

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

**Judgment delivered on: 24.04.2015**

**CRL.L.P.256/2015**

**FOOD INSPECTOR**

..... Petitioner

Versus

**KISHAN KANSAL**

..... 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 26.09.2012 passed by the Additional Chief Metropolitan Magistrate-II, New Delhi, in CC No.319/03 whereby the respondent has been acquitted of the charges levelled against him.

2. The facts herein briefly are, the Food Inspector Arun Kumar purchased a sample of Laddoo from the respondent on 28.03.2003 at about 3.00 p.m. Thereafter, the Food Inspector divided the sample into three equal parts and thereafter 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 was adulterated because total dye content of synthetic colour used exceeded the prescribed maximum limit of 100 PPM. The respondent was charged under Section 2(ia)(a)(j)(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 solitary 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 sample was not representative.

4. The Trial Court relied upon the decision of this court in **Kanshi Nath vs. State**, 2005 (2) FAC 219, Delhi High Court, wherein it was held as follows:-

“..... To this extent, the argument raised by Mr. Sharma that once the certificate of the Director, CFL is obtained, then that is final and conclusive and the Public Analyst's report cannot be looked into at all for any purpose whatsoever, is not quite tenable. If the variation in the two reports is substantial enough, then the Public Analyst's report can certainly be looked into to establish this variation so as to support the contention of the petitioner that the sample was not representative. As indicated above, the Director, CFL who was examined as CW-1 in cross-examination, has clearly stated that if the content of common salt as quantified by the two experts would have a variation of more than- Y.3% then the samples would not be representative. This is an opinion of an expert and one has to go by it. In the facts of the present case, we find that the variation, as indicated above, is more than Y.3%. Therefore, on the facts of the present case, it can be said that 7 the variation is beyond the acceptable range and would clearly imply that the samples were not representative. In view of this finding and in the background of the law which is well settled, no conviction can be sustained.”

5. Placing reliance upon the aforesaid decision of this court in ***Kanshi Nath*** (*supra*), the Trial Court came to the conclusion that the prosecution had failed to establish that the sample was representative. It was observed by the Trial Court in this behalf as follows:-

“14. Now coming to the facts of the present case, it be seen that there are variations in the analytical results of both the reports. The PA found **Tartrazine & Sunset Yellow FCF (Total Dye Content 349.77 PPM)**. However, the quantity of **Tartrazine & Sunset Yellow FCF** each have not been mentioned by the PA. It has not been specified by the PA as to in how much quantity these colours were present? And how he ascertained the value of **Total Dye Content**? Further the Director CFL found the **Total Dye Content 223.5 PPM** (Tartrazine 158.5 + Sunset Yellow FCF 65 = **Total Dye Content 223.5 PPM**) i.e. less than that of PA’s findings. Here, it be seen that though both the reports found the sample having been coloured with synthetic colours i.e. Tartrazine & Sunset Yellow FCF, however, there are variations so far as the values are concerned. It has nowhere been explained by any of the prosecution witnesses as to how and why variations to such an extent happened to be there in the analytical results of both the experts. Thus, a doubt stands casted upon the prosecution story more particularly w.r.t. the representative character of the sample in question. Had it been a representative sample, such wide variations between the two reports would not have been possibly there.”

6. In view of the decision of this court in *Kanshi Nath (supra)* 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

in tartrazine and sunset yellow FCF between the report of the PA and the Director CFL. The State has not satisfactorily explained the said variance.

7. Consequently, the Trial Court came to the conclusion that the petitioner herein has failed to prove that the sample was homogenized and representative and resultantly acquitted the respondent.

8. 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**