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

+ **CRL.L.P. 125/2020**

FOOD SAFETY OFFICER

.....Petitioner

Through: Mr. Hitesh Vali, APP for State.

versus

MANOJ CHETRI & ANR.

.....Respondents

Through: Mr. Inderdeep Singh, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

01.11.2025

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1. The present petition under Section 378 (1) of the Code of Criminal Procedure, 1973¹ (*pari materia* Section 419(1) of the Bharatiya Nagarik Suraksha Sanhita, 2023²) seeks leave to appeal against the judgement dated 11th October, 2019 acquitting the Respondents in Criminal Case No. 30679/2016 under Sections 26/51/59 of the Food Safety and Standards Act, 2006.³

FACTUAL BACKGROUND

2. The case of the prosecution is as follows:

2.1. On 7th August, 2013, a team comprising Food Safety Officers⁴ O.P.S. Ahlawat and C.B. Boora, under the supervision of the Designated Officer⁵, inspected the premises of *Metro Grill Restaurant*, Pitampura, where

¹ "Cr.P.C."

² "BNSS"

³ "FSS Act"

⁴ "FSO"

⁵ "DO"



Respondent No.1 (Manoj Chetri) was found operating as the Food Business Operator.⁶ Cashew nuts stored for use in preparation of gravy for sale were found on the premises. The FSOs drew the sample in accordance with the prescribed procedure: the cashew nuts were thoroughly mixed in a clean, dry tray (*jhabha*) and the sample was divided into four equal counterparts, each packed, sealed and marked in clean, dry glass bottles. One counterpart was sent to the Food Analyst, while the remaining three were deposited with the DO. The FBO did not exercise his statutory right to have one counterpart sent to an Accredited Laboratory under Section 47(1)(c)(iii) of the FSS Act read with Rule 2.4.5 of the FSS Rules.

2.2. The Food Analyst, in its report dated 19th August, 2014, opined that the sample was unsafe, being insect-infested and fungus-contaminated, and sub-standard owing to damaged/discoloured units exceeding the permissible limit and the acidity of extracted fat being above the prescribed standard. On receipt of the report, the DO issued notice to the FBO, who sought referral analysis. Accordingly, a counterpart was forwarded to the Referral Food Laboratory⁷, Mysore, which, *vide* report dated 17th October, 2013, also concluded that the sample was unsafe and sub-standard within the meaning of Sections 3(1)(zz)(ix) and 3(1)(zx) of the FSS Act.

2.3. Upon receipt of the RFL report, investigation was undertaken and it was found that Respondent No. 2 (Manish Goel) the proprietor of *Metro Grill Restaurant* was responsible for its day-to-day operations along with Respondent No. 1. Thereafter, a complaint was filed alleging violation of Section 26(2)(i) read with Section 3(1)(zz)(ix), punishable under Section

⁶ “FBO”

⁷ “RFL”



59(1), and Section 26(2)(ii) read with Section 3(1)(zx), punishable under Section 51 of the FSS Act. The Respondents pleaded not guilty and claimed trial.

2.4. At trial, prosecution examined three witnesses, PW-1 (FSO O.P.S. Ahlawat), PW2 (DO Pawan Bhatnagar) and PW3 (FSO C.B. Boora) who were part of the team that visited the spot for sample proceedings. After closure of Prosecution evidence, the statement of the Respondents was recorded under Section 313 of Cr.P.C., wherein they denied all allegations and claimed innocence. They did not produce any evidence in their defence.

2.5. On the basis of the evidence adduced, the Trial Court, by the impugned order, acquitted the Respondents for the offences charged.

GROUND OF APPEAL

3. Mr. Hitesh Vali, APP for the State, urges the following grounds to seek leave to appeal against the judgement:

3.1. Both the Food Analyst and the Referral Food Laboratory conclusively reported the sample to be unsafe (insect-infested and fungus-contaminated) and sub-standard (damaged units and excessive acidity). The Trial Court erred in discarding concurrent scientific findings.

3.2. The Trial Court's reasoning that infestation and rancidity may have developed naturally due to monsoon and lapse of time is speculative. The Food Analyst specifically recorded that the seals were intact, ruling out post-sampling contamination.

3.3. The RFL report states that the sample was received in proper condition and fit for analysis. Under Section 46(4) of the FSS Act, the RFL report is final and binding, and could not have been displaced by conjecture.

3.4. The presence of live and dead insects and insect fragments in the



sample was in clear violation of Regulation 2.3.47.5 of FSS Regulations, 2011, which requires the product to be free from such contamination.

3.5 The reliance placed by the Trial Court on *NDMC v. Chaman Lal*⁸ is misplaced, as that decision was under the PFA Act. Under the FSS Act and Regulation 2.3.47.5, any presence of living/dead insects or insect fragments renders the food unsafe, and no threshold of “large infestation” is required.

