

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 20.03.2015

CRL.L.P.163/2015

FOOD INSPECTOR

..... Petitioner

Versus

RAM GOPAL

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Ms Isha Khanna, APP
For the Respondents : 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 29.03.2012 passed by the Additional Chief Metropolitan Magistrate-II, Patiala House Courts, New Delhi, in CC No.118/2002 under Sections 7/16 of the Prevention of Food Adulteration Act, 1954, whereby the respondent has been acquitted of the charges levelled against him.

2. To briefly encapsulate the facts, a sample of Boondi Laddo was duly lifted from the respondent/vendor Sh. Ram Gopal on 30.03.2002 by the Food

Inspector Sh. M.K.Gupta. Upon analysis by Public Analyst (PA) a report dated 09.04.2002 found the said sample to be adulterated because total dye content of the synthetic colour used exceeded the prescribed maximum limit of 100 ppm. Upon request of the respondent the second counterpart was sent to CFL which was also found adulterated. By way of the impugned order, the trial court has acquitted the respondent on the ground that there is variation between the PA report and the CFL report as in the PA report the synthetic colour was found 209.75 ppm and in the CFL report it was found to be 322.2 ppm, which is not a reasonable variation. It appeared to the trial court that the variation in the two reports was either due to the defective sampling procedure or a result of delayed analysis in respect of the second counterpart.

3. The solitary submission on behalf of the State is that since the CFL report was conclusive on the aspect, there was no need for the trial court to have looked at the PA report in this behalf. Further, it has also been suggested that the delay in sending the sample for testing was not on account of the petitioner. In this behalf the trial court has observed as follows:-

“12.Firstly, taking the ground of alleged delay, the sample proceedings had taken place as on 30.03.2002 whereas, the Complaint in question was filed on 12.11.2002 i.e. almost after a period of 7½ months. Perusal of the case file reveals that nothing sort of investigation was carried out after 22.04.2002 meaning

thereby that the investigations, if any, stood concluded and completed by that time. Moreover, the prosecution was to be launched (and was in fact launched) against one and the only accused i.e. accused namely Shri Ram Gopal. In that eventuality, it was incumbent upon the prosecution to satisfactorily explain and justify as to why the proceedings were not initiated immediately after the conclusion of the investigation. However, neither any such explanation does appear in the Complain in question, nor any sort of justification was put forth either during the course of evidence, or otherwise. The prosecution story gets further dented in this regard by a mere perusal of the order of according Consent U/s 20 of PFA Act, by the Director PFA. It is an undated order reflecting nowhere and in no way as to when the case file was put before the worthy Director PFA, how much time he took to peruse the same, on which date and in which month he accorded the requisite Consent etc. etc. This becomes even more important when the Complaint dated 12.11.2002 is perused so as to ascertain these aspects. Even the Complaint is also entirely silent in this regard. In Para – 5 thereof, a passing reference appears to the effect that:-

‘after conclusion of the investigation entire case file including the statutory documents, PA report and the FI’s Report were sent to the Director PFA, who accorded Consent U/s 20 of the PFA Act for instituting the case’

If, this assertion (as appearing in Para – 5 of the Complaint and as reproduced herein above); is to be believed, the case file might have been submitted to the Director PFA, somewhere in the last week of April, 2002, or in the beginning of May, 2002. In that eventuality, Consent might have been granted by the end of May, 2002 or so. However, despite that the Complaint

against the accused herein, could only be filed by 12.11.2002 and not prior thereto, for the reasons best known to the PFA Officials in general and the Complainant FI in particular. Even if it is assumed that the requisite Consent was granted just a few days prior to the filing of the Complaint in question, it remains entirely unexplained as to how and why all this exercise was not completed within a reasonable span of time, more particularly when as per the prosecution's own version (as reflected in the list of documents, annexed with the Complaint), the investigation had been completed by 22.04.2002.

13. Further, in respect of first counterpart, the color in question was found present in the given food article to the extent of '209.75 ppm' whereas, in respect of the second counterpart of the same sample, it was detected to be to the tune of '322.2 ppm'. As a matter of fact, there is a time gap of almost 10 months between the analysis of the respective sample counterparts. The 'delay' is mostly attributable to the prosecution as has already been discussed herein above. The variation in the two Reports i.e. the Report of the PA and the Director CFL, is to the extent of '112.45 ppm' in respect of color concentration in the sample of Boondi ke Laddoo, is in no way a reasonable variation. Moreover, none of the prosecution witnesses has put forth any plausible reason for variation to such an extent. It reasonably appears that either it was due to the defective sampling procedure or might be the result of delayed analysis in respect of the second counterpart. In both these eventualities, the fault lies with the prosecution only. The accused thus, deserves to be acquitted and is hereby acquitted of the charges leveled against him."

4. The argument made on behalf of the State that the CFL report is conclusive and there was no need for trial court to have considered the PA report holds no water as there is a substantial variation in the PA report and the CFL report.

5. The PA report states that the total dye content of the synthetic colour used in the given sample was 209.75ppm. However, in the CFL report it was detected to the tune of 322.2ppm. The variation in the two reports is to the extent of 112.45ppm, which is not a reasonable variation. Moreover, none of the prosecution witnesses have put forth any valid reason for the said variation.

6. I agree with the conclusion arrived at by the trial court on the basis of discussion extracted hereinabove. Insofar as the question of delay is concerned the same cannot be also laid at the door of the respondents so as to enure to their prejudice.

7. Consequently, I find no merit in the present petition and the same is dismissed.

SIDDHARTH MRIDUL, J

MARCH 20, 2015

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