

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 26.05.2015

CRL.L.P.459/2015

FOOD INSPECTOR

..... Petitioner

Versus

KALI CHARAN BRIJ MOHAN & 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 04.01.2010 passed by the Additional Chief Metropolitan Magistrate-II, New Delhi, in CC No.03/1999 whereby the respondents have been acquitted of the charges levelled against them.

2. To briefly encapsulate, it is stated that Food Inspector S.P. Singh purchased a sample of mustard oil from the respondents on 12.08.1998 at about 01.30 p.m. After taking the sample the Food Inspector divided the sample into

three equal parts by putting them in clean and dry bottle and each bottle containing the sample was separately packed, fastened and sealed according to the PFA Act and Rules. The respondents' 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 said sample does not conform to standard as it shows presence of argemone oil. The respondents were 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 they pleaded not guilty.

3. The only 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 respondents 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:-

“15. 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 ascertain whether the sample was representative or not. In the present case, as per report of the Public Analyst dated 18.8.98 wherein the opinion given by the Public Analyst, Delhi was that the

sample does not conform to the standards and the result of the Public Analyst was as follows:-

B.R at 40 Deg. C. : 60.0

Iodine value : 111.08

Saponification value : 170.64

Acid value : 1.85 Test for

Argemone oil : Positive

B.T.T (Acetic acid method) : 27.5 Deg. C.

16. The second counterpart of the same sample was analysed by the Director, Central Food Laboratory, Calcutta on dated 5.7.99 , the result of analysis of second counterpart of the sample commodity is as under :

Butyrorefractometer reading at 40 Deg. C - 59.6

Saponification value - 176.5

Iodine value - 107.3

acid value - 2.11

Test for Argemone oil by T.L.C. - Negative

B.T.T (Acetic acid method) - 28.2 Deg. C.

17. The two analytic reports of the Public Analyst and the Director, CFL in respect of the same counterpart of the sample commodity are divergent to a great extent. One counterpart of the sample commodity shows BTT value in the prescribed limit while another counterpart of the same sample commodity shows BTT value above the prescribed limit. Further, Public Analyst finds the test for

argemone oil 'positive' and due to only this reason declared the sample non- conforming to the standard of mustard oil, while Director, CFL, finds the test for argemone oil 'Negative' in the counterpart of the same sample commodity. Complainant has failed to explain how the two analytic reports in respect of same counterpart of the sample commodity are divergent to such an extent. Thereby relying upon *Kashi Nath versus State* (supra), I am of the considered view that the sample was not representative as to why divergent reports have been given by two Analysts.”

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 reveals substantial variance in PA report and the CFL report. The PA report delineates that the test of argemone oil is positive and the BTT value is within the prescribed limit. Whereas in the report of Director CFL the test for argemone oil is negative and BTT value is above the prescribed limit. 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

MAY 26, 2015
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