No. 8/04 whereby the appeals filed by the petitioners challenging the judgment dated 30th October, 2003 and order on sentence dated 07th January, 2004 passed by the Metropolitan Magistrate, New Delhi were dismissed.
2. The relevant facts of the present case are that on 19th June, 1993, Food Inspector collected a sample of double toned milk from M/s. Manchanda Bakers and Confectioneries, Kamla Nagar, Delhi. The said package of milk had been purchased by them from Mr. Radhey Shyam who were distributors of M/s. Amrit Foods, G.T. Road, Ghaziabad. The milk is stated to have been packaged by M/s. Amrit Foods whose nominee is Mr.K.D. Yadav.
3. A sample of double toned milk was sent to the Public Analyst. According to his report, there was an adulteration because milk solid not fat was 8.4 % which was less than the prescribed minimum percentage of 9%. However, the Public Analyst found the milk fat content to be 1.7%, i.e., within legal limits.
4. Upon sanction being granted, Food Inspector, approximately eight months later, filed a complaint on 17th February, 1994.

5. On 15th March, 1994 at the request of the accused, Metropolitan Magistrate sent the counter-part sample to the Director, CFL for analysis in accordance with Section 13(2) of the Food & Adulteration Act, 1954 (for short 'the Act').

6. The Director, CFL in his report dated 13th April, 1994 stated that milk solid not fat was 9.8% which was above the minimum prescribed percentage of 9%. However, as far as milk fat is concerned, the report found the content to be 0.2% which was less than minimum prescribed percentage of 1.5%.

7. Learned counsel for the petitioners submit that the report of the Public Analyst regarding the content of milk solid not fat is completely contradicted by the subsequent report of the Director, CFL.

8. On the other hand, Mr. Manoj Ohri states that both the experts have found the sample to be adulterated.

9. It is settled law that by virtue of Section 13 of the Act, the report of the Director, CFL is final and conclusive evidence about the facts stated therein as well as the contents of the sample. The relevant portion of Section 13(5) of the Act reads as under:-

“13. Report of public analyst.

xxx

xxx

xxx

(5) Any document purporting to be a report signed by a public analyst, unless it has been superseded under sub-section (3), or any document purporting to be a certificate signed by the Director

of the Central Food Laboratory, may be used as evidence of the facts stated therein in any proceeding under this Act or under sections 272 to 276 of the Indian Penal Code (45 of 1860):

[Provided that any document purporting to be a certificate signed by the Director of the Central Food Laboratory [not being a certificate with respect to the analysis of the part of the sample of any article of food referred to in the proviso to sub-section(1A) of section 16] shall be final and conclusive evidence of the facts stated therein.]”

10. In ***Calcutta Municipal Corporation v. Pawan Saraf and Another (1999) 2 SCC 400***, the Supreme Court has held as under:-

“10. When the statute says that certificate shall supersede the report it means that the report would stand annulled or obliterated. The word "supersede" in law, means "obliterate, set aside, annul, replace, make void or inefficacious or useless, repeal", (vide Black's Law Dictionary, 5th Edn.). Once the Certificate of the Director of Central Food Laboratory reaches the court the Report of the Public Analyst stands displaced and what may remain is only a fossil of it.

11. In the above context the proviso to Sub-section (5) can also be looked at which deals with the evidentiary value of such certificate. The material portion of the proviso is quoted below:

“Provided that any document purporting to be a certificate signed by the Director of the Central Food Laboratory....shall be final and conclusive evidence of the facts stated therein.”

12. If a fact is declared by a statute as final and conclusive, its impact is crucial because no party can then give evidence for the purpose of disproving the fact. This is the import of Section 4 of the

Evidence Act 1872 which defines three kinds of presumptions among which the last is "conclusive proof:

"When one fact is declared by this Act to be conclusive proof of another the court shall, on proof of the one fact regard the other as proved and shall not allow evidence to be given for the purpose of disproving it."

13. Thus the legal impact of a Certificate of the Director of Central Food Laboratory is three-fold. It annuls or replaces the report of the Public Analyst, it gains finality regarding the quality and standard of the food article involved in the case and it becomes irrefutable so far as the facts stated therein are concerned."

11. Moreover, in the present case, the two reports prepared by the Public Analyst and the Director, CFL show a sharp and substantive variation in both milk solid not fat and milk fat content. Consequently, the samples drawn by the respondent cannot be said to be representative and no conviction is permissible on the basis of the said reports. In fact, this Court in ***Kanshi Nath v. State 124(2005) DLT 413*** has held as under:-

“7. xxx xxx xxx

A careful reading of the Supreme Court decision reveals that the certificate of the Director, CFL supersedes the report of the Public Analyst and is conclusive as regards the quality and standards of the sample tested. There is no quarrel with this and there can be none. But, this does not enable us to detract from the ratio of the Full Bench decision of this court in the case of MCD v. Bishan Sarup (supra) that even after such a certificate is issued by the Director, CFL, it would still be open to the accused to establish, if he can do so on concrete grounds, that the sample tested was not a representative one. To this extent, the argument raised by Mr.

Sharma that once the certificate of the Director, CFL is obtained, then that is final and conclusive and the Public Analyst's report cannot be looked into at all for any purpose whatsoever, is not quite tenable. If the variation in the two reports is substantial enough, then the Public Analyst's report can certainly be looked into to establish this variation so as to support the contention of the petitioner that the sample was not representative. As indicated above, the Director, CFL who was examined as CW-1 in cross-examination, has clearly stated that if the content of common salt as quantified by the two experts would have a variation of more than 0.3%, then the samples would not be representative. This is an opinion of an expert and one has to go by it. In the facts of the present case, we find that the variation, as indicated above, is more than 0.3%. Therefore, on the facts of the present case, it can be said that the variation is beyond the acceptable range and would clearly imply that the samples were not representative. In view of this finding and in the background of the law which is well settled, no conviction can be sustained.”

12. This Court in ***State Vs. Mahender Kumar & Ors., Criminal Appeal No. 54/1990*** decided on **24th January, 2008** has also held as under:-

“11. While both reports have concurred in the conclusion that the sample was adulterated, the variation in the material parameters in the sample sent to each of them is not insignificant. In the sample sent to the Public Analyst the ash content is 4.04% whereas in the sample sent to the CFTRI it is 6%. The ash insoluble in dilute HCL is 2.55% in the sample sent to the Public Analyst whereas it is 1.95% in the sample sent to the CFTRI. The lead content is Nil in the first and 5.4 ppm in the second. These variations are more than –Y .3% which is stated to be the permissible limit. It cannot therefore be said that identical

representative samples were sent to both the Public Analyst as well as the CFTRI....."

(emphasis supplied)

13. In view of the aforesaid, the present revision petitions are allowed and the impugned judgment passed by ASJ as well as judgment and order on sentence passed by Metropolitan Magistrate are set aside.

14. The bail bonds furnished by the petitioners stand discharged.

15. With the aforesaid observations, the revision petitions and pending application stand disposed of.

MANMOHAN, J

OCTOBER 12, 2012

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