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

+ CRL.L.P. 698/2013

% ***Judgment dated 02.12.2013***

FOOD INSPECTOR/FOOD SAFETY OFFICER Petitioner
Through : Mr.Manoj Ohri, Adv.

versus

MAHABIR Respondent
Through

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI

% **ORDER**
02.12.2013

CRL.M.A.18125/2013

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

CRL.M.A.18126/2013

3. By the present application, the petitioner seeks condonation of delay in filing leave to appeal petition.
4. Notice. Learned counsel for the State accepts notice and submits that he has no objection if the present application is allowed.
5. Heard. For the reasons stated in the application, the same is allowed. Delay in filing present leave to appeal petition is condoned.
6. Application stands disposed of.

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7. Present leave to appeal petition has been filed under Section 378 Cr.P.C. against the order of acquittal dated 2.11.2012 passed by learned ACMM,

Delhi.

8. The facts of this case, as noticed by the learned ACMM in the judgment, are as under:

*“1. The present complaint has been filed on 29.09.2003 by the Delhi Administration through FI Sh. V.P.S. Chaudhary against the above said accused. It is stated in the complaint that on 20.06.2003 at about 3:20 PM, FI Shri V.P.S. Chaudhary purchased a sample of **Dal Arhar**, a food article for analysis from accused Mahabir from the aforesaid premises, where the said food article was found stored for sale and the accused was found conducting the business of the said food article at the time of sampling. The sample consisted of approximately 1.5 kg of **Dal Arhar** (ready for sale), taken from an open gunnybag, bearing no label or declaration. The sample was taken under the supervision and direction of Sh. M.A. Ashraf, SDM / LHA. The sample was taken after properly mixing the **Dal Arhar** with the help of a clean and dry JHABA by rotating it in all possible directions. The FI divided the sample into three equal parts then and there by putting them into three separate clean and dry 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 on the wrapper of the sample bottles. Notice was given to accused and price was paid to the accused. Panchnama was also prepared at the spot. Other statutory documents were prepared at the spot. Rest of the procedural formalities were also completed according to PFA Act & Rules.*

2. The complaint further runs to the effect that one counterpart

*of the sample was sent to the PA, Delhi intact condition and two intact counterparts were deposited with the LHA. The PA analysed and found the sample to be **adulterated because it was coloured with synthetic colouring matter viz Tartrazine and was also containing admixture of Khesari.***

3. *During investigations, accused Mahabir was found to be Vendor-cum-Proprietor of M/s Goyal Store at the time of sampling and as such he was In-Charge and responsible for the day to day conduct of the business of the aforesaid store. Thereafter, the entire case file was sent to the Director PFA who accorded the requisite consent U/s 20 of the Act and consequent thereto the present complaint was filed.*

4. *The accused was summoned vide order dated 29.09.2003. He appeared in the due course and exercised the Right & option U/s 13(2) of the Act of 1954 and consequently the sample counterpart as per the choice of the accused was sent for analysis to the CFL-Pune. The Director CFL-Pune gave his report dated 17.11.2003 and opined that **the samples bearing No. 91/LHA/4481 does not conform to the standards of split pulse (Dal) Arhar as per PFA Rules 1955.***

5. *Charge for the violation of the Provisions of S. 2 (i-a) (a) (b) (c) (j) & (e) of PFA Act 1954 alongwith provision of Rule 23 r/w Rule 28 & 29 and Rule 44 A of PFA Rules 1955, punishable U/s 16 (1A) r/w S. 7 of PFA Act 1954 was framed against the accused to which he pleaded not guilty and claimed trial.*

6. *To bring home the guilt of the accused, the prosecution got examined three witnesses namely Sh. V.P.S. Chaudhary, Food Inspector (**PW-1**), Shri Balwant Shah, Field Assistant (**PW-2**) and*

Shri M.A. Ashraf, the then SDM/LHA (PW-3).”

9. Learned counsel for the petitioner submits that the learned trial court while passing the impugned judgment has failed to appreciate that the sample failed as per both, the public analyst and CFL report. 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.
10. The trial court in para 13 of the impugned judgment has discussed the result of respective reports of the Public Analyst and Director CFL. The Court observed that the public analyst vide her report found the sample to be adulterated because of being coloured with synthetic colouring matter namely Tartrazine and also found admixture of Khesari. The Director CFL also found the sample to have been coloured with synthetic colour viz. Tartrazine and besides this nothing else was detected. It was further observed by the trial court that there are as many as three tests where the opinion of both the experts i.e. the public analyst and the Director, CFL, are contradictory to each other. In public analyst's report foreign matter organic, damaged grains and other food grains were found to the tune of 0.06%, 0.35% and 0.16%, respectively, whereas the Director CFL adjudged all of them NIL. Moreover, the public analyst conducted paper chromatographic method and found Khesari present therein whereas the Director, CFL, has not conducted any such test and as such there is no mentioning about the Khesari. Apart from the above mentioned contradictions, there were also variations as far as moisture value was concerned. The public analyst found the moisture to the tune of 8.19% whereas the Director CFL found the same to the tune of 9.98% i.e. 1.79% more than that of public analyst's findings.
11. The trial court has further considered that in *State v. Rama Rattan*

Malhotra, CrL.L.P. 581/2011, relying upon the case titled as *State v. Mahender Kumar & ors.*, CrL.A.No.54/1990, the appeal of the State was dismissed. In *State v. Mahender Kumar & Ors.*, reported at 2008 (1) FAC 177, a reference was made to the case of *Kanshi Nath v. State*, reported at 2005 (2) FAC 219 DHC, and it was reiterated that if on comparison of the report of public analyst and CFL unacceptable variations are shown in two samples then it cannot be said that the samples were representative and consequently the accused would be entitled to an acquittal.

12. 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."

13. Counsel for the petitioner is unable to draw a distinction between the decision rendered by this Court in the case of *State v. Rattan Malhotra* (supra) and the present case. Admittedly, the variation in the report is more than 0.3% with respect to content of moisture.
14. 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 unacceptable variations are found, then it cannot be said that the samples were representative and consequently

the accused would be entitle to an acquittal.

15. In view of the above and taking into consideration 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 02, 2013
msr

G.S.SISTANI, J