

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 23rd September, 2015

CRL.L.P.533/2015

FOOD INSPECTOR

..... Petitioner

Through: Mr.Rajat Katyal

versus

RAJENDER RATHORE & ORS.

..... Respondents

Through: None.

CORAM:

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

SIDDHARTH MRIDUL, J (ORAL)

1. The present appeal has been preferred by the State against the order dated 28th June, 2010 passed by Ld. ACMM-II/New Delhi in C.C. No. 85/97 whereby the complaint filed by the Food Inspector against the respondents under Section 2(ia)(a)(m) punishable under Section 16(1) read with section 7 of The Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the PFA Act) has been dismissed and the respondents have been acquitted.

2. The accused are allegedly said to have violated the provisions of Section 2 (ia)(a)(m) punishable u/s 16(1) read with Section 7 of the PFA Act and Rules.

3. The facts in brief are that a complaint was filed by the Delhi Administration through Local Health Authority R. K. Ahuja against the respondents alleging that on 12th February, 1997 at about 5.30 p.m. Food Inspector, Suniti Kumar Gupta purchased a sample of Pizza Cheese (Hard Cheese) for analysis from Shri Rajinder Rathore S/o Sh. Pudena Singh Rathore at M/s Premila's Cheese Co., 1B, Shahpur Jat, New Delhi-49 where the said food article was found stored for sale and Sh. Rajender Rathore was found conducting the business of the said shop. The sample consisted of 600 gms of Pizza Cheese (Hard Cheese) taken from a brick of cheese ready for sale, which was cut into small pieces in a clean and dry stainless steel tray with a clean and dry stainless steel knife and mixed with a clean and dry stainless steel spoon. The Food Inspector divided the sample into three equal parts and put them in three separate clean and dry bottles and 16 drops of formalin were added in each of the three bottles. Each bottle containing the sample was separately packed, fastened, marked and sealed according to the PFA Act and Rules. Vendor's signatures were obtained on the LHA slip and

the wrapper of the sample bottles. Notice was served on the accused Rajender Rathore and the price of the sample was also paid to him. A Panchnama was also prepared. All the documents prepared by Shri Suniti Kumar Gupta, Food Inspector were signed by the accused Rajender Rathore and the other witness Sh. Rajesh Kumar. Before starting the sample proceedings, efforts were made to join the public witnesses but none came forward. The sample was taken under the supervision of Sh. R.K. Ahuja, LHA. One counterpart of the sample was sent to the Public Analyst in intact condition and two counterparts were deposited with the LHA in intact condition. The Public Analyst analysed the sample on 4th March, 1997 and opined that the sample does not conform to the standards laid down under item A.11.02.07 of Appendix 'B' of the PFA Rules 1955 because moisture content is more than the prescribed limit of 43.0% and fat content is less than the minimum prescribed limit 42%.

4. After the conclusion of the investigation, the entire case file including the statutory documents and PA's report and the report of the F1 was sent to the Director (PFA) Delhi Administration, Government of NCT of Delhi who accorded consent under section 20 of PFA Act for institution of the case and

authorized Shri R.K. Ahuja, Local Health Authority to file the present complaint.

5. The foremost question for consideration is that whether the standard of hard cheese can be applied on the sample of Pizza Cheese, as collected in the present case. As per the admitted position there was no standard of Pizza Cheese at the time of sampling and the standard of Pizza Cheese has been provided under the PFA Rules on a date later than the date of raid in the present case as the standard of Pizza Cheese has been provided in item No.A.11.02.06 of Appendix 'B', of PFA Rules and the same was inserted by the GSR 356 (e) dated 7.06.05 (w.e.f. 7.3.06). As the Rules stand today, the Pizza Cheese and Hard Cheese are two different varieties.

6. The trial court while relying upon the decision of this Court in **MCD Vs. Ram Kishan**, reported as **1985 PFA Cases 192**, dismissed the present complaint. In the said decision this Court observed as follows:

“..... This analysis was made on the basis of prescribed standard for ice-cream the rule treating same standard for softy ice cream and ice-cream came in force w.e.f. 23rd February 1974. This clearly shows that the earlier rule prescribing standard for ice-cream was not meant to apply for softy ice-cream. Held as the same was taken on 16.2.73 this rule previously cannot be applied with retrospective effect.”

7. The Ld. Trial Court relied on another decision of this court in **Pale Ram Vs. State**, reported as **1976 PFA Journal 203**, wherein it was held as under :

“(ii) Prevention of Food Adulteration Rule 1955 – Article of food for which no standard has been laid down in the Cannot be compared with articles for which standards have been laid down.

Held that there is no reason why an article of food for which no standard has been laid down under the Prevention of Food Adulteration Rules, 1955, should be compared with articles of food for which standards have been laid down in order to find out whether there has been a violation of the standard or not. This would result in the Court legislating and laying down the standard of articles of food for which admittedly no standard has been laid down.”

8. Public Analyst in his report Ex. PW1/F compared the standard of Hard Cheese with the sample of present Pizza Cheese (Hard Cheese) and stated that the same does not conform to the standard as moisture content is more than the prescribed limit and fat content is less than the minimum prescribed limit and as per analytic result, moisture was found 52.92% and fat on dry weight basis was found 37.70%. It has been observed by the Ld. Trial Court that:-

“...It is further matter of record that the analysis of the Public Analyst on the sample commodity conforms to the

standard of Pizza Cheese as provided in the year 2006. Had it been that the standards of Pizza Cheese were provided by the legislature at the time of sampling, as per report of the Public Analyst the sample would have been conforming to the standard of Pizza Cheese.”

9. In view of the above, it is clear that the Public Analyst analyzed the sample commodity being Pizza Cheese while taking the standards for hard cheese as the yardstick, whereas on the said date there was no standard in existence for the Pizza Cheese, which admittedly came in force w.e.f. 7th March, 2006.

10. The argument of the prosecution that the vendor declared Pizza Cheese as Hard Cheese in his own writing and made endorsement on the document, which is duly exhibited and not rebutted in cross-examination or statement of accused recorded under Section 313 Cr.P.C., or in defence evidence is of no avail, as in the complaint filed by the prosecution before the Competent Authority, it has itself been mentioned by the prosecution that Food Inspector purchased a sample of Pizza Cheese and only in brackets it has been mentioned as Hard Cheese, thus it was clearly within the knowledge of the raiding party that the cheese being sold is Pizza Cheese, for which there were no standards provided for on the said date.

11. Accordingly as observed by this Court in *Ram Kishan's* case (*Supra*) the standard for Pizza cheese which came into existence on a later date cannot be applied retrospectively. Further, in the present case the same are instead confirming to the standards which have been laid later on. The standard of hard cheese was wrongly applied upon the sample of Pizza Cheese for which no standards were prevailing at that relevant time.

12. In view of the foregoing, the petition is devoid of merit and is liable to be dismissed.

13. Ordered accordingly.

14. No costs.

SEPTEMBER 23, 2015
bp

SIDDHARTH MRIDUL, J