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

+ CRL.L.P. 696/2013

% ***Judgment dated 02.12.2013***

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

versus

SANTOSH SHARMA & ORS. Respondents
Through

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

ORDER

% **02.12.2013**

CRL.M.A.18119/2013

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

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3. Present leave to appeal petition has been filed under Section 378 Cr.P.C. against the order of acquittal dated 28.8.2012 passed by learned ACMM, Delhi.
4. 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 11.12.2002 by the Delhi Administration through FI Sh. S.P. Singh against the above named accused persons. It is averred in the complaint that on 19.10.2001 at about 1:30 AM, FI Sh. S.B. Sharma lifted a sample of **Full Cream Milk**, a food article for analysis from a vehicle / Tanker No. UP-13 D-1285, which was parked at Ghazipur Police Check Post, Delhi carrying milk and where Sh. Santosh Sharma,*

*S/o Sh. Rajender Parshad Sharma was found as Salesman of Milk in question at the time of sampling. The sample consisted of approx. 2 x 550 ml sealed polypacks of **Full Cream Milk** (ready for sale), having identical label declaration, taken from the above said tanker. The sample was taken under the supervision and direction of Sh. K.D. Dogra, SDM / LHA. The sample was taken after opening the polypacks from the corners and pouring them into a clean and dry jug and after properly mixing the sample commodity by pouring and re-pouring it into two jugs. The FI divided the sample commodity then and there into three equal parts by putting them in three separate clean and dry glass bottles. 20 drops of Formalin were added in each sample bottle and thereafter, each sample bottle was separately packed, fastened and sealed as per the requirements. The vendor's signatures were obtained on the LHA slips and on the wrapper of the sample bottles. Notice was given to the accused and price was also paid to him vide Vendor's Receipt dated 19.10.2001. Panchnama was also prepared at the spot. All these documents were signed by accused / vendor Shri Santosh Sharma and the other witness namely Sh. S.P. Sing, FI, (as no public witness had come forward for the purpose despite efforts.*

*2. The complaint further contains that one counterpart of the sample bearing LHA code No. KD/LHA/004736 was sent to the PA, Delhi in intact condition and the remaining two intact counterparts were deposited with the LHA. The PA analysed and opined the sample **not conforming to the standards because milk solids not fat was less than the prescribed minimum limit of 9.0%.***

3. During investigations, said Sh. Santosh Sharma was found to be Vendor-cum-Salesman of the Tanker carrying milk and was

*responsible for the distributor of milk on behalf of M/s Milan Dairy Foods Pvt. Ltd. It was further revealed that M/s Milan Dairy Foods Pvt. Ltd. had appointed Shri Rameshwar as its Nominee and as such he was liable to be prosecuted in this case and being the owner, company of the milk in question, M/s Milan Dairy Foods Pvt. Ltd. was also prosecuted in this case. 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.***

*4. The accused were summoned vide order dated 11.12.2002. They appeared in the due course and were admitted to bail and thereafter, accused no. 3 exercised the Right and Option **U/s 13 (2) of the Act of 1954** and consequent thereto, the second sample counterpart was sent to the Director CFL-Pune for analysis. The Director CFL furnished his Report vide Certificate No. CFL/154/489/03, dated 11.03.2003 and opined the sample **not conforming to the standards of Full Cream Milk as per PFA Rules 1955.***

5. Charges for the violation of Provision of S.2(i-a) (a) & (m) of PFA Act, punishable U/s 16(1) (a), r/w S.7 of the Act of 1954 were framed against the accused persons vide order dated 08.06.09, to which they pleaded not guilty and claimed trial.

*6. To prove its case, prosecution examined three witnesses namely Sh. S.B. Sharma, Food Inspector (**PW-1**), Shri K.D. Dogra, the then SDM/ LHA (PW-2) and Shri S.P. Singh, Food Inspector (**PW-3**) and the PE stood closed vide order dated 22.05.2010.”*

5. Learned counsel for the petitioner has made three-fold submissions.

Firstly, that the learned ACMM while passing the impugned judgment has failed to appreciate that the sample failed as per reports of both the public analyst as well as CFL; secondly, the CFL report is final and supersedes the report of the public analyst; and, thirdly, the delay in launching the prosecution in the present case is not fatal as even after the lapse of time the sample was found fit for analysis by the Director, CFL, and hence the observations of the trial court that lapse of thirteen months in filing the complaint by prosecution has adversely affected the rights of the respondent under Section 13(2) of PFA Act is not correct.

6. The trial court has observed that as per the public analyst's report dated 30.10.2001, which revealed that the sample of Full Cream Milk was found not conforming to the standards as it was adjudged deficient in respect of 'Milk solids not fat', which was found to the tune of 8.53% against the requirement of not less than 9%. On the contrary, as per the certificate dated 11.3.2013 issued by the CFL, the given sample was adjudged deficient in respect of 'milk fat' which was found present to the tune of 4.9% against the requirement of not less than 6%.
7. Another observation made by the trial court is that there is no explanation on record as to why after obtaining the opinion of the Public Analyst in respect of the sample of Full Cream Milk, a period of almost 13 months was taken by the department to launch the prosecution against the accused person despite the fact that complainant is well aware that accused can exercise his valuable right under Section 13(2) of PFA Act to get analysed the second counterpart of the sample from the Director, CFL, only after institution of complaint and, thus, the trial court was of the opinion that the period of more than 13 months in filing the complaint in case of sample of Full Cream Milk, adversely affected the right of the accused persons under Section 13(2) of PFA Act. The trial court has relied upon a

decision rendered in the case of *State v. Ramesh Chand*, reported at 2010 (2) J.C.C. 1250 (Delhi), wherein the High Court has upheld the order of acquittal passed by learned Additional Sessions Judge, affirming the view point that the delay in filing the complaint as well as the variation between the reports of PA and CFL (in respect of fat contents in the sample of Paneer), could be fatal so as to materially prejudice the defence of the accused more particularly, when the article in question (even to the knowledge of PFA Officials) was of perishable nature.

8. 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."

9. I have heard counsel for the petitioner and carefully examined the record. Although, learned counsel for the petitioner has distinguished the present case from the judgment rendered in *State v. Ramesh Chand* (supra), which has been relied upon by the trial court on the point of delay by urging that delay in launching prosecution is not fatal in the present case and in support of his submission has drawn the attention of the Court to the fact that even CFL has found the sample to be fit for analysis and hence opined the same to be adulterated, however, he is unable to draw a distinction between the decision rendered by the Court in *State (Delhi Administration) v. Ram Singh & Ors.*, reported at 2009 (1) FAC 371, and the facts of the present case. Admittedly, in the present case, the Public Analyst's report has adjudged the sample as deficient in 'milk solid not

fat', whereas the CFL has found the same to be deficient with respect to milk fat. Hence, both the reports are totally divergent.

10. 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)* (supra) 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.
11. 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.

G.S.SISTANI, J

DECEMBER 02, 2013
msr