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

+ CRL. L.P. 401/2010

Decided on 3rd October, 2012

LOCAL HEALTH AUTHORITY Petitioner

Through: Ms. Fizani Hussain, APP

versus

JOGINDER SINGH Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

A.K.PATHAK, J. (ORAL)

1. Trial Court has convicted the respondent under Section 16(1) read with Section 7 of the Prevention of Food Adulteration Act, 1954 (for short hereinafter referred to as “the Act”) for violating sub-clause (a) & (m) of Section 2(ia) of the Act; sentenced to undergo rigorous imprisonment for six months with fine of Rs.3,000/- (Rupees Three Thousand Only) and in default of payment of fine to undergo simple imprisonment for one month.

2. Respondent preferred an appeal before the Additional Sessions Judge, Delhi, which has been allowed and the respondent has been acquitted by the order dated 2nd June, 2010, impugned in

this petition.

3. That is how, petitioner is before this Court by way of present petition under Section 378(4) Cr.P.C. seeking leave to appeal against the acquittal of respondent.

4. On 6th June, 1999, Food Inspector Shri R.P. Singh intercepted a milk tanker containing double toned milk. Sample of milk was drawn. Twenty drops of formalin were mixed as preservative. Sample was divided in three parts and kept in three different clean and dry bottles. Thereafter, bottles were sealed. One sample was sent to Public Analyst. As per the report of Public Analyst, milk fat was found 1.9% and milk solids not fat 8.36%. Sample was reported as adulterated since it did not meet the prescribed standards as milk solids not fat was less than prescribed minimum limits of 9%.

5. A complaint was filed in the court of Additional Chief Metropolitan Magistrate, New Delhi. Respondent exercised his option under Section 13(2) of the Act and counterpart sample was sent to Central Food Laboratory (CFL). As per the report of CFL, milk fat was found to the extent of 1.7%, while milk solids not fat

to the extent of 8.4%. Since complaint was filed belatedly, respondent could exercise his option under Section 13(2) of the Act only after a gap of eight months.

6. Additional Sessions Judge by placing reliance on *M.C.D. vs. Ghisa Ram*, AIR 1967 SC 970 and *Gian Chand vs. State*, 1979 Cri LJ 754, has held that the shelf life of the milk is about four months, if it is kept in a room temperature and six months, if kept in a refrigerator, thus, sending of counterpart sample to CFL after a gap of eight months had deprived respondent of his right under Section 13(2) of the Act. It has further been noted that no evidence was led to show that the sample was kept in a refrigerator, therefore, life of counterpart sample could not be more than four months. Accordingly, conviction has been set aside and respondent has been acquitted.

7. I do not find any manifest error or perversity in the impugned order, inasmuch as, same is in consonance with the evidence led before the trial court and the law applicable to the facts involved in the matter. Admittedly, counterpart sample was sent to CFL after about eight months on account of delay in filing

the complaint. This delay has deprived the respondent to avail option under Section 13(2) of the Act, which makes the respondent entitled to benefit of doubt.

8. In Ghisa Ram (supra) the complaint was filed in the court after about seven months from the date of raid and taking sample of milk product (curd) from the shop of accused. In these circumstances, Supreme Court has held that valuable right available to the accused under Section 13(2) of the Act of having the sample tested at CFL had stood denied to him. Crux of the judgment of the Supreme Court is that prosecution in these kinds of cases should be launched promptly. In the facts of this case, I do not find the view taken by the Additional Sessions Judge to be unreasonable or perverse, inasmuch as, the same is reasonably possible on the evidence adduced before the Trial Court.

9. In State of Punjab vs. Ajaib Singh and Ors. 2005 SCC (Cri) 43, Supreme Court has held, thus, “it is well settled that in an appeal against acquittal, the appellant court is entitled to re-appreciate the evidence on record, but having done so it will not interfere with the order of acquittal unless it finds the view of the

court acquitting the accused to be unreasonable or perverse. If the view recorded by the court acquitting the accused is a possible, reasonable view of the evidence on record, the order of acquittal ought not to be reversed". In Sirajuddin @ Siraj vs. State of Karnataka 1980 CAR 359 (SC), Supreme Court has held that if the view on the evidence taken by the Trial Court is reasonably possible, the High Court should not, as a rule of prudence, disturb the acquittal.

10. For the foregoing reasons, I do find any justifiable reason to grant leave to appeal to the petitioner.

11. Petition is dismissed.

A.K. PATHAK, J.

OCTOBER 3, 2012
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