

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 28.04.2015

CRL.L.P.329/2015

FOOD INSPECTOR

..... Petitioner

Versus

SUNIL 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 25.06.2010 passed by the Additional Chief Metropolitan Magistrate-II, New Delhi, in CC No.42/02 whereby the respondent has been acquitted of the charges levelled against him.

2. To briefly encapsulate, it is stated that Food Inspector S.K. Sharma purchased a sample of Toned Milk from the respondent on 25.07.01 at about 4 p.m. After taking the sample the Food Inspector divided the sample into three

equal parts by putting them in three separate clean and dry bottles and 20 drops of formalin were added to each bottle. 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 as the milk solids not fat is less than the prescribed minimum limit of 8.5%. 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 Toned Milk was representative and the trial court should have only considered the CFL report. Further, it has also been suggested that the delay in sending the sample for testing was not on account of the petitioner.

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 Toned Milk was analysed by the Public Analyst, Delhi on 07.08.01 i.e. within thirteen days from which the sample was lifted by F.I.S.K. Sharma but complaint was filed on 11.2.02 and the Director, CFL examined the second counterpart on 12.04.2002. No explanation whatsoever came on record that even after opinion of Public Analyst in respect of a sample of toned milk, why period of more than six months occurred by the department to launch the prosecution against the accused in a case of sample of toned milk, 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 sample is representative:

17. Ld. SPP for the complainant has submitted that the sample is representative but the Ld. Counsel for the accused has submitted that the sample was not representative sample. Ld. Defence Counsel further submitted that there is difference of more than 0.3% between the report of the Public Analyst and Report of Director, CFL, Kolkata which itself shows that the sample was not representative. On the other hand, Ld. SPP argued that the accused challenged the report of Public Analyst after considering the same as erroneous and moved an application for getting analysed the second counterpart by the Director, CFL. Therefore, he cannot again rely upon the report of the Public Analyst and as such report of Public Analyst cannot be looked into for deciding whether the sample was representative or not.”

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6. 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.

7. 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 judgment of this Court in *Anil Batra (supra)*. The perusal of the trial court judgment delineates substantial variance in the PA report and the report of the Director, CFL. Further, the State has not satisfactorily explained the delay of almost six months in filing the complaint against the accused.

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 28, 2015
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SIDDHARTH MRIDUL, J

