

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 09.04.2015

CRL.L.P.197/2015

DELHI ADMINISTRATION

..... Petitioner

Versus

SANJAY JAIN & OTHERS

..... Respondents

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 17.11.2009 passed by the Additional Chief Metropolitan Magistrate-II, New Delhi, in CC No.162/1999 whereby the respondents have been acquitted of the charges levelled against him.

2. The facts herein briefly are, the Food Inspector S.P.Singh purchased a sample of Mustard Oil from the respondents on 29.01.1999 at about 1:30 p.m. Thereafter, the Food Inspector divided the sample into three equal parts, each bottle 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 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 iodine value is more than the maximum prescribed limit of 112 and saponification value is also more than the maximum prescribed limit of 117. The BTT is also less than the minimum prescribed limit of 23 degree C. The respondents were charged under Section 2(ia)(a)(b)(d)(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 respondents 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 thanY.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:-

“17. In view of above judgment of the Hon'ble Delhi High Court, I find no force in the contention of the Ld. SPP that the report of the Public Analyst and the Director, CFL cannot be looked into to ascertain whether the sample was representative or not. In the present case, as per report of the Public Analyst dated 13.2.99 Ex.PW1/F wherein the opinion given by the Public Analyst, Delhi was that the sample does not conform to the standards and the result of the Public Analyst was as follows:-

B.R at 40 Deg. C.: 60.5

Iodine value: 112.40

Saponification value: 185.99

Acid value: 2.71

B.T.T (Acetic acid method) : 22 Deg. C.

18. The second counterpart of the same sample was analysed by the Director, Central Food Laboratory, Calcutta on dated 14.2.2000, the result of analysis of second counterpart of the sample commodity is as under :

B.R. at 40 Deg. C. : 58.8

Iodine value : 110.2

Saponification value : 184.5

Acid value : 3.37

B.T.T (Acetic acid method) : 22.4 Deg. C.

19. There is vast variation between the reports of the Public Analyst and the Director, CFL in respect of the acid value, iodine value,

saponification value and B.R. Reading in respect of the counterpart of the same sample. As per report of the Public Analyst, the sample was found non-conforming to standard as Iodine value was also found more than the prescribed limit of 112 but in the report of the Director, CFL the Iodine value was found within the prescribed limit i.e. 110.2. Complainant has failed to explain how the two analytic reports in respect of same counterpart of the sample commodity are divergent to such an extent. Thereby relying upon *Kashi Nath* versus State (*supra*), I am of the considered view that the sample was not representative.”

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 between the report of the PA and the Director CFL. The PA report states that the iodine value of the sample is more than the prescribed limit whereas in the CFL report the iodine value is within the prescribed limit. The learned APP has failed in explaining 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.

SIDDHARTH MRIDUL, J

APRIL 09, 2015

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