

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 24.03.2015

CRL.L.P.139/2015

FOOD INSPECTOR

..... Petitioner

Versus

RAKESH

..... 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 25.02.2010 passed by the Additional Chief Metropolitan Magistrate-II, New Delhi, in CC No.47/2001 whereby the respondent has been acquitted of the charges levelled against him.

2. To briefly encapsulate, it is stated that Food Inspector S.P.Singh purchased a sample of Khoa from the respondent on 04.02.2001 at about 8.30 a.m. The said sample was taken under the supervision and direction of Sh.

G.R.Meena, SDM/LHA. After taking the sample the Food Inspector divided the sample into three equal parts by putting them in three separate clean and dry bottles. 20 drops of formalin were added in each of the sample bottle and they were 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 the PA found that the sample did not conform to standard because milk fat was less than the prescribed minimum limit of 30%. 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 question that came up for consideration before the Trial Court was whether the sample lifted by the Department 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 demonstrated that the sample was not representative.

4. The Trial Court relied upon the decision of this court in *Kanshi Nath v. State, 2005 (2) FAC 219*, 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 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. Relying upon the aforesaid decision 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:-

“16. 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 find whether the

sample was representative or not. In the present case, as per report of the Public Analyst dated 28.2.01 Ex.PW1/F wherein the opinion given by the Public Analyst, Delhi was that the sample was not conforming to the standard because milk fat was found 27.80% (against minimum prescribed of 30%). However, second counterpart of the same sample was analysed by the Director, Central Food Laboratory, Kolkatta on 28.9.01 and the result of analysis of second counterpart of the sample commodity was that milk fat was found 26.4%. There is variation of 1.4% in milk fat content between two reports. Complainant has failed to explain the variation more than 0.3% in the counterpart of the same sample. Thereby relying upon *Kashi Nath versus State (supra)*, I am of the considered view that the sample was not representative.”

6. The only argument made on behalf of the State by the learned APP holds no ground in view of the judgment of this Court in *Kashi Nath (supra)* as there is a substantial variation in the report of the PA and the Director, CFL. In the PA report the sample was not conforming to the standards as milk fat was found to be 27.80% whereas in CFL report, the same was found to be 26.4% which is more than standard range (0.3%).

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

MARCH 24, 2015

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