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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.REV.P. 714/2012**

STATE (DELHI ADMINISTRATION) Petitioner

Through: Mr. Naresh Kumar
Chahar, APP for the State
along with Mr. Gaurav
Gambhir, Mr. Pranay
Mehta, Mr. Saaranish
Parashar, Mr. Shikhar
Vhardwaj, Mr. Lakshay
Singh Rawat & Ms.
Nandini Dinesh, Advs.

versus

DINESH GUPTA Respondent
Through: Mr. P K Bhardwaj & Mr.
Anshu Bhardwaj, Advs.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
26.07.2024

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1. The present petition was filed way back in the year 2012 challenging the judgment dated 29.05.2012, passed by the learned Additional Sessions Judge ('ASJ') in Criminal Appeal No. 28/2012 titled *Dinesh Gupta v. The State* (hereafter '**the impugned judgment**'))

2. By impugned judgment, the learned ASJ had set aside the order of conviction dated 18.05.2010, and order on sentence dated 21.05.2010, passed by the learned Additional Chief Metropolitan Magistrate ('ACMM') in CC No. 216/2003 whereby the respondent was convicted of an offence under Section 16(1A) read with Section 7 of the Prevention of Food

CRL.REV.P. 714/2012

Page 1 of 5



Adulteration Act, 1954 (**'PFA Act'**) and was sentenced to undergo rigorous imprisonment for one year, and was liable to pay a fine of ₹5,000/-

3. It is stated that on 18.07.2002, 750 gms sample of '*Daal Arhar*' was purchased from the store of the respondent, which were allegedly found to be stored for sale. It is stated that the said sample was found to be adulterated, mixed with synthetic colouring agent, that is, Tartrazine.

4. The learned ASJ set aside the order of conviction, and order on sentence while noting that the report of the public analyst, and that of the Director, CFL merely found the presence of colour Tartrazine, which is impermissible for the food item '*Daal Arhar*'. It was noted, however, that Tartrazine *per se* is not a prohibited colour, and is permitted for the category of foods listed under Rule 29 of the Prevention of Food Adulteration Rules, 1955 (**'PFA Rules'**).

5. It was further noted that for a food item to be considered adulterated, it must be shown that its presence in the food was injurious to the customer. The learned ASJ observed that since there was no quantity of Tartrazine specified in the collected sample from where it could be inferred that the presence of Tartrazine was injurious, it may even be the case that the presence of Tartrazine itself was in negligible amount. In that light, the learned ASJ noted that the prosecution had failed to establish that the sample of '*Daal Arhar*' qualified as adulterated within the definition of Section 2(ia) of the PFA Act.

6. The learned Additional Public Prosecutor for the State submits that while Rule 28 of the PFA Rules permits the use of Tartrazine, yet Rule 29 of the PFA Rules prohibits the use of



such colouring agent in food items other than those which are explicitly provided under Rule 29. He submits that '*Daal Arhar*' not being specified in the list under Rule 29 of the PFA Rules, its presence in '*Daal Arhar*' renders the food adulterated.

7. He submits that the learned ASJ erred in drawing parallels in which the use of Tartrazine is permitted with that of the '*Daal Arhar*' sample. He submits that Tartrazine is generally permitted for sweet products which are fast moving goods, having a short perishable shelf life unlike food items like pulses which can be stored for months. He submits that the presence of colouring agent Tartrazine, even though *per se* permissible, can be misused for colouring stale product for deceiving the consumers by giving them an impression that the food is fit and fresh for consumption.

8. The learned counsel for the respondent submits that the learned ASJ has rightly set aside the order on conviction and sentence of the respondent since the petitioner had failed to establish that the sample of '*Daal Arhar*' was 'adulterated' as specified under Section 2(ia) of the PFA Act. He submits that the presence of Tartrazine is permissible in certain foods, and is not *per se* injurious to health.

9. The present case relates to the mixing of synthetic colouring agent Tartrazine to '*Daal Arhar*'. It is the case of the petitioner that since '*Daal Arhar*' is not a food item specified under Rule 29 of the PFA Rules, even though the use of Tartrazine is not *per se* prohibited, yet its use on '*Daal Arhar*' is not permissible, and renders the food adulterated.

10. It is pertinent to note that Rule 28 of the PFA Rules specifies a list of synthetic food colours that may be used on food items, and admittedly 'Tartrazine' is a permissible food colour,



and may be used on food items. Merely because ‘*Daal Arhar*’ is not specified under Rule 29 of the PFA Rules does not by itself defeat the case of the respondent. It must be borne in mind that for a food item to be rendered “adulterated” within the meaning of Section 2(ia) of the PFA Act, such food item must be to the prejudice of the buyer, or must contain any substance that injuriously affects the nature or quality of the food item.

11. While the prosecution has repeatedly emphasised upon the presence of Tartrazine in the ‘*Daal Arhar*’ sample collected from the respondent, it has failed to show how the same is rendered to be of an inferior quality or prejudices the buyer. In fact, the learned ASJ noted that the sample of ‘*Daal Arhar*’ collected by the Food Inspector was found to be confirming to all the standards, except for the presence of Tartrazine, which too is not *per se* an impermissible synthetic food colouring agent.

12. As was rightly noted by the learned ASJ, the prosecution failed to specify what weight/quantity of Tartrazine was present in the collected sample, and its injurious effect, which makes it probable that Tartrazine itself was present in negligible amount in the collected sample. Even otherwise, mere presence of a permissible food colouring agent would not attract Section 2(ia) of the PFA Act, unless it is shown that the same either prejudices the buyer or renders the food to an inferior quality or is injurious in nature.

13. It is also settled law that when an appeal is filed against an order of acquittal, the Appellate Court shall generally not interfere, as the presumption of innocence of the accused is further strengthened by the acquittal. It is also settled that if two views are possible on the evidence adduced and one points to the



guilt and other to the innocence of the accused, the view favourable to the accused should be adopted.

14. The Court is to interfere with the order of acquittal only when there are compelling and substantial reasons for doing so. As noted above, the case relates to the year 2002.

15. Thus, considering the aforesaid, I find no reason to interfere with the impugned judgment.

16. The present petition is therefore dismissed in the aforesaid terms.

17. Pending application(s), if any, also stand disposed of.

AMIT MAHAJAN, J

JULY 26, 2024