

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.C.REF.01/2014**

Reserved on: 25.02.2015
Date of decision: 17.03.2015

COURT ON ITS OWN MOTION Appellant
Through: Mr. Ashish Singh, Amicus Curiae.

versus

SH. HUKAM SINGH Respondent
Through: Dr. Rakesh Gosain and Mr. Rajeshwar
Singh, Advocates with SDM in
person.
Mr. Saleem Ahmed, Standing Counsel
(Crl.) with Ms. Charu Dalal, Adv.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR, J.

1. A reference was made on 19.05.2011 by the learned ACMM II, New Delhi, against the Respondent Hukam Singh, the then SDM/the Local Health Authority (LHA for short) who was entrusted with the responsibility of keeping two sealed samples of article of food which was collected from the premises of one Brijender Kumar in connection with the complaint case no.63/2011 (Food Inspector (Delhi Administration) vs. Brijender Kumar) registered under Section 16(1A) of the Prevention of Food Adulteration Act, 1954 (PFA Act for short). The sample for food article in question was of Lal Jeera (a food item).

Out of the three samples which were made out of the seized food article, one was sent to the public analyst whereas the two other were handed over to the Respondent for safe custody. The sample sent to the public analyst was found to be adulterated for it contained synthetic colouring matters.

2. Section 16 (1A) of the PFA Act gives a right to the accused to get the second sample tested by the Central Forensic Laboratory. This could be done only through the sample which was deposited and preserved with LHA.

3. It appears that the accused exercised such right and consequently the samples with the LHA were directed to be produced before the Court of the Learned ACMM on 19.04.2011 vide order dated 15.04.2011. On the abovementioned date, the learned ACMM was informed by the Field Assistant of the LHA that the samples were damaged by rat bites. The court, on finding the samples to be totally damaged, got the said samples resealed with the seal of the Court and by an order dated 19.04.2011 asked for an explanation from the Respondent herein Hukam Singh as to why a contempt proceeding be not initiated against him. The Court below suspected collusion on the

part of the Respondent for the purposes of frustrating the prosecution, thereby making him liable for obstructing the process of justice.

4. The Respondent (proposed contemnor) replied that there was no intention to cause damage to the samples and that out of the 54 samples preserved in the almirah, only four were found to be damaged (including the sample in the present case). Respondent tendered his unconditional apology for his negligence in keeping the sample in safe and proper manner. The reply was not found to be acceptable by the ACMM.

5. In the order making reference, it stands observed that the Respondent was aware of the fact that if the right of the accused under Section 13(2) of the PFA Act, namely to have the second sample tested fails, then the entire prosecution would stand vitiated and this would tantamount to disturbing the judicial process. Thus, damage of the sample in such circumstances, has the potential of lowering the authority of the Court.

Hence, the reference.

6. It would be appropriate in this context to quote Section 2 of the

Contempt of court Act.

“Sec.2

- a) “Contempt of Court” means civil contempt or criminal contempt;*
- b) “civil contempt” means wilful dis-obedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of and undertaking given to a court.*
- c) “Criminal contempt” means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which-*
 - i. Scandalizes or tends to scandalize, or lowers or tends to lower the authority of, any court, or*
 - ii. Prejudices, or interferes or tends to interfere with the due course of any judicial proceeding , or*
 - iii. Interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.*
 - iv. “High Court” means the High Court for a State or a Union territory and includes the court of the Judicial Commissioner in any Union territory.*

7. There is no doubt that the LHA i.e. the Sub-Divisional Magistrate in the present reference, is the custodian of the samples and is duty bound to properly secure and periodically check the sample in his custody. The sample must be kept in safe custody, and be protected from incendiary objects, vagaries of weather and rats,

insects, etc. The Respondent here appears to be negligent and careless but there is no material before us to conclude/assume that such negligence was deliberate and for the purpose of interfering with the course of justice. Collusion with the accused is a serious misdemeanour and malevolent conduct cannot be speculated in the absence of incriminating and relevant facts. Having said so, we observe that we do not approve the casual and cavalier approach of the Respondent in safe keeping the samples. Keeping in mind the abovementioned aspect, by an order dated 19.01.2015, we directed Mr.Saleem Ahmed, Standing Counsel, Government of NCT of Delhi to enter appearance in this case. He was also asked to file an affidavit of the Deputy Commissioner on the steps which are being taken after the incident, to ensure decorous preservation of samples and for providing steel almirahs, etc. It was further made clear that the affidavit needed to indicate whether any directions were issued for periodical examination of the samples or with regard to sealing of samples and containers by the SDM/LHA. This was felt necessary, lest such defences may not be taken in future and even when taken, could be rejected. It should serve as a warning to the respondent and

others.

8. Pursuant to such an order, the Deputy Commissioner/DM (East) filed an affidavit stating that with the enactment of 'The Food Safety and Standards Act, 2006 and the Food Safety and Standards Rules, 2011, the obligation to enforce and check food adulteration (w.e.f. 05.08.2011) fall under the exclusive domain of the Commissioner, Department of Food Safety (Under the Department of Health and Family Welfare, Govt of NCT of Delhi). The earlier law in this regard namely PFA Act and the Rules, have since been repealed.

9. Under the new law, the 'Designated Officers' of the Department of Food Safety, Govt. of NCT of Delhi have been appointed as LHA and the Officers of Deputy Commissioner/ District Magistrate are not now concerned with the administration of the new law. However, the affidavit makes it very clear that a request has been made to the Commissioner, Department of Food and Safety to take over the old samples which were lifted by the earlier LHA/SDMs and ensure their proper storage and preservation. The concerned LHA/SDMs who were earlier discharging their duties under the PFA Act, 1954 have been sounded to properly inventorize and catalogue the old samples which

are still stored in the office complex and to make fortnightly inspections to ensure their proper storage and preservation till they are taken over by the Food Safety Department. Such instances should not happen and will not be taken lightly and stringent and painful punishment may follow.

10. In the light of what has been stated in the affidavit as also the fact that we have not found sufficient material to saddle the Respondent with criminal contempt, we close the proceedings as against the Respondent.

11. The reference stands disposed of.

(ASHUTOSH KUMAR)
Judge

(SANJIV KHANNA)
Judge

MARCH 17th, 2015/ab