

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

Reserved on: 31st January, 2013
Pronounced on: 18th February, 2013

+ **CRL.A.153/2013**

DELHI ADMINISTRATION THROUGH
DESIGNATED OFFICER

..... Petitioner
Through: Ms.Rajdipa Behura, APP

Versus

MANOHAR LAL

..... Respondent
Through: Ms. Asha Tiwari, Advocate

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. The Appellant impugns a judgment dated 11.11.2011 whereby the order of the learned Metropolitan Magistrate(“MM”) dated 02.05.2011 holding the Respondent guilty under Section 7 read with Section 16 of the Prevention of Food Adulteration Act, 1954 (PFA Act) and the order dated 13.05.2011 whereby the Respondent was sentenced to undergo RI for one year and to pay a fine of ₹15,000/- was set aside and the Respondent was acquitted.
2. On 31.03.2003, Food Inspector S.B. Sharma purchased a sample of ‘*Dal Arhar*’ (a food article) for analysis. The sample purchased was properly mixed with the help of a *jhaba*; it was divided in three equal parts and

was put in three separate clean and dry bottles. The bottles were separately packed, sealed and labelled as per the provisions of the PFA Act and the Rules made thereunder. One sealed bottle was sent to the Public Analyst for analysis who by his report dated 10.04.2003 opined the sample to be adulterated as it was found to contain a synthetic colouring matter, viz, '*Tartrazine*'. After obtaining consent under Section 20 of the PFA Act, the complaint was instituted against the Respondent.

3. On analysis of the evidence adduced, the learned MM opined that the Appellant had successfully proved the purchase of the sample which was found to be adulterated with the presence of '*Tartrazine*'. The Respondent was convicted and sentenced to imprisonment as stated earlier.
4. The Respondent challenged the judgment dated 02.05.2011 and order dated 13.05.2011 passed by the learned MM in the Court of learned Additional Sessions Judge("ASJ"). The learned ASJ acquitted the Respondent on the premise that the Appellant had failed to prove that the presence of colour was to such an extent so as to make the food article injurious to health. He opined that in the absence of any evidence about the quantity of '*Tartrazine*' present in the sampled food article, it could be presumed that the same was negligible. The learned ASJ further held that photo-chromatic test which was conducted in the instant case to determine the presence of the '*Tartrazine*' was not a sure test to determine presence of permitted metanil yellow coal tar dye in the sampled food article. The learned ASJ further found that as per the

Public Analyst's report Ex.PW1/G, the analysis of the sample was started on 02.04.2003, it was completed on 04.04.2003 and the report was signed on 10.04.2003. The learned ASJ held that the delay of six days in signing the report would lose its value. Relying on the judgment of the Gujarat High Court in *Babubhai Ranchhodbhai Chauhan v. State of Gujarat*, (Criminal Revision No.2936/1985) decided on 19.03.1996, the Respondent was acquitted.

5. The following contentions are raised on behalf of the Appellant:
 - (i) The artificial colouring matter can be added only in the food articles specified in Rule 29 of the PFA Rules. Rule 23 prohibits addition of colouring matter to any article of food except specifically permitted by the PFA Rules. Since the standard of foodgrains is given in A.18.06 Appendix B of the Rules and that of *Arhar Dal* in Appendix A.18.06.09 of the Rules and Item A.18.06 specifically prohibits the use of any added colouring matter, thus, a conjoint reading of Rule 23, 28 and 29 read with Item A.18.06 and A.18.06.09 will clearly show that the sample of *Arhar Dal* was adulterated. Reliance is placed on the report of the Supreme Court in *Prem Ballab and Anr. v. State(Delhi Admn.)*, (1977) 1 SCC 173.
 - (ii) It is true that the Public Analyst started analysis on 02.04.2003; the sample was completed on 04.04.2003 and the report Ex.PW1/G was signed by the Public Analyst on 10.04.2003; yet the delay of six days in signing the report by itself would not be fatal to the prosecution. The learned APP places reliance on a

Full Bench judgment of this Court in *Municipal Corporation of Delhi v. Chhote Lal*, ILR, (1969) Delhi 885 and *Municipal Corporation of Delhi v. Thou Ram*, ILR, (1974) I Delhi 649.

