

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 24.04.2015

CRL.L.P.259/2015

FOOD INSPECTOR

..... Petitioner

Versus

DHARMENDER SINGH

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Ms Isha Khanna, APP
For the Respondent : None

**CORAM:
HON'BLE MR JUSTICE SIDDHARTH MRIDUL**

SIDDHARTH MRIDUL, J. (ORAL)

1. The present is a petition for grant of leave to appeal against the impugned order dated 03.07.2012 passed by the Additional Chief Metropolitan Magistrate-II, New Delhi, in CC No.19/04 whereby the respondent has been acquitted of the charges levelled against him.

2. The facts herein briefly are, the Food Inspector Sunil Kumar Gupta purchased a sample of Cow's Milk from the respondent on 07.08.2003 at about 7.00 p.m. Thereafter, the Food Inspector divided the sample into three equal parts and they were put in three separate clean and dry bottles. 40 drops of formalin were added in each sample bottle and each bottle was separately packed, fastened and sealed according to the PFA Act and Rules. The respondent's signatures were also obtained on the LHA slip and the wrapper of the sample bottles. One counterpart of the sample was sent to the Public Analyst in intact condition and two counter parts were deposited with the LHA. Upon analysis it was found by the PA that the sample did not conform to standard because milk solids not fat were less than prescribed minimum limit of 8.5%. The respondent was charged under Section 2(ia)(a)(m) of PFA Act punishable under Section 16(1)(a) read with Section 7 of the PFA Act and Rules to which he pleaded not guilty.

3. The sole contention that was raised before the Trial Court was whether the sample taken was representative or not. It was pointed out on behalf of the respondent that there was vast variation between the report of PA and the Director, CFL which establishes that the said sample was not representative.

4. The Trial Court relied upon the ratio laid down in the following decisions and acquitted the respondent on the ground that prosecution had failed to establish that the sample was representative.

- (i) M.C.D. vs. Jawahar Lal, 1980 (2) F.A.C. 145 Delhi
- (ii) M.C.D. & Ors. vs. Om Prakash, 1970 (2) CrL.L.J.1047
- (iii) Isham Singh vs. State of Haryana, 2009 (1) R.C.R. (CrL.) (P&H)
- (iv) Delhi Administration vs. Sat Sarup Sharma, CrL.Apl. No.869/1985, decided on 25.11.1993

5. It was observed by the Trial Court in this behalf as follows:-

“13. In the given context, the ‘milk fat’ as adjudged by both the Experts were found to be more than the minimum required thereof. The Experts found the ‘milk fat’ contents in the respective sample counterparts, to the extent of ‘4.6 per cent (CFL) and ‘5.0 per cent’ (PA), as against the minimum requirement of ‘3.5 per cent’. Similarly, the ‘total solids’ in the **Cow’s Milk** have been shown to the tune of ‘12.30%’ in the Certificate dated 05.14.2004, which depiction is also higher the minimum requirement of (3.5 per cent – milk fat + 8.5 per cent – snf) ‘12 per cent’.”

6. In view of the decisions cited by the trial court the arguments made on behalf of the State by the learned APP that the trial court should have only considered the CFL report and not the PA report holds no ground as the perusal

of the trial court judgment delineates substantial variance between the report of the PA and the Director CFL. The State has not satisfactorily explained the said variance.

7. I see no reason to differ with the conclusion arrived at by the Trial Court passed based on the discussion extracted hereinabove. Consequently, the present petition seeking leave to appeal is without merit and the same is dismissed.

APRIL 24, 2015

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SIDDHARTH MRIDUL, J

