

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

% Order delivered on: May 20, 2015

+ **Crl. A. No.198/2014 & Crl.M.A. No.2572/2014**

DELHI ADMINISTRATION THROUGH DESIGNATED
OFFICER Petitioner
Through Ms.Jasbir Kaur, APP
versus

ISHWAR DASS Respondent
Through Mr.S.N. Gupta, Adv.

**CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH**

MANMOHAN SINGH, J.

1. The Delhi Administration through Designated Officer has filed the present appeal under Section 377 of Cr.P.C. on the ground of inadequacy of sentence awarded by the Court of ACMM-II/PHC/ND vide order dated 13th February, 2013 in a case bearing CC No.163/11 titled as DA vs. Ishwar Dass under the Prevention of Food Adulteration Act, 1954 under Section 16(1)(a).

2. As per prosecution case the brief facts are:

“That on 27.4.2011 at about 3:00 pm Food Inspector Sh.Suniti Kumar Gupta purchased a sample of 1500 gms. Of Ladoo stored for sale in a open tray without label declaration from Ishwar Dass (Vendor) MCD Kiosk at UGC Lane, Bahadur Shah Zafar Marg, New Delhi-110002. The sample was taken after mixing the ladoo properly after breaking into smallest pieces with the help of a clean and dry stainless steel spoon in a clean and dry

stainless steel tray and properly mixed with the spoon thoroughly. It was divided into three equal parts and putting into dry and clean bottles. That one of the counter part of the sample was sent to public analyst. The Public Analyst analysed the sample and opined that the sample was misbranded because it shows the presence of turmeric which is not declared as one of the ingredients.

That the accused was summoned and on 13.2.2013 the accused pleaded guilty to the offence for the offence complained of and learned trial court vide order of the same date convicted the respondent and awarded a punishment of TRC (Till rising of the Court) and a fine of Rs.40,000/-."

3. The said order has been challenged before this Court. I have heard the learned counsel for the parties.

4. Sections 376 and 357 of Cr.P.C. read as under:

"376. No appeal in petty cases -- Notwithstanding anything contained in section 374, there shall be no appeal by a convicted person in any of the following cases, namely:

(a) where a High Court passes only a sentence of imprisonment for a term not exceeding six months or of fine not exceeding one thousand rupees, or of both such imprisonment and fine;

(b) where a Court of Session or a Metropolitan Magistrate passes only a sentence of imprisonment for a term not exceeding three months or of fine not exceeding two hundred rupees, or of both such imprisonment and fine;

(c) where a Magistrate of the first class passes only a sentence of fine not exceeding one hundred rupees; or

(d) where, in a case tried summarily, a Magistrate empowered to act under section 260 passes only a sentence of fine not exceeding two hundred rupees

Provided that an appeal may be brought against any such sentence if any other punishment is combined with it, but such sentence shall not be appealable merely on the ground-

- (i) that the person convicted is ordered to furnish security to keep the peace; or
- (ii) that a direction for imprisonment in default of payment of fine is included in the sentence; or
- (iii) that more than one sentence of fine is passed in the case, if the total amount of fine imposed does not exceed the amount hereinbefore specified in respect of the case.

377. Appeal by the State Government against sentence -- (1) Save as otherwise provided in sub-section (2), the State Government may, in any case of conviction on a trial held by any Court other than a High Court, direct the Public Prosecutor to present an appeal to the High Court against the sentence on the ground of its inadequacy –

(a) to the Court of session, if the sentence is passed by the Magistrate and

(b) to the High Court, if the sentence is passed by any other Court.

(2) if such conviction is in a case in which the offence has been investigated by the Delhi Special Police Establishment, constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946) or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, ¹ the Central Government may also direct] the Public

Prosecutor to present an appeal to the High Court against the sentence on the ground of its inadequacy –

(a) to the Court of session, if the sentence is passed by the Magistrate and

(b) to the High Court, if the sentence is passed by any other Court.

(3) When an appeal has been filed against the sentence on the ground of its inadequacy, the High Court shall not enhance the sentence except after giving to the accused a reasonable opportunity of showing cause against such enhancement and while showing cause, the accused may plead for his acquittal or for the reduction of the sentence.”

5. Learned counsel for the respondent has raised the preliminary objection that it is a petty offence. The appeal, if any, ought to have been filed before the Session Court and not before the High Court. The same is not maintainable. Even otherwise, no permission from the State Government has been taken by the petitioner.

6. Having heard the learned counsel for the parties, nature of the order passed by the trial court and the objection raised by the learned counsel for the respondent, there is no merit in the appeal. Even otherwise there is a delay of 179 days in filing the appeal. This Court is not satisfied with the reasons given in the application. Accordingly, the appeal is dismissed.

(MANMOHAN SINGH)
JUDGE

MAY 20, 2015