ANALYSIS

4. The pertinent issue is whether leave to appeal is warranted under Section 378(3) CrPC. The governing principles are settled. At the leave stage, the High Court must be satisfied that the acquittal discloses a patent infirmity, such as perversity, manifest illegality, or a glaring misreading/omission of material evidence, so as to justify appellate scrutiny. The mere possibility of an alternative view cannot be the basis for interference with an acquittal. Rather, the Court must be persuaded that the Trial Court has either ignored material evidence, adopted a patently unreasonable view, or drawn conclusions which no court could have arrived at. These principles have been articulated by the Supreme Court in several cases and have been summarized in *Prem Kanwar v. State of Rajasthan*,⁹ wherein the Court observed as follows:

“16. The principles which would govern and regulate the hearing of appeal by the High Court against an order of acquittal passed by the trial Court have been set out in innumerable cases of this Court and in Ajit Savant Majagavi v. State of Karnataka (AIR 1997 SC 3255) the following principles have been reiterated:

1. In an appeal against an order of acquittal, the High Court possesses

⁸ FAC 1980 (1) 272.

⁹ (2009) 3 SCC 726.



all the powers and nothing less than the powers it possesses while hearing an appeal against an order of conviction.

2. The High Court has the power to reconsider the whole issue, reappraise the evidence and come to its own conclusion and findings in place of the findings recorded by trial Court, if the said findings are against the weight of the evidence on record, or in other words, perverse.

3. Before reversing the finding of acquittal, the High Court has to consider each ground on which the order of acquittal was based and to record its own reasons for not accepting those grounds not subscribing to the view expressed by the trial court that the accused is entitled to acquittal.

4. In reversing the finding of acquittal, the High Court has to keep in view the fact that the presumption of innocence is still available in favour of the accused and the same stands fortified and strengthened by the order of acquittal passed in his favour by the trial court.

5. If the High Court on a fresh scrutiny and re-appraisal of the evidence and other material on record, is of the opinion that there is another view which can be reasonably taken, then the view which favours the accused should be adopted.

6. The High Court has also to keep in mind that the trial court had the advantage of looking at the demeanor of witnesses and observing their conduct in the Court especially in the witness box.

7. The High Court has also to keep in mind that even at that stage, the accused was entitled to benefit of doubt. The doubt should be such as a reasonable person would honestly and conscientiously entertain as to the guilt of the accused. In this respect, the decisions of this Court in Balbir Singh Vs. State of Punjab (AIR 1957 SC 216) Ram Kumar Vs. State of Haryana (AIR 1995 SC 280), Bharwad Jakshibhai Nagjibhai Vs. State of Gujarat (AIR 1995 SC 2505), Hari Chand Vs. State of Delhi (AIR 1996 SC 1477), Raghbir Singh Vs. State of Haryana (JT 2000 (5) SC 21), and Hari Ram Vs. State of Rajasthan (JT 2000 (6) SC 254) may be seen.

17. In Ashok Kumar Vs. State of Rajasthan (AIR 1990 SC 2134) this Court has held as under: "While caution is the watchword, in appeal against acquittal as the trial Judge has occasion to watch demeanour of witnesses interference should not be made merely because a different conclusion could have been arrived at. Prudence demands restraint on mere probability or possibility but in perversity or misreading interference is imperative otherwise existence of power shall be rendered meaningless. In the present case the order of the trial Court is vitiated as



part from deciding the case on irrelevant consideration the most serious error of which he was guilty and which rendered the order infirm which could be set aside by the High Court was that he misread the evidence and indulged in conjectural inferences and surmises.”

5. In ***Ashok Kumar v. State of Rajasthan***,¹⁰ the Supreme Court emphasised that prudence must guide appellate interference. It is not the possibility of another conclusion, but the unreasonableness or illegality of the conclusion reached by the Trial Court that justifies appellate scrutiny. Where the Trial Court has proceeded on conjecture, surmise, or patent misreading of material evidence, the High Court is not merely empowered, but is in duty-bound, to correct the miscarriage of justice.

6. Bearing in mind the principles noted above, we now proceed to examine whether the impugned judgment discloses any manifest error, perversity, or misappreciation of evidence warranting interference. The impugned order reasons the acquittal as follows:

“10. I have heard the arguments advanced by Ld. SPP for the complainant and Ld. Defence Counsel for the accused persons and have carefully perused the material available on record.

11. To bring out the case of food article being unsafe the prosecution is relying upon the report of Director, RFL dated 17.10.2013 who had reported that the sample of Kaju Pieces collected/lifted by the Food Safety Officer on 07.08.2013 was unsafe because it contained infested with insects dead and living and the sample was not free from musty odour and rancidity and the damage/dicoloured units exceeded the maximum prescribed limit and the acidity of the extracted fat as oleic acid exceeded the maximum prescribed limit. However, I do not agree with the conclusions/report of the Director, RFL as only on account of presence of live and dead insects the sample of Kaju Pieces cannot be concluded to be "insect infested" as the sample was collected during Monsoon season and it is a natural phenomena that due to contact with air and moisture the sample commodity may have been infested with insects. Reliance is placed on the judgment in New Delhi Municipal Committee Vs. Chaman Lal and the State

¹⁰ (1991) 1 SCC 166.