(iii) The learned ASJ erred in holding that the photo-chromatic test was not a reliable test to determine the presence of an artificial colour. The learned APP relies on *Dhian Singh v. Municipal Board, Saharanpur*, 1970 AIR 318 in support of her contention that mode or particulars of analysis or test applied are not to be seen by the Court to come to a conclusion whether the article of food was or was not adulterated as defined in S. 2(i) of the PFA Act.

6. On the other hand, the learned counsel for the Respondent supports the impugned judgment. It is urged that the contentions raised by the learned APP cannot be attached any importance in view of the judgment of a learned Single Judge of this Court in *Delhi Administration v. Amar Chand*, (Crl.L.P.266/2012) decided on 21.05.2012.
7. I have given my thoughtful consideration to the contentions raised on behalf of both the parties.
8. In *Amar Chand*, a Co-ordinate Bench of this Court while dealing with a sample of *Dal Moth* held that making a harmonious construction of the provisions in Rule 28 and Article A.18.06, a synthetic food colour would not fall in the category of added colouring matters which are prohibited in foodgrains. Similarly, relying on the judgment of the Gujarat High Court in *Babubhai Ranchhodbhai Chauhan*, the learned Single Judge opined

that the delay of twelve days in signing the report by the Public Analyst would be fatal and reliance could not be placed on the report.

9. With all humility at my command, I may say that the judgment in *Amar Chand* runs counter to the Supreme Court judgment in *Prem Ballab* and Full Bench judgment of this Court in *Chhote Lal*.
10. In the case of *Prem Ballab*, a sample of mustard oil was found to contain permitted coal tar dye. On behalf of the Appellant, a contention was raised before the Supreme Court that since no colouring matter was prescribed in respect of linseed oil (Item A.17.04), the presence of permitted artificial dye will make the sample of linseed oil to be adulterated.
11. The Supreme Court extracted Item A.17.04 of Appendix B which contains the standard of linseed oil and analysed Rules 23, 28 and 29 which deal with addition of artificial colour and held that since the added colouring matter was specifically prohibited, even permitted colouring matter was not permissible in linseed oil. Para 6 of the report is extracted hereunder:

“6. That takes us to the question whether the present case falls within clause (j) of Section 2(i), for if it does, it would be immaterial whether it falls also within clause (l) of Section 2(i) and insofar as the linseed oil sold by the appellants is deemed to be adulterated under clause (j) of Section 2(i), the proviso to Section 16(1) would not be attracted. Now, the report of the Public Analyst showed that the linseed oil sold by the appellants contained artificial dye and this was clearly prohibited under the Rules. Rule 23 provided that the addition of a colouring matter to an article of food, except as specifically permitted by the Rules, shall be prohibited. The

only artificial dyes, which were permitted to be used in food, were those set out in Rule 28, and Rule 29 prohibited the use of permitted coaltar dyes in or upon any food other than those enumerated in that rule. Linseed oil was admittedly not one of the articles of food enumerated in Rule 29 and hence even permitted coaltar dyes could not be added to linseed oil. It does not appear from the report of the Public Analyst as to what was the artificial dye found mixed in the sample of linseed oil sent to him but we will assume in favour of the defence that it was a permitted coaltar dye. Even so, by reason of Rules 23 and 29, it could not be added to linseed oil. In the circumstances, the linseed oil sold by the appellants contained artificial dye which was prohibited under the Rules. The argument of the appellants was that since colouring matter was prohibited in respect of linseed oil, it could not be said that any colouring matter was prescribed in respect of linseed oil by the Rules and hence the presence of artificial dye in linseed oil did not attract the applicability of clause (j) of Section 2(i). It was said that clause (j) of Section 2(i) would be attracted only if a colouring matter is prescribed in respect of an article of food and the article is found to contain a colouring matter different from that prescribed. But if no colouring matter is prescribed, which would be the position where colouring matter is totally prohibited, it cannot be said that the article of food contains a colouring matter other than that prescribed in respect of it. This argument has the merit of ingenuity but it has no force and cannot be sustained. When no colouring matter is permitted to be used in respect of an article of food, what is prescribed in respect of the article is "nil colouring matter" and if the article contains any colouring matter, it would be "other than that prescribed in respect" of the article. Clause (j) of Section 2(i) is not merely intended to cover a case where one type of colouring matter is permitted to be used in respect of an article of food and the article contains another type of colouring matter but it also takes in a case where no colouring matter is permitted to be used in respect of an article of food, or in other words, it is prohibited and yet the article contains a colouring matter. There is really no difference in principle between the two kinds

