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

+ CRL.L.P. 764/2013

% **Judgment dated 20.12.2013**

DELHI ADMINISTRATION THOROUGH

FOOD INSPECTOR/DO

..... Petitioner

Through: Mr.Manoj Ohri, Advocate

versus

VIDYA GUPTA

..... Respondent

Through: NEMO.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

CRL.M.A.19502/2013

1. Exemption allowed subject to all just exceptions.
2. Application stands disposed of.

CRL.M.A.NOS.19501/2013 & 19503/2013.

3. By CRL.M.A. 19501/2013 the petitioner seeks condonation of 305 days' delay in filing the present leave to appeal petition and by CRL.M.A.19503/2013 the petitioner seeks condonation of 97 days' delay in re-filing the present leave to appeal petition.
4. Heard and for the reasons stated in the application, the same is allowed. Delay in filing and re-filing the present leave to appeal petition is condoned. Applications stand disposed of.

CRL.L.P. 764/2013

5. Present leave to appeal petition has been filed by the petitioner under Section 378(1) of the Code of Criminal Procedure against the order of acquittal passed by learned Additional Sessions Judge, Delhi, on 12.4.2012, passed in Criminal Appeal No.34/2011.

6. The facts of this case, as noticed by the learned Additional Sessions Judge, are as under:

“On 08.04.2004 at about 7.00 PM, FI S.K. Sharma purchased a sample of ghee, a food article for analysis from appellant/accused Vidya Gupta, S/o Sh. Madhi Mangal Gupta, Vendor of M/s. New Bikaner Sweet Center, S.No. A9, Tilak Market, Ramesh Nagar, New Delhi 15, Where the said food article was stored for sale and where said appellant/accused Vidya Gupta was found conducting the business of the said food article at the time of sampling. The sample consisted of approx. 600 gms of ghee (ready for sale) taken from an open Tin, bearing no label or declaration. The sample was taken under the supervision and direction of Sh. B.M. Jain, SDM/LHA. The sample of ghee was taken after proper mixing with the help of a clean and dry long spoon, in all possible directions and shaking the Tin for proper mixing. The FI divided the sample then and there into three equal parts by putting them in three separate clean and dry glass bottles. Each sample bottle was separately packed, fastened and sealed as per the requirements. The vendor's signature were obtained on the LHA slip and the wrapper of the sample bottles. Notice was given to appellant/accused and price paid vide Vendor's Receipt dated 08.04.2004. Panchnama was also prepared at the spot. All these documents were signed by appellant/accused Vidya Gupta and the other witness namely Sh. Balwant Shah, FA (as no public witness had come forward for the purpose despite efforts).

The complaint further contains that one counterpart of the sample bearing LHA code No. 93/LHA/7757 was sent to the PA, Delhi in intact condition and the remaining two intact counterparts

were deposited with the LHA. The PA analysed the opined that "the sample does not conform to standard because B.R. exceeds the maximum limit of 43 and; Reichert Value is less than 28. It also gives a positive B.T. Test, which should be negative in case of Ghee".

Further, appellant/accused Vidya Gupta was found to be Vendor of M/s. New Bikaner Sweet Center at the time of sampling and was In-Charge and responsible for the day to day conduct of the business of the said Shop. This way appellant/accused violated the Provisions of Section 2 (ia) (a) (c) & (m) of PFA Act 1954, punishable u/s 16 (1) (a), r/w section 7 of the Act 1954. After the conclusion of the investigation entire case file including the statutory documents; was sent to the Director PFA who accorded the requisite consent U/s 20 of the PFA Act.

Thereafter, appellant/accused was summons vide order dated 16.09.2004. On appearance, appellant/accused opted to lead his right and option U/s 13 (2) of the Act 1954 and got the second counterpart of the sample analysed by the Director CFL and consequent thereto the second sample counterpart was sent to the Director CFL for being analysed. The Director CFL furnished report vide Certificate No.CFL/679/743/2004 dated 20.10.2004. It is reflected therein in the report that the sample bearing No. 93/LHA/7757 does not conform to the standards of Ghee as per PFA Rules, 1955. Charge for contravention of provision of Section 2 (ia) (a) (c) & (m) punishable under section 16 (1) (a) read with section 7 of the PFA Act 1954 was framed against the accused on 18.02.2009 to which accused pleaded not guilty and claimed trial."

7. Learned counsel for the petitioner submits that the sample of ghee, which

was lifted by the Food Inspector from the shop of the respondent, was one of the ingredients to be used for the preparation of sweets. Counsel further submits that the learned trial court while passing the impugned judgment has failed to appreciate that the sample failed as per the reports of both i.e. the public analyst as well as CFL. Counsel contends that the trial court has further failed to consider that the CFL report is final and supersedes the report of the public analyst. It is next contended that that the respondent refused to accept the price that was offered to him in return of the sample that was lifted from his shop.

