

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 07.07.2015

CRL.L.P.525 /2015

FOOD INSPECTOR

..... Petitioner

Versus

GURDEV SINGH & ORS.

..... 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 08.12.2009 passed by Shri Sanjeev Kumar Malhotra, Additional Chief Metropolitan Magistrate-II, New Delhi, in CC No.62/97 whereby the respondent has been acquitted of the charges levelled against him.

2. The facts herein briefly are, the Food Inspector Shri S.B.Sharma purchased a sample of 'fresh pasteurized full cream milk' from the respondent on 16.07.1996 at about 06.15 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 the PA that the sample did not conform to standards as laid down because it shows presence of skimmed milk powder.

3. The respondent was charged under Section 2(ia)(a)(m) of PFA Act punishable under Section 16(1) read with Section 7 of the PFA Act and Rules to which he pleaded not guilty.

4. 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.

5. 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.”

6. 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 the present case, as per report of the Public Analyst dated 08.08.96 Ex.PW1/E, it was opined by the Public Analyst that the sample does

not conform to the standards laid down under A.11.01.11 of Appendix B of the PFA Rules 1955 because it shows that presence of Skimmed Milk Powder and the analytic result of the Public Analyst was as under:

Fat	:	6.3%
Solid not fat	:	9.55%
Test for starch and sugar	:	Negative
Test for SMP	:	Positive

19. However, the Director, CFL examined the sample on 10.09.97 but no skimmed milk powder was detected in the second counterpart of the sample and as per report of the Director CFL milk fat was found 4.3% and milk solids not fat was found 7.5% against the minimum prescribed. There is a vast variation in the reports of the Public Analyst and the Director, CFL. Complainant has failed to show any explanation in respect of the variation between two reports in respect of the counterpart of the same sample. Thereby relying upon **Kanshi Nath versus State (supra)**, I am of the considered view that the sample was not representative due to which diversion report were given by two experts.”

7. 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 delineates substantial variance in the percentage of ‘milk fats’ and ‘solids not fat’ value between the report of

the PA and the Director CFL. The State has not satisfactorily explained the said variance.

8. 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.

9. 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.

JULY 07, 2015

SIDDHARTH MRIDUL, J