of cases. Both are equally reprehensible; in fact the latter may in conceivable cases be more serious than the former. Where no colouring matter is permitted to be used in an article of food, what is prescribed in respect of the article is that no colouring matter shall be used and if any colouring matter is present in the article in breach of that prescription, it would clearly involve violation of clause (j) of Section 2(i).”

12. Turning to the facts of the instant case, the standard of foodgrains is given in Item No.A.18.06, whereas Item No.A.18.06.09 lays down the standard of *Dal Arhar* which is included in the foodgrains. The relevant items for the purpose of dealing with the controversy raised are extracted hereunder:

“A.18.06-FOODGRAINS meant for human consumption shall be whole or broken kernels of cereals, millets and pulses. In addition to the undermentioned standards to which foodgrains shall conform, they shall be free from argemone maxicana and kesari in any form. They shall be free from added colouring matter. The foodgrains shall not contain any insecticide residues other than those specified in column (2) of the table of Rule 65 and the amount of insecticide residue in the foodgrains shall not exceed the limits specified in column (4) of the said Table. The foodgrains meant for grinding/processing shall be clean, free from all impurities including foreign matter (extraneous matter).

[Provided that the imported wheat for the purpose of Public Distribution System, or imported under the O.G.L. vide number G.S.R.386(E), dated the 28th June, 2006 from the date of commencement of the Prevention of Food Adulteration (VIth Amendment) Rules, 2006 till the 31st day of March, 2008, shall be practically free from argemone maxicana and kesari in any form.

Explanation.- For the purpose of this item, “Public Distribution System” shall have the same meaning assigned to it under the Public Distribution(Control) Order, 2001.]”

xxx	xxx	xxx	xxx	xxx
xxx	xxx	xxx	xxx	xxx

“A.18.06.09-SPLIT PULSE (DAL) ARHAR:

Dal Arhar shall consist of husk and split seeds of red gram[Cajanus cajan (L) Millsp]. It shall be sound, clean, sweet, dry, wholesome and free from admixture of unwholesome substance. It shall also conform to the following standards, namely:-

- (i) *Moisture-Not more than 14 per cent by weight (obtained by heating the pulverised pulses at 130°C- 133°C for two hours).*
- (ii) *Foreign matter (Extraneous matter)- Not more than 1 per cent by weight of which not more than 0.25 per cent by weight shall be mineral matter and not more than 0.10 per cent by weight shall be impurities of animal origin.*
- (iii) *Other edible grains-Not more than 0.5 per cent by weight.*
- (iv) *Damaged grains-Not more than 5 per cent by weight.*
- (v) *Weevilled grains-Not more than 3 per cent by count.*
- (vi) *Uric acid content-Not more than 100 mg per kilogram.*
- (vii) *[Aflatoxin]-Not more than 30 micrograms per kilogram.*

Provided that the total of foreign matter, other edible grains and damaged grains shall not exceed 6 per cent by weight.”

13. The standard of Dal Arhar as given in Item A.18.06.09 has to be read with the general standard of foodgrains as given in Item A.18.06 of Appendix B. Item A.18.06 specifically prohibits the use of colouring matter as it says *they shall be free from added colouring matter*. The

reasoning of the Supreme Court extracted above fully applies to the standard of foodgrains which similarly prohibits use of added colouring matter. Thus, the judgment of the learned Single Judge of this Court in *Delhi Administration v. Amar Chand* shall have to be held as per incuriam.