FAC 1980 (1) 272, the Hon. Delhi High Court held as under:

“.....As to the connotation of the expression "insect-infested" the Supreme Court put its seal of approval on the Bench decision of this court in Dhanraj vs. Municipal Corporation of Delhi, 1972 FAC 335 in which Jagjit Singh, J had brought out the whole position quite lucidly. To be concise it was held by the Division Bench that "an article of food would be insect-infested" if it has been attacked by insects in swarms or numbers, if an article of food is attacked by insects in large swarms or numbers and for some reason those insects die, the mere fact that the article of food has no longer living insects but has dead insects will not change its character of being insect-infested". Applying this criterion to the case in hand, there can be no manner of doubt that the presence of three living insects in the counterpart of the sample weighing 250 gms which was sent to the Public Analyst can by no stretch of reasoning be called to be insect-infested. Certainly, it can not be said to have swarmed by insects. The number of insects present was by no means large”.

12. *With respect to the charge that the sample commodity was unsafe as they discoloured/damage units and total extracted fat increasing the prescribed limit, it is seen that in the present case the sample proceedings were conducted on 07.08.2013 and the sample was sent to RFL, Mysore on 26.09.13. The report of the Director, RFL was received on dated 23.10.2013 and is dated 17.10.2013. Therefore, it is clear that the sample commodity which is changes and natural phenomenon was sent for analysis to RFL, Mysore after a period of approximately 40 days for analysis. Therefore, the possibility of rancidity being developed during this period alongwith the extracted fat being increased beyond the permissible limits which cannot be denied. Furthermore, the damaged discoloured units being beyond the prescribed limits is also a natural phenomena due to oxidation of the sample commodity as the second counterpart sample commodity was sent after 40 days of the sample being collected leading to natural changes in the sample commodity beyond the control.*

13. *Therefore, it can be said that due to lapse of time there were natural changes in the sample commodity and the presence of extracted fat beyond the prescribed limit and the presence of discoloured and damaged units beyond the prescribed limit can be attributed to such natural phenomena. The accused persons are therefore, entitled to benefit of doubt.*

14. *In view of the facts and circumstances mentioned above, accused persons namely Manoj Chetri and Manish Goel are hereby acquitted for the offences charged against them.*

15. *Ordered accordingly.”*

7. The acquittal, in essence, rests on the principle of benefit of doubt on



account of the time gap between the collection of the sample and its analysis by the Referral Food Laboratory. The sample was drawn on 07th August, 2013 and the counterpart was forwarded to the RFL only on 26th September, 2013. The Trial Court held that, during this intervening period, natural changes could have occurred in the sample, particularly given that the sample was collected during the monsoon season. The Trial Court also noted in the cross-examination PW-2 and PW-3 admitted that, at the time of sampling, no live or dead insects were visible in the *kaju* pieces. Although, it is correct that insect infestation may not always be visible to the naked eye, the fact remains that the sample, when examined by the RFL, contained visible live and dead insects, insect fragments, and exhibited mustiness and rancidity. This contrast suggests that some degree of deterioration which occurred over the passage of time.

8. The Court further notes that although the seals on the bottles were reported to be intact, the determinative question is whether the packaging and storage conditions were sufficient to prevent oxidation, moisture ingress, or natural progression of rancidity. In this context, the Trial Court's reliance on the seasonal humidity and the possibility of moisture retention cannot be brushed aside as wholly implausible. Considering the 40 days gap from the date of sampling and the RFL analysis, and that the sample consisted of a high-fat, moisture-sensitive commodity, the possibility of natural chemical and biological changes during this period cannot be ruled out with certainty.

CONCLUSION

9. In view of the foregoing analysis, this Court is unable to discern any perversity, patent illegality, or manifest misappreciation of evidence in the



impugned judgment. The Trial Court's conclusion rested primarily on the possibility of natural change in the condition of the sample during the intervening period between its collection and analysis, the admitted absence of visible infestation at the time of sampling, and the susceptibility of the commodity to deterioration in monsoon conditions. On these facts, the Trial Court adopted a plausible view in extending the benefit of doubt to the Respondents. The presumption of innocence, fortified by the acquittal, therefore operates with full force. No exceptional circumstance has been demonstrated that would warrant interference at the stage of leave under Section 378(3) Cr.P.C.

10. Accordingly, the application seeking leave to appeal is dismissed.

SANJEEV NARULA, J

NOVEMBER 1, 2025

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