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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.L.P. 245/2012

DELHI ADMINISTRATION

THR. FOOD INSPECTOR

Through

..... Petitioner

Mr. Manoj Ohri, APP for State.

versus

SURESH KUMAR & ANR

Through

..... Respondents

None

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Date of Decision: 27th August, 2012

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J :

CRL.M.A. 5879/2012

Allowed, subject to just exceptions.

CRL.M.A. 5878/2012

Keeping in view the averments in the application, delay in filing the petition is condoned.

Accordingly, present petition stands allowed.

CRL.L.P. 245/2012

1. Present petition has been filed under Section 378(3) Cr. P.C. for grant of leave to appeal against the order dated 19th May, 2009 passed by the learned Additional Sessions Judge-01, South, New Delhi in Criminal Appeal No. 50/1999 whereby accused/respondents' appeal against conviction order dated 24th May, 1999 passed by learned Metropolitan Magistrate has been allowed and accused/respondents have been acquitted for offences punishable under Section 16(1A) read with Section 7 of Prevention of Food Adulteration Act, 1954 (for short 'PFA Act).

2. Learned Additional Sessions Judge while acquitting the accused/respondents has observed as under:-

“In the present case it is not disputed that there is no prescribed standard given in Appendix B in the PFA Rules with regard to chatni ie food article. It is also not disputed as argued on behalf of the appellants that chatni was not sold by appellant no. 1 for price. The contention is that with the pakodas prepared by the appellant, the chatni is given free of cost to the customers and it was a pundina chatni having ingredients of mint plant herbs (pudina) which is famous of its digestive properties along with garlic, onion and other herbs and sweet along with salt and is used in our Indian system with a food article

for the digestive purpose. It is also a matter of common knowledge that the shopkeepers who sell the articles like samosa, pakodas, Aloo tikki etc give such chatni to the customers free of cost with the main food article. Therefore, the said chatni can be held to be not for sale. Therefore, there is no violation of Section 2(ia) which requires that the food article should be sold by the vendor. Further since chatni in question did not contain harmful substance so there was no violation of Section 2(b) also. Section 7 of the PFA Act also speaks about manufacture or sale, storage or distribution of any adulterated food article. But chatni given with main food article in question being not in violation of Sec 2(ia)(b) can also not be said in violation of Sec. 7 also as it was not for sale, distribution or storing and was only given free of cost by the appellants in a small quantity to the customers along with pakodas etc.

As regards violation of Sec. 2(j) if any colouring matter other than prescribed in respect thereof is present in the article, or if the amounts of the prescribed colouring matter which is present in the article are not within the prescribed limits of variability then food article can be said to be adulterated. It is not disputed that the Coaltar Dye or food colouring found by Director CFL as specified in the Certificate Ex PX are permitted colour as per Rule 28 of PFA Rules. But these permitted colour are only permitted for the food articles specified in Rule 29. The contention of learned counsel for appellant no. 1 is that the 'chatni' comes in the food article 'savory' and by virtue of Rule 29(b) the appellants can not be held liable even if it is found Coaltar Dye was used in the 'chatni'. He has relied upon dictionary meaning of savory. But this contention is not acceptable as items of 'savory' which are permissible are given in the bracket in the clause (b) of Rule 29 and 'chatni' does not find mention in it. Therefore, the submissions of learned counsel for the appellants is liable to be rejected. However, within the

same clause (b) used in Rule 28. The term 'confect' is defined in Oxford Concise Dictionary 9th Edition published by Manzar Khan, Oxford University Press page 278 as "put together, make." The word confectionary is defined as sweets and other confections. Keeping in view the fact that the Public Analyst report Ex PW2/A shows that the test for sugar in the sample of chatni was positive it can be taken as a confectionary item permitting use of coal tar dye permitted by Rule 28 of PFA Act. I am not unmindful of the fact that certificate of Director CFL supersedes the report of Public Analyst Ex PW2/A. But since from the certificate of Director CFL it is not reflected that presence of sugar was tested or not in the sample sent to the Director CFL, to know that sampled chatni contained sugar also. The finding of Public Analyst that test for sugar was positive can also be relied upon. Therefore, said chatni can be treated as confectionary item and this interpretation would be in line with the meaning of the words, 'confect' and 'confectionary' given in the said Concise Oxford Dictionary. Therefore, even if the coal tar dye/ food colouring as permitted in Rule 28 as per certificate of Director CFL Ex PX was used in the chatni the same does not violate Section 2(h) of the PFA Act, more so, when the quantity of the coal tar dye in percent or weight term is not specified in the certificate Ex PX issued by Director CFL. It is a pity that sample of the chatni was lifted by Food Inspector in 1991 which is a item not for sale and is given free of cost by the shopkeepers to the customers along with main item pakoda, samosa etc and for such a priceless item, the appellants have faced agony of trial and proceedings in the appeal for more than 18 years.

In view of the above discussion, I hold that prosecution have not been able to prove its case against the appellants/ convicts beyond the shadow of reasonable doubt."

3. Mr. Manoj Ohri, learned APP for State submits that learned Additional Sessions Judge failed to appreciate that if unpermitted colour is added in any food article, then the same has to be held to be adulterated and details of percentage as well as test are not required to be given as colour is not permitted in eatable chutney in accordance with Rules 28 and 29 of Prevention of Food Adulteration Rules, 1955 (for short 'PFA Rules').

4. Having heard learned APP for State, this Court is of the opinion that any acquittal order cannot be lightly interfered with by the Appellate Court, though it has wide powers to review the evidence and to come to its own conclusion. The power to grant leave has to be exercised with care and caution because the presumption of innocence is further strengthened by the acquittal of an accused. It is also well settled that the Appellate court should reverse an acquittal only for very substantial and compelling reasons. (See ***Chandrappa & Ors. Vs. State of Karnataka, (2007) 4 SCC 415*** and ***Arulvelu & Anr. Vs. State Represented by the Public Prosecutor & Anr., (2009) 10 SCC 206***).

5. In the present case, learned Additional Sessions Judge has held that as sugar was found in the sample of chutney it can be taken as confectionary item and by virtue of Rule 28 of PFA Rules Coal tar Dye or food colouring could have been used. Consequently, this Court is of the view that even if food colouring had been used, the same was permissible in view of Rule 28 of PFA Rules as per certificate of Director, CFL and the same does not violate Section 2(h) of PFA Act.

6. Keeping in view the aforesaid, present petition for leave to appeal is bereft of merits and is accordingly dismissed.

MANMOHAN, J

AUGUST 27, 2012

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