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

+ CRL.L.P. 691/2013

FOOD INSPECTOR / FOOD SAFETY OFFICER ..... Petitioner

Through : Mr.Manoj Ohri, Adv.

versus

R K KAUSHIK & ORS.

..... Respondents

Through

**CORAM:**

**HON'BLE MR. JUSTICE G.S.SISTANI**

**ORDER**

% **02.12.2013**

**CRL.M.A.18082/2013**

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

**CRL.M.A.18081/2013**

3. By the present application, the petitioner seeks condonation of delay in filing leave to appeal petition.
4. Heard. For the reasons stated in the application, the same is allowed. Delay in filing present leave to appeal petition is condoned.
5. Application stands disposed of.

**CRL.L.P. NO.691/2013.**

6. Present leave to appeal petition has been filed under Section 378 Cr.P.C. against the order of acquittal dated 6.4.2013 passed by learned ACMM, Delhi.
7. 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 02.02.2001 by the Delhi Administration through FI Sh.N.N. Sharma against the aforesaid accused persons. It is stated in the complaint that on 03.07.2000 at about 8:15 PM, FI Sh. N.N. Sharma purchased a sample of **Paneer**, a food article for analysis from Sh. R.K. Kaushik (General Manager), S/o Sh.Late Shri J.N. Kaushik of M/s Sanjog Banquet & Restaurant Complex ( a unit of Porwal Hotels Pvt. Ltd.), 6 & 15, F.I.E. Patparganj Indl. Estate, Delhi-92, who was found conducting the business at the aforesaid premises and the sample commodity was stored for use in preparation of food for human consumption. FI Sh. N.N. Sharma purchased 750 gms. of **Paneer** (ready for use), taken from a tray. The sample was taken after cutting with the help of dry and clean knife in dry and clean tray and mixed well under the supervision and direction of Dr.P.S. Batra, SDM/LHA (Vivek Vihar). Thereafter, the sample was divided into three equal parts by FI by putting it in three clean and dry bottles and 20 drops of formalin were added to each bottle and thereafter each bottle containing the sample was separately packed, fastened and sealed according to the PFA Act and Rules. The signatures of R.K. Kaushik (vendor) were obtained on the LHA slip and the wrapper of the bottles containing the sample. Notice in Form VI was given to accused and price of sample was also offered to him but he did not accept. Panchnama too was prepared at the spot. All these documents prepared by FI Sh. N.N. Sharma were signed by accused Sh. R.K. Kaushik, the vendor and the other witness namely Sh. O.P.S. Ahlawat, FI. It is stated that before taking the sample, efforts were made to get the public witnesses to join the proceedings, but none came forward and as such Sh.

*O.P.S. Ahlawat, FI joined as witness.*

2. *It is further stated that one counterpart of the sample in intact condition was sent to the Public Analyst, Delhi and two counterparts of the sample in intact conditions were deposited with LHA. The Public Analyst analysed the sample and opined that “**the samples does not conform to standards because milk of dried matter is less than the prescribed minimum limit of 50%**”.*

3. *It is further stated that accused Sh. R.K. Kaushik S/o Late Sh. J.N. Kaushik was the Vendor-cum-Nominee of M/s Sanjog Banquet & Restaurant Complex and he being the in-charge and Nominee of the said restaurant was responsible for the day to day conduct of the business of the said restaurant. 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 for violation of provisions of Section 2 (i-a) (a) (b) (d) & (m) of the PFA Act, 1954 which is punishable U/s 16 (1)(a) r/w S. 7 of PFA Act 1954.*

4. *The accused R.K. Kaushik was summoned vide order dated 01.02.2001. He appeared and moved an application U/s 13(2) of the Act to get analyzed the second counterpart of the sample from Central Food Laboratory (CFL). The said application was allowed and consequently second counterpart of the sample was sent to CFL, Calcutta for analysis. The Director, CFL on analysing the second counterpart of the sample in question opined vide his Certificate dated 19.03.2001 that, “**sample of panner is adulterated**”.*

5. *Notice U/s 251 Cr.P.C. for violation of Section 2 (i-a) (a) (b) (d) & (m) of the PFA Act, punishable U/s 16 (1)(a) of the Act r/w*

*section 7 of the PFA Act was framed against the accused R.K. Kaushik (as well as upon accused no.2 through him) vide order dated 22.10.2001 to which he pleaded not guilty and claimed trial.*

*6. Thereafter, prosecution examined three witnesses namely Sh. O.P.S. Ahlawat, Food Inspector as PW-1, Sh. N.N. Sharma, Food Inspector as PW-2 and Dr.P.S. Batra, the then SDM/LHA as PW-3 and PE was closed vide order dated 20.09.2005.”*

8. Learned counsel for the petitioner submits that the learned ACMM while passing the impugned judgment has failed to appreciate that the sample failed as per both, the public analyst as well as the CFL report. Counsel further contends that ACMM has failed to consider that the CFL report is final and supersedes the report of the public analyst. It is also submitted that while the learned trial court has relied upon the judgment reported in ***State v. V.K. Muttoo and Others***, CrI.Appeal No.144/1996; ***Municipal Corporation of Delhi v. Ghisa Ram***, CrI.Appeal No.194/1996; ***State v. Anil Batra and Others*** reported at 2008 (1) FAC 191, to acquit the respondent on the ground that there was a delay in getting the sample examined by the CFL, the trial court did not consider that delay would not be a relevant factor in the present case as the sample herein was found to be fit for analysis by both i.e. the Public Analyst as well as the Director, CFL.
9. The learned trial court while passing the impugned order has observed that there are variations in both the reports so far as ‘milk fat of dry matter’ is concerned. In Public Analyst’s report milk fat of dry matter was to the tune of 36.56% whereas, the Director CFL vide his certificate dated 19.03.2001 found the same to be to the tune of 27.3%. Since the variations appear to be on the higher side it goes on to show that the

sample was not a representative one. The trial court has relied upon the observations made by the High Court in the case of *M/s Raja Ram Seth & Sons & Anr. v. Delhi Administration*, reported at 2012 (2) FAC 523 wherein it was held that if the variations in the report of PA and CFL are more than 0.3% it cannot be said that identical representative samples were sent to both the Public Analyst and CFL and therefore it raises a doubt about the sample being not homogenized and no conviction is permissible on the basis of said reports and benefit of doubt is liable to be given to the accused. Similar view has been taken by the High Court in the case of *State (Delhi Administration) v. Ram Singh & Ors.*, reported at 2009 (1) FAC 371.

10. 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."

11. In my opinion, while learned counsel for the petitioner has drawn some distinction between the three judgments relied upon by the trial court and the facts of the present case, on the point of delay in submitting a sample on the ground that unlike in the facts of those three judgments, in the present case the sample was found fit for analysis, however, counsel for the appellant is unable to draw a distinction between the decision rendered by this Court in the case of *State (Delhi Administration) v. Ram Singh & Ors.*, reported at 2009 (1) FAC 371 and the present case. Admittedly, the variation in the reports is more than 0.3% and in this case, the same was 9.26%.

12. 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.

13. 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.

**G.S.SISTANI, J**

**DECEMBER      02, 2013**  
msr