14. The reasoning given by the learned ASJ that the quantity of the colour could be negligible or that the added colour was not injurious to health is going beyond the standard laid down in Item A.18.06 read with A.18.06.09 of Appendix B. The same, therefore, cannot be accepted. On the basis of the report of Supreme Court in *Prem Ballab* there is no manner of doubt that presence of artificial dye even if it is one of the dyes as mentioned in Rule 28 cannot be allowed as it is not permitted by Rule 29 of the PFA Rules.
15. Now turning to the delay in signing the report Ex.PW1/G by the Public Analyst it is not in dispute that the analysis was completed on 04.04.2003 and the report was signed on 10.04.2003. The learned ASJ relied on the report of the Gujarat High Court in *Babubhai Ranchhodbhai Chauhan* to hold that delay in signing the report after completion of analysis would be fatal to the prosecution. In *State of Gujarat v. Vishramdas Virumal*, (2000) 4 GLR 2884, a Division Bench of the Gujarat High Court considered the judgment in *Babubhai Ranchhodbhai Chauhan* but declined to agree with the view on the ground that the report of the Public Analyst cannot be ignored without examining the Public Analyst. Paras 14 and 17 of the report are extracted hereunder:

“14. In the case before us, it is very clear that neither the prosecution nor the accused nor the Court thought it fit to call the Public Analyst as a witness. In the absence of that, the report submitted by the Public Analyst has to be accepted by the Court.

17. Having discussed the issue in detail, our reply to the question raised is as under:

A report of the Public Analyst delivered under Section 13(1) of the Prevention of Food Adulteration Act, 1954 declaring an analysis of a sample of food to be “adulterated” or “misbranded”, cannot be ignored without examining the Public Analyst as a witness either by the Court or the accused raising a doubt about the correctness of the report only on the ground that the report is signed by the Public Analyst later on and not on the date on which sample was analysed.”

16. In *Municipal Corporation of Delhi v. Chhote Lal*, ILR, (1969) Delhi 885, a Full Bench Bench of this Court held that unless prejudice is shown to have been caused to the accused by delay in signing the report, the same would not be of any significance. The delay of seven days in signing the report was, therefore, held to be inconsequential. The relevant para of the report in *Chhote Lal* is extracted hereunder:

“Coming to the facts of the present case, we find that no prejudice is shown to have been caused to the accused respondent because of the lapse of seven days between the date of analysis and the signing of the report by the Public Analyst. We are not impressed by the argument advanced on behalf of the respondent that any every delay should be presumed to have caused prejudice to the accused. The question of prejudice is essentially one of fact and in the absence of any material on the record, we are unable to hold that prejudice has been caused to

the accused merely because of the delay of seven days in signing the report by the Public Analyst.”

17. Similarly, in *Municipal Corporation of Delhi v. Thou Ram*, ILR, (1974) I Delhi 649, a Division Bench of this Court held that in the absence of any indication to the contrary, the normal presumption would be that a few days delay in signing the report occurred in routine or due to the volume of work to be handled by him and not because of extraneous influences or consideration. It was held that delay of seven days in signing the report would not be of any significance.
18. Another ground for reversing the judgment of conviction taken by the learned A.S.J. was that photo-chromatic test was not a reliable test to conclude presence of colouring matter. The learned ASJ relied on a judgment of *Punjab and Haryana High Court in Bansi Lal v. State of Haryana*, 1993 (1) FAC 117. The observations about the authenticity of photo-chromatic test are only relevant where the Public Analyst is to determine the presence of a permitted or unpermitted coal tar dye. In *Balmukand Singh v. State of Punjab*, 2008 CrL.L.J. 1084, the learned Single Judge of Punjab and Haryana High Court held that paper chromatography test is not sufficient to conclude whether permitted or unpermitted colouring matter has been used in the sampled food article. To the same effect, are the observations of the learned Single Judge of this Court in *State v. Subhash Chand*, 2012 (2) JCC 1052. In the instant case, the artificial colour permitted by Rule 28 were also prohibited by virtue of the standard laid down in Item No.A.18.06 and 18.06.09. If the Respondent was not satisfied with the report of the Public Analyst, he had

the option to get it analysed by Director CFL. The method of analysis or the days applied could not be challenged by the Respondent in view of the judgment of the Supreme Court in *Dhian Singh*, where it was held as under:

“The correct view of the law on the subject is as stated in the decision of the Allahabad High Court in Nagar Mahapalika of Kanpur v. Sri Ram wherein it is observed: “that the report of the public analyst under Section 13 of the Prevention of Food Adulteration Act, 1954 need not contain the mode or particulars of analysis nor the test applied but should contain the result of analysis namely, data from which it can be inferred whether the article of food was or was not adulterated as defined in S.2(1) of the Act.”

