



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

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Date of Decision: 17.12.2025

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CRL.A. 139/2018

FOOD INSPECTOR

.....Appellant

Through: Mr. Pradeep Gahalot, APP for State
versus

MAYA DEVI & ORS.

.....Respondent

Through: Ms. Ashaa Tiwari, Advocate

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. By way of the present appeal, the Food Inspector (through State) has assailed the impugned judgment of acquittal dated 12.07.2012 rendered by the Trial Court in complaint case no. 03/2001 titled as '*DA vs Maya Devi & Ors.*'
2. Learned APP for State contends that in the present case, the Trial Court failed to appreciate that the sample seized of the skimmed milk did not confirm to the parameters and as per the PA report, the sample did not confirm to the standard because "*milk solids not fat*" was found to be 4% in the present case, less than the prescribed limit of 8.7%.
3. Ms. *Ashaa Tiwari*, learned counsel for the respondent, however, defended the impugned judgment and stated that in the present case, the sample was taken on 17.05.2000, whereafter it was examined on 18.05.2000, that report of the Public Analyst Food Laboratory, Delhi (Public Analyst Laboratory) dated 24.05.2000 was returned with a finding that the sample does



not conform to the prescribed standard of “*milk solids not fat*” being minimum 8.7%. She submits that thereafter the complaint came to be filed after a delay of nearly 8 months on 16 January, 2001 and that the sample seized of the skimmed milk was a “*perishable item*”. The delay in filing the complaint has defeated the invaluable right of the respondent in receiving reports to avail the second-opinion remedy under Section 13 (2) of the Prevention of Food Adulteration Act, 1954¹ (PFA Act), whereby the remaining part of the sample could have been sent to Central Food Laboratory. She submits that though the respondent did exercise that right, however, the same had been futile. She further submits that none of the prosecution witnesses have stated that preservatives were not added to the samples, and that the samples were, in fact, kept in a refrigerator. Relying on Gian Chand Vs State², 1978 (1) PFA 15, it is contended that the contents of the sample would remain fit for analysis only for a period of four weeks. In this regard, reliance is also placed on the decision of the Supreme Court in MCD vs. Ghisa Ram³.

4. I have heard learned counsels for both the parties and have gone through the records as well. In the present case, the said complaint came to be filed on 16.01.2001, with the allegation that on 17.05.2000 at about 4.30 PM Food Inspector *Dharambir Singh* purchased a sample of pasteurized skimmed milk, being 1 liter in quantity, through two 500ml sealed poly packs milk from Smt. Maya Devi, Respondent-1. The Food Inspector had purchased two packets of 500 ml each and after properly shaking and homogenizing, the contents were

¹ The Prevention of Food Adulteration Act, 1954, No. 37, Acts of Parliament, 1954 (India)

² 1978 (1) PFA 15

³ 1975 F.A.C 186



taken out and divided into 3 equal parts in 3 clean and dry bottles, 27 drops of formalin were added in each sample bottle and the same were separately packed, fastened and sealed as per the requirements. The signatures of the vendor were also taken on the LHA slip and the wrappers of the sample bottles. Notice was given to the appellant and *Panchnama* prepared at the spot while one counterpart of the sample bearing LHA code no. AC/LHA/1646 was sent to the Public Analyst in intact condition, while the other two counterparts were deposited with the LHA. As per the report received from the Public Analyst, the sample failed for not confirming to the standards as *milk solids not fat* was found less than the prescribed limit of 8.7%.

5. The Trial Court while passing the impugned judgment noted that the though the respondent had exercised the right under Section 13 (2) of the PFA Act by filing the requisite application, the same was dismissed for being filed at a belated stage.

6. Admittedly, there is a delay of about 8 months in filing the complaint. The Supreme Court in 'MCD v Bishan Swaroop'⁴ noted that

“the delay or lapses on part of prosecution to institute a prosecution this valuable right of the accused is in any way impaired, the question becomes of paramount importance for the purpose of determining if the defence was prejudiced on this Account”.

7. The Court noted its earlier decision in 'Ghisa Ram's case'⁵, wherein while considering the food article which is curd, the Court held as under:

“the sample of the article of food which was curd of cow's milk was

⁴ Decided on 11.03.1970, in CRL.A. No. 48D of 1966.

⁵ *Supra* Note 3



taken by the Food Inspector on September 20, 1961. The prosecution was instituted on May 23, 1962. On October 4, 1963, the accused person applied that the sample given to him by the food Inspector may be sent for examination of Director of Central Food Laboratory. The Director reported on receipt of the sample that it had become highly decomposed and no analysis was possible. On the basis of evidence produced in the case, the Court found that the sample of curd could not survive for successful analysis beyond four months from the date when it was taken. Having regard to the fact that the accused could not have applied for the sending of this sample till after the prosecution was filed in Court it was clear that the sample in this case according to the evidence had got deteriorated even before the date when the prosecution was launched. In these circumstances the court found that the accused had been seriously prejudiced in the trial by a deliberate conduct of the prosecution namely the delay in the launching of the prosecution and therefore, it was not proper to sustain his conviction”.

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"The opinion of one of the experts, Dr. Sat Parkash, given in this case shows that in the case of a food article, like curd, it starts under-going changes after a week, if kept at room temperature, without a preservative, but remains fit for analysis for another 10 days thereafter. On the other hand, if the sample is kept in a refrigerator, it will preserve its fat and non-fatty solid contents for purposes of analysis for a total period of four weeks. If a preservative is added and the sample is kept at room temperature, the percentage of fat and non-fatty solids contents for purposes of analysis will be retained for about four months, and in case it is kept in a refrigerator after adding the preservative, the total period which may be available for making analysis, without decomposition, will be six months. In this case, when the Food Inspector handed over the sample to the respondent, the respondent was not expected to keep it in a refrigerator. Consequently, without any preservative, the sample kept with him could have been analysed successfully during the next 17 days, whereas, if a preservative had been added, it could have been analysed successfully during the next four months."

8. In the present case the Trial Court has held that there is no evidence that



has come on record as to whether the counterparts of sample were kept in a refrigerator or not. Further, there has also been a delay on the part of the DA in launching the prosecution and the Trial Court also noted that there is no evidence to show that the milk packets were first brought to room temperature to ensure that both fatty and non-fatty solids do not remain stuck to the inner walls of the polypacks. In this regard, the Trial Court observed that some fatty as well as non-fatty solids might have remained adhered to the inner walls of the polypacks, as the packets were poured out immediately after being taken out of the freezer. It was further noted that there is no specification on record regarding the condition in which the milk packets were stored at the premises of the vendor.

9. The law pertaining to double presumption of innocence operating in favour of an accused at the appellate stage after his acquittal by the Sessions Court is fortunately a settled position, no longer *res integra*. A gainful reference may be made to the Supreme Court's decision in Ravi Sharma v. State (NCT of Delhi)⁶, and Anwar Ali v. State of H.P.⁷.

10. Therefore, in the light of the facts and circumstances, I find no grounds to interfere with the impugned judgment.

11. Accordingly, order of acquittal is upheld and the appeal is dismissed.

MANOJ KUMAR OHRI
(JUDGE)

DECEMBER 17, 2025/sn

⁶ (2022) 8 SCC 536

⁷ (2020) 10 SCC 166