

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

% *Judgment reserved on :12.08.2014.*
Judgment delivered on :14.08.2014.

CRL.A. No. 377/2006

STATE Appellant

Through: Ms. Kusum Dhalla, APP

Versus

PHUL CHAND & ANR Respondents

Through: Mr. D.K. Mathur, Adv.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1. This appeal is directed against the impugned judgment dated 20.12.2004 wherein the respondents Phul Chand and Gopi Ram Tara Chand stood acquitted for the offence under Section 16 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the 'said Act').

2. Record shows that on 28.09.1995 at about 05:45 pm Satish Gupta (PW-1), the Food Inspector had purchased a sample of Urad Dal Chilka from Phul Chand at his store M/s Gopi Ram Tara Chand, 2322/4, Rui Mandi, Delhi-110006 where the articles were found stored. The sample comprised of 750 gms of 'Urad Dal Chilka'. It was taken from an open

gunny bag having no label declaration after a proper mixing with a clean dry ihaba. It was divided into three parts and each part was separately packed, fastened, marked and sealed as per the Prevention of Food Adulteration Rules, 1995 (hereinafter referred to as the 'said Rules').

3. Punchnama was prepared at the spot. In the course of investigation, the Public Analyst submitted its report dated 02.11.1995. This report of the Public Analyst was in favour of the respondents; the sample was found conforming to the standards of the said Act and said Rules.

4. A second counterpart of the sample was thereafter sent to the Public Analyst, Bangalore by the Department when exercised its right under Section 13 (2-E) of the said Act for analysis. The second report (dated 15.12.1995) reported the sample to contain an artificial colour; conclusion was that the sample was adulterated.

5. The impugned judgment had acquitted the respondents noting that there was nothing on record to show that the right exercised by the Department for sending the second counterpart of the sample was based on a conclusion that the first report (dated 02.11.1995) was an erroneous report. The second reason for acquittal was that the testimonies of LHA

Gopal Singh (PW-1) and FI Satish Kumar Gupta (PW-2) had disclosed that all laboratories would have found colour present in the sample had it been present and thus the first report of the Public Analyst dated 02.11.1995 not having detected the colour but the second report having detected the coloured material clearly shows that the samples were not representative. This was the second reason for the acquittal of the respondents.

6. Arguments have been addressed by the both the parties.

7. On behalf of the State, it has been stated that the testimony of PW-1 clearly shows that the second sample had been sent for analysis as the report of the Public Analyst was found to be erroneous. Learned APP for the State, however, candidly admits that there is no such document in support of this version. It is pointed out that the judgment of the trial Court acquitting the respondents largely on this count otherwise suffers from an infirmity as the samples being adulterated, the accused persons are guilty under the aforementioned offence.

8. Needless to state that the learned counsel for the respondents has refuted these submissions.

9. Record shows that the judgment cannot be faulted with. The first

proposition on the basis of which acquittal had been ordered was that Section 13 (2-E) of the said Act postulates that the second counterpart of the sample can be sent only if there is an opinion that the first report is erroneous. No such opinion has been placed on record. This is an admitted position. The second report dated 15.12.1995 makes a reference to a letter No. F6(353)/95/PFA/ENF dt. 22.11.1995-S. No.S/18/95: Code No. GS/LHA/3055 but why this document has not seen the light of the day has not been answered or explained. This letter would probably have disclosed as to whether the first report was erroneous or not and if the report was erroneous only then could the Department exercise its right under Section 13 (2-E) of the said Act.

10. Section 13 (2-E) of the said Act reads as follows:-

“(2-e) If, after considering the report, if any, of the Food Inspector or otherwise, the Local (Health) Authority is of the opinion that the report delivered by the public analyst under sub-section (1) is erroneous, the said Authority shall forward one of the part of the sample kept by it to any other public analyst for analysis and if the report of the result of the analysis of that part of the sample by that other public analyst is to the effect that the article of food is adulterated, the provisions of sub-sections (2), (2-D) shall, so far as may be, apply.”

11. The thrust of this provision is that the Department can exercise its right in the event that there is an opinion that the first report of the

Public Analyst is erroneous; some kind of material has to be placed on record by the Department to exercise its right which is contained in Section 13 (2-E) of the said Act.

12. This provision works both ways. Where the first report is beneficial to the accused, a doubt may arise that this report has been procured. Vice versa if this report is against the accused, the Department unless it places sufficient material on record to show that the first report is erroneous, by exercising its right under Section 13 (2-E) of the said Act and procuring a report which is in favour of the accused can well raise suspicion in the mind of the Court that this report has been obtained at the behest and at the asking of the accused. It is for this reason that caution has to be exercised and material has to be placed on record to satisfy the Court that this right under Section 13 (2-E) of the said Act has been exercised by the Department bonafidely and in good faith. There is no such material on record. The judgment of acquittal on this ground by itself cannot be faulted.

13. The acquittal of the respondents for the reason that the sample is not a representative sample is also evident from the fact that the first counterpart of the sample had detected no coloured material in the 'Urad

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Dal Chilka' sample. The second counterpart has however detected a colouring material. PW-1 and PW-2, who were working as LHA and FI in the Department, have categorically in their cross-examination stated that all counterparts of the sample if tested in any laboratory would have detected the colouring material if the colour was present. Non detection of colour in the first of the Public Analyst (dated 02.11.1995) and detection of colour in the second report (dated 15.12.1995) clearly shows that the samples were not representative. This is violation of Rules 9-A and 9-B of the said Rules.

14. This Court also notes that it is sitting in appeal against a judgment of acquittal. Unless and until, there is a grave infirmity or a patent illegality committed by the Court below, interference is not called for.

15. The principles that an appellate court, while dealing with an acquittal order, has to follow were reiterated by the Apex Court in 2007 4 SCC 415 Chandrappa Vs. State of Karnataka. These guidelines read as under:

“(1) An appellate Court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded; (2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own

conclusion, both on questions of fact and of law; (3) Various expressions, such as, substantial and compelling reasons, good and sufficient grounds, very strong circumstances, distorted conclusions, 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion. (4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court. (5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

16. Impugned judgment cannot be faulted with. State appeal is without any merit. Dismissed.

INDERMEET KAUR, J

AUGUST 14, 2014

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