

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 15.05.2015

CRL.L.P.345/2015

FOOD INSPECTOR

..... Petitioner

Versus

VIJAY 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 22.07.2010 passed by the Additional Chief Metropolitan Magistrate-II, New Delhi, in CC No.54/02 whereby the respondent has been acquitted of the charges levelled against him.

2. The facts herein briefly are, the Food Inspector Mr. Satish Kumar Gupta purchased a sample of Masoor Dal from the respondent on 15.03.2002 at about 04.00 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 signature was 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 that the sample was adulterated as it was coloured with synthetic colouring matter viz. Sunset Yellow FCF. The respondent was charged under Section 2(ia)(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 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 the above judgment of the Hon’ble 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 02.04.2002 wherein the opinion given by the Public Analyst, Delhi that the sample is adulterated because it is coloured with synthetic colouring matter viz. Sunset Yellow FCF. However, the second counterpart of the same sample when analysed by the Director, Central Food Laboratory, Pune on 24.02.2003, no synthetic colour was found by the Director, CFL. Similarly, Public Analyst did not find any Kesari/Lakh Dal in the sample commodity while Director, CFL, in the counterpart of the same sample found 0.04% Lakh Dal by weight and only due to this opined the sample non-conforming to standard. One Analyst found artificial colouring matter in the counterpart of same sample. PW-2 F.I. Satish Kumar Gupta confirmed in his cross-examination that sample should be representative and analytic result of two Analysts should be identical. To a specific question as put by the Ld. Defence Counsellor, PW-2 F.I. Satish Kumar Gupta deposed that he cannot say that if one Analyst finds colour sunset yellow FCF in one counterpart and another Analyst did not find the same, it is indicative of the fact that the sample was not representative. No explanation whatsoever has come on record on behalf of the complainant in respect of divergent analytic results in respect of artificial colouring matter and presence of Lakh/Kesari Dal by the two Analyst in respect of counterpart of same sample. Thereby relying upon ***Kanshi Nath versus State*** (*supra*), I am of the considered opinion 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

the PA report and CFL report. The PA report reveals that the sample was adulterated with synthetic colour matter i.e. sunset yellow FCF. The same has been found absent in the report of the Director, CFL. The State has not 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.

MAY 15, 2015
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SIDDHARTH MRIDUL, J