

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 09.04.2015

CRL.L.P.195/2015

FOOD INSPECTOR

..... Petitioner

Versus

PRAFUL KUMAR

..... 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 06.02.2010 passed by the Additional Chief Metropolitan Magistrate-II, New Delhi, in CC No.162/1993 whereby the respondent has been acquitted of the charges levelled against him.

2. To briefly encapsulate, it is stated that Food Inspector Anil Kumar Dhir purchased a sample of Mix Masala Cheese (Processed) from the respondent on 18.03.1993 at about 4 p.m. The sample consisted of three originally sealed

packets containing 200gms each. After taking the sample the Food Inspector divided the sample into three equal parts by putting one packet as one counterpart and each part containing the sample was separately packed, fastened and sealed according to the PFA Act and Rules. The respondent's signatures were also obtained on the paper slip and the wrapper of the sample. 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 the PA found that the sample did not conform to standard because moisture exceeded the prescribed maximum limit of 47% and milk fat of dry matter is less than the minimum limit of 40%. Further there is violation of Rule 32(b) of PFA Act and Rules. 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 submission on behalf of the State is that the sample of Masala Cheese (Processed) was represented and the said sample sent for analysis by Director, CFL was stored in the prescribed manner. 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:-

4. The Trial Court relied upon the decision of this court in *State v Anil Batra and Others: 2008(1) FAC 191 (DEL)*, wherein it was held as follows:-

“9.Learned Trial Court has relied upon one judgment of the Hon'ble Supreme Court in 'Municipal Corporation of Delhi v. Ghisa Ram 1975 (I) PFA cases 186. In that case the complaint was filed in Court after about seven months from the date of raid and taking of sample of milk product (curd) from the shop of the accused which was on 20/09/1961. The complaint was filed on 23/05/1962. Hon'ble Supreme Court held that in these circumstances, the valuable right available to the accused under section 13(2) of the Act of having the sample tested at Central Food Laboratory had stood denied to him. It was also observed that ordinarily it was possible for the prosecution to obtain the report of the Public Analyst and institute the prosecution within 17 days of the taking of the sample. Mr. Dudeja, learned APP had submitted that this judgment was not applicable to the facts of the 7 present case since in that case the Director of Central food Laboratory had found the sample sent to him to be unfit for analysis because of decomposition and because of that reason the accused could not have the benefit of the report of the Director which, if had been given, would have superseded the report of the Public Analyst and so the Hon'ble Supreme Court had held that the delay in launching the prosecution against the accused had resulted in denial of the benefit of Section 13(2) of the Act to him while in the present case despite the delay in the filing of the complaint in court the third counter part of the sample which was sent for analysis, as per the CFL report, did not conform to the prescribed standard. So, learned APP contended, the acquittal of the accused of the present case by the trial Court relying upon the said judgment of the Hon'ble Supreme Court was totally unjustified and not sustainable at all. However, in my view the acquittal of the respondents in the present case

in view of the decision of the Hon'ble Supreme Court in Ghisa Ram's case (Supra) cannot be said to be unjustified because the crux of the judgment of the Hon'ble Supreme Court is that prosecution in these kinds of cases should be launched promptly. In that case reference was also made to the opinion of an expert that if a food article, like curd, is kept in a refrigerator and a preservative is added to the sample the total period which may be available for making analysis of that sample without decomposition will be six months. In the present case, the third sample of the paneer was sent to the Central Food Laboratory after the expiry of more than six months from the date when it was taken from the shop of the respondent no. 1 and there is no explanation forthcoming from the side of the prosecution for that delay. It is admitted by the prosecution that the sample was not kept in refrigerator but was kept in at room temperature till the time from taking of the samples to sending it to CFL.”

5. Relying upon the aforesaid decision in *Anil Batra (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:-

“16. In the present case, it is clearly seen from the record that the sample of Mix Masala Cheese (Processed) was analysed by the Public Analyst, Delhi on 11.4.93 i.e. within twenty four days from which the sample was lifted by F.I Anil Kumar Dhir but complaint was filed on 19.8.93 and the Director, CFL examined the second counterpart on 15.10.93. No explanation whatsoever came on record that even after opinion of Public Analyst in respect of a sample of Mix Masala Cheese (Processed), why period of more than four months occurred by the department to launch the prosecution against the accused, although, complainant was aware that accused can exercise his right under Section 13

(2) of PFA Act only after institution of complaint, which is also fatal to the case of complainant.

Whether the sample was not taken properly and the right of accused under Section 13 (2) of PFA Act was frustrated.

17. Ld. Defence counsel argued that sample was not properly taken as it was required to be kept under refrigeration condition as also mentioned on the label of the sample commodity. PW-2 F.I. A.K. Dhir confirmed in his cross-examination that the sample of three bricks was taken from refrigerator. To a specific question as put by the Ld. Defence counsel, PW-1 Sh. M.R. Grover, deposed that no formalin was added in the sample commodity as the packets were taken in sealed condition as they were having preservative. DW-2 Dr. Dharampal, PHD in Dairy Technology and Co-authored of Book of NCERT of Class XII as Dairy Product II, deposed that processed cheese and cheese spread should be stored in refrigerator and it will deteriorate in 5-6 days at room temperature and if a suitable preservative is added or the sample is sent under refrigeration only then it can be correctly analysed after a period of ten days. DW-2 further deposed that the chemical composition of cheese changes, if it is not properly stored and same may be the reason that Public Analyst found light yellow and Director, CFL found pale brown colour of the sample commodity. It is a matter of record that on Notice in form VI Ex. PW1/B on which the label of sample commodity was reproduced by the Food Inspector at the spot, it was mentioned on the label that to eliminate contamination stored under refrigeration. Thus from the label of the sample commodity as well as from the testimony of PW-2 F.I. A.K. Dhir, the sample commodity was stored and to be stored in refrigerator. In connected case, where a sample of slice cheese (processed) i.e C.C. No. 129/93 was lifted on the same day under the supervision of Sh. M.R. Grover, LHA, he confirmed in his cross-examination that sample of slice cheese 10 (processed) was stored by the vendor in a freezer as same would spoil outside the freezer. Thus, if the sample was taken from refrigerator and it was mentioned on the label of the sample commodity that to eliminate contamination, it

should be stored under refrigeration and admittedly sample was stored at room temperature for about six months, itself frustrated the right of the accused in obtaining the correct analysis of the sample commodity from the Director, CFL. Therefore, I am of the considered opinion that the sample was not properly stored and due to the time of about four months taken by complainant in filing the complaint after report of the Public Analyst in sample of Mix Masla Cheese (Processed) , when admittedly the sample commodity was stored in refrigerator and it was mentioned on the label of the sample commodity that it should be stored in refrigerator to avoid contamination, in fact frustrated the right of the accused to get the correct analysis of second counterpart under Section 13 (2) of the PFA Act from the Director, CFL.”

6. The argument made on behalf of the State by the learned APP regarding the storage of the said sample holds no ground in view of the judgement of this Court in *Anil Batra (supra)*. As it has been clearly established that the sample of Mix Masala Cheese (Processed) was not stored in refrigeration and therefore the said sample decomposed. Further, the learned APP has failed to explain the delay of almost four months in filing a complaint against the accused.

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 09, 2015

SIDDHARTH MRIDUL, J