8. The learned trial court while passing the impugned order has observed that the sample taken for the purpose of analysis was not ready for sale, as the place from where the sample was taken, was a shop by the name of M/s New Bikaner Sweet Centre, which was engaged in the business of selling sweets and not the ghee, of which the sample was taken. In other words, the ghee was not stored for the purpose of sale and consequently the storing of the impugned article, despite being adulterated, would not constitute an offence under Section 16(1)(a) of the PFA Act as only such adulterated food articles are hit by Section 16(1)(a) of the PFA Act which are found stored for the purpose of sale.
9. The trial court has relied upon ***Municipal corporation of Delhi v. Laxmi Narain Tandon etc.*** in CrI.Appeal Nos.101-104/1971, decided on 17.12.1975 wherein the Apex Court has held that “*if an article of food is not intended for sale and is in the possession of a person who does not fulfil the character of a seller, conveyer, deliverer, consignee, manufacturer or storer for sale, such as is referred in sub-SS.1 (a) and (2) of the section, the Food Inspector will not be competent under the law to take a sample and on such sample being found adulterated, to validly launch prosecution thereon. In short the expression "store" in s. 7 means*

"storing for sale" and consequently storing of an adulterated article of food for purposes other than for sale would not constitute an offence under s. 16 (1) (a)".

10. The trial court has further relied upon in the case of ***State (Delhi Administration) vs. Vijay Kumar & Ors.***, reported at 2007 (4) JCC 3011, wherein the Supreme Court has held that *"the complainant visited the factory premises where alleged 'Katha' was being manufactured. If a product is being manufactured, only the final product which is ready for dispatch to godown or to the whole seller can be considered as the product meant for sale, stored in the factory. If a heap of something is lying in the factory which is neither meant for sale nor ready for dispatch to the whole seller, it cannot be said that it was a final product stored in the factory"*. Relying upon the above cases, learned trial court concluded that even though the sample of ghee that was taken was going to be used as an ingredient in the preparation of sweets, it cannot be said to be 'ready for sale'. The trial court has further observed that neither in the Public Analyst's report nor in the CFL report was it mentioned that the sample taken was injurious for human consumption. Based on the above observations, the learned trial court dismissed the appeal and acquitted the respondent herein.
11. The law with regard to the grant of leave is well settled by a catena of judgments. Leave to Appeal can be granted only where it is shown that the conclusions arrived at by the Trial Court are perverse or there is mis-application of law or any legal principle. The High Court cannot entertain a petition merely because another view is possible or that another view is more plausible. In ***Arulvelu and Anr. vs. State represented by the Public Prosecutor and Anr.***, 2009 (10) SCC 206, while referring with approval the earlier judgment in ***Ghurey Lal vs. State of Uttar Pradesh***, (2008) 10

SCC 450, the Supreme Court reiterated the principles which must be kept in mind by the High Court while entertaining an Appeal against acquittal.

The principles are:-

“1. The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.

2. The power of reviewing evidence is wide and the appellate court can re-appreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law, but the Appellate Court must give due weight and consideration to the decision of the trial court.

3. The appellate court should always keep in mind that the trial court had the distinct advantage of watching the demeanour of the witnesses. The trial court is in a better position to evaluate the credibility of the witnesses.

4. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

5. If two reasonable or possible views can be reached - one that leads to acquittal, the other to conviction - the High Courts/appellate courts must rule in favour of the accused.

6. Careful scrutiny of all these judgments lead to the definite conclusion that the appellant court should be very slow in setting aside a judgment of acquittal particularly in a case where two views are possible. The trial court judgment cannot be set aside because the appellate court's view is more probable. The appellate court would not be justified in setting aside the trial court judgment unless it arrives at a clear finding on marshalling the entire evidence on record that the judgment of the trial court is either 'perverse' or wholly unsustainable in law.”

12. I have heard counsel for the petitioner and carefully examined the record.

I agree with the observations made by the learned trial court that since the item lifted as sample i.e. ghee was not meant for the purpose of sale but it was to be used merely as an ingredient in the preparation of sweets which was the final article ready for sale, no offence is made out under the provisions of section 2 (ia) (a) (c) & (m) and s 16 (1) (a) r/w section 7 of the PFA Act, 1954. In addition to the above, it may be noticed that the judgment of learned ACMM has pointed out the discrepancy between the report of the Public Analyst and that of CFL with respect to B.R. reading. While Public Analyst has recorded the B.R. reading as 52.7, the CFL has recorded the same to be 53.1. It has been clearly laid down in the case of *State (Delhi Administration) v. Ram Singh & Anr.*, reported (2009) 1 FAC 371 that if the variation in the two reports is more than 0.3%, it cannot be said that the sample was representative in nature. In the present case, variation in both the reports with respect to BR reading was 0.76%.

13. Having regard to the facts of this case, the same is fully covered by the decision rendered in *Kanshi Nath v. State*, reported at 2005 (2) FAC 219 Delhi High Court; *State v. Mahender Kumar & Ors.*, reported at 2008 (1) FAC 177; *State (Delhi Administration) v. Ram Singh & Anr.*, reported (2009) 1 FAC 371, wherein it has been held that if on comparison of the reports of Public Analyst and CFL vast variations are found, then it cannot be said that the samples were representative and consequently the accused would be entitle to an acquittal.
14. In view of above and keeping in mind the general principles set out in the case of *Arulvelu and Anr.* (Supra), no grounds are made out to entertain the present leave to appeal petition and the same is accordingly dismissed.

DECEMBER 20, 2013 msr

G.S.SISTANI, J