19. In this view of the matter, the learned ASJ fell into grave error in reversing the judgment of conviction passed by the learned M.M.
20. In result, the judgment dated 11.11.2011 passed by the learned ASJ is set aside.
21. It is urged by the learned counsel for the Respondent that the Respondent is now aged about 50 years. He is facing the rigours of prosecution for the last about ten years and, therefore, a lenient view may be taken in the matter of awarding sentence to the Respondent. It is contended that the offence was committed almost 10 years ago. No useful purpose would be served by sending the Respondent to jail.
22. On the other hand, Ms. Rajdipa Behura, learned APP for the Appellant argues that the offence under the PFA Act are very serious in nature as it affects the health of the public at large. It is urged that the Legislature in

its wisdom amended Section 16 of the PFA Act and provided minimum sentence for various offences. It is urged that Section 20AA was added in the Act and the provisions of the Probation of Offenders Act, 1958 and Section 360 of the Code of Criminal Procedure were excluded in its applicability with regard to the persons convicted under the PFA Act unless he was under 18 years of age. It is submitted that for some of the offences under the PFA Act, punishment of imprisonment for life has been provided.

23. On the other hand, the learned counsel for the Respondent relies on two judgments of this Court in *Shayam Lal v. State*, (in Crl.Rev.P.326/2010) decided on 13.12.2012 and *Food Inspector v. Vinod Kumar* (in Crl.A.1209/2011) decided on 28.02.2012 where the sentence less than the minimum was awarded.
24. The question for consideration is whether the sentence less than the minimum provided under the PFA Act can be awarded to a person found guilty under the Act.
25. The Prevention of Food Adulteration Act was enacted by the Parliament and it came into force on 29.09.1954. The punishments for various violations as given in Clauses (a) to (g) of Section 16(1) were provided as under:

“16. Penalties.- (1) If any person-

(a) whether by himself or by any person on his behalf imports into India or manufactures for sale, or stores, sells or distributes any article of food in contravention of any of the provisions of this Act or of any rule made thereunder, or

- (b) prevents a food inspector from a sample as authorised by this Act, or
- (c) prevents a food inspector from exercising any other power conferred on him by or under this Act, or
- (d) being a manufacturer of an article of food, has in his possession, or in any of the premises occupied by him, any material which may be employed for the purpose of adulteration, or
- (e) being a person in whose safe custody any article of food has been kept under sub-section (4) of section 10, tampers or in any other manner interferes with such article, or
- (f) uses any report or certificate of a test or analysis made by the Director of the Central Food Laboratory, or by a public analyst or any extract thereof for the purpose of advertising any article of food, or
- (g) whether by himself or by any person on his behalf gives to the purchaser a false warranty in writing in respect of any article of food sold by him,

he shall, in addition to the penalty to which he may be liable under the provisions of section 6, be punishable-

- (i) For the first offence, with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees, or with both;
- (ii) For a second offence with imprisonment for a term which may extend to two years and with fine;

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court, such imprisonment shall not be less than one year and such fine shall not be less than two thousand rupees;

- (iii) For a third and subsequent offences, with imprisonment for a term which may extend to four years and with fine;

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court,

such imprisonment shall not be less than two years and such fine shall not be less than three thousand rupees;

(2).....”

