IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 28.04.2015

CRL.L.P.327/2015

DELHI ADMINISTRATION ..... Petitioner

Versus

PRAHLAD RAI & ORS ..... 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 08.09.2009 passed by the Additional Chief Metropolitan Magistrate-II, New Delhi, in CC No.170/98 whereby the respondents have been acquitted of the charges levelled against them.

2. The facts herein briefly are, the Food Inspector N.N. Sharma purchased a sample of Mustard Oil from the respondents on 29.08.1998 at about 04.30 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 that the sample did not conform to standard laid down as the sample showed presence of argemone oil. 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 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 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:-

18. 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 14.12.93 wherein the opinion given by the Public Analyst, Delhi was that the sample does not conform to the standard as total soluble solids and total acidity in terms of acetic acid 12 was found less than prescribed minimum limit of 15% & 1% respectively, and as per analytic report of the Public Analyst, the analytic result on above two accounts is as follows:- Total soluble solids - 11.72% Total acidity in terms -0.46% of acetic acid

19. The second counterpart of the same sample was analysed by the Director, Central Food Laboratory, Mysore dated 13.4.94 , the result of analysis of second counterpart of the sample commodity was that total soluble solids were found 12.3% and acidity as acetic acid was found 1.36%. Further, the fermentation test was also found 'positive' . There is vast variation between the reports of two Analysts in respect of the counterpart of the same sample as acetic acid was found by the Public Analyst less then prescribed minimum limit i.e 0.46% (against minimum 1%) while Director, CFL found in the counterpart of the same sample, acetic acid above the prescribed limit i.e 1.36% (against minimum 1%). The complainant has failed to explain in respect of variation appearing in two reports in respect of counterparts 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. 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 shows substantial variance in BTT value between the report of the PA and the Director CFL. In the PA report the test of argemone oil was found positive whereas the report of the Director, CFL found the same to negative. 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 respondents.

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 28, 2015
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