26. The PFA Act came to be amended by the Prevention of Food Adulteration (Amendment) Act, 1964 and the minimum punishment of imprisonment came to be provided. At the same time, the Court was empowered to impose a sentence less than the minimum prescribed for adequate and special reasons. Section 9 of the Prevention of Food Adulteration (Amendment) Act 1964 which amended Section 16 is extracted hereunder:

“9.Amendment of Section 16.-For sub-section (1) of section 16 of the principal Act, the following sub-sections shall be substituted, namely:-

" (1) If any person-

(a) whether by himself or by any other person on his behalf imports into India or manufactures for sale, or stores, sells or distributes any article of food-

(i) which is adulterated or misbranded or the sale of which is prohibited by the Food (Health) authority in the interest of public health;

(ii) other than an article of food referred to in sub-clause (i), in contravention of any of the provisions of this Act or of any rule made thereunder; or

(b) prevents a food inspector from taking a sample as authorized by this Act; or

(c) prevents a food inspector from exercising any other power conferred on him by or under this Act; or

(d) being a manufacturer of an article of food, has in his possession, or in any of the premises occupied by him, any material which may be employed for the purposes of adulteration; or

(e) uses any report or certificate of a test or analysis made by the Director of the Central Food Laboratory or by a public analyst or any extract thereof for the purpose of advertising any article of food; or

(f) whether by himself or by any other person on his behalf gives to the vendor a false warranty in writing in respect of any article of food sold by him,

he shall, in addition to the penalty to which he may be liable under the provisions of the section 6, be punishable with imprisonment for a term which shall not be less than six months but which may extend to six years, and with fine which shall not be less than one thousand rupees:

Provided that-

(i) if the offence is under sub-clause (i) of clause (a) and is with respect of an article of food which is adulterated under sub-clause (l) of clause (i) of section 2 or misbranded under sub-clause (k) of clause (ix) of that section; or

(ii) if the offence is under sub-clause (ii) of clause (a), the court may for any adequate any special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or of fine of less than one thousand rupees or of both imprisonment for a term of less than six months and fine of less than one thousand rupees.

(1A)....

(1B)....

(1C)....

(1D)....”

27. The PFA Act was further amended by the Prevention of Food Adulteration(Amendment) Act, 1976 whereby the penalties as provided in Section 16 of the PFA Act were made more stringent. The provision

of Section 16(1)(f)(ii) of the Act whereby for adequate and special reasons, the sentence of imprisonment for less than six months or fine of less than one thousand rupees could be provided, were removed. As per the newly added Sections, the punishment of imprisonment of three months, six months, one year and six years were provided.

28. A three Judge Bench of the Supreme Court in *Eknath Shankarrao Mukkawar v. State of Maharashtra*, (1977) 3 SCC 25 which was in respect of a sample lifted on 13.04.1974, that is, before the Prevention of Food Adulteration(Amendment) Act, 1976 came into effect, held that the Magistrate on recording adequate and special reasons had jurisdiction to award a sentence less than the minimum. Thus, I am of the view that after amendment in Section 16 of the PFA Act w.e.f. 01.04.1976, the Court is not empowered to award any sentence less than the minimum prescribed under Section 16 of the PFA Act. The judgments relied upon by the learned counsel for the Respondent, therefore, will not help the Respondent.
29. Admittedly, the sample of 'Dal Arhar' was found to contain a synthetic colouring matter, viz, 'Tartrazine' which was prohibited as per the standard of 'Dal Arhar' as prescribed in Item No.A.18.06 read with A.18.06.09. Thus, the sample of 'Dal Arhar' was found adulterated within the meaning of Section 2(ia)(m) of the Act. The minimum punishment provided under Section 16(1)(a)(i) of the Act is punishment which shall not be less than six months but it may extend to three years or with fine which shall not be less than one thousand rupees. The learned M.M. in this case had awarded a sentence of rigorous imprisonment for

one year and a fine of ₹15,000/-. I have already held above the Court is not empowered to impose any sentence less than the minimum provided under the Act. The Respondent otherwise also has failed to disclose any adequate or special reasons for imposing a sentence of less than the minimum prescribed. But, at the same time, in view of the fact that the Respondent faced the rigours of trial for almost ten years, the ends of justice would be met if the Respondent is awarded the minimum substantive sentence of imprisonment. Thus, the Respondent is sentenced to undergo RI for six months and to pay a fine of ₹15,000/-. In default of payment of fine, the Respondent shall undergo SI for 15 days as awarded by the learned M.M.

30. The Appeal is allowed in above terms.
31. The Respondent shall surrender before the Trial Court within six weeks from today.

(G.P. MITTAL)
JUDGE

FEBRUARY 18, 2013
pst