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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment delivered on: 11th March, 2016

+ **CRL.L.P. 231/2015**

DELHI ADMINISTRATION

..... Petitioner

Versus

AVINASH KUMAR ARORA & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Ms. Radhika Kolluru, 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 23.07.2009 passed by Shri S.K. Malhotra, Additional Chief Metropolitan Magistrate-II, New Delhi, in CC No. 134/93 whereby the respondent has been acquitted of the charges levelled against him.

2. The facts herein briefly are, the Food Inspector Shri Virender Singh purchased a sample of 'pasteurized full cream milk' from the respondent No. 1, Mr. Avinash Kumar Arora S/o Shri B.K. Arora at M/s Chawla Store, T-33, Crl. LP 231/2015

Janta Market, Rajouri Garden, New Delhi on 18.02.1993 at about 08.45 a.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 No. 1'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 standard because milk fat and milk solids not fat were less than the prescribed minimum limit of 6.0% and 9.0% respectively, when judged on the basis of buffalo milk. On 13.8.1993, the respondents moved an application u/s 13(2) PFA Act, and a second counterpart of the sample was examined by the Director, CFL, Mysore. As per the report of the Director, CFL, the sample did not conform to the standard for buffalo milk as the milk fat content was below the specified limit of 6%. However, as per the Director, CFL, the 'milk solids not fat' were in accordance with the standards prescribed.

3. The respondent was charged under Section 2(ia)(a)(m) 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. On the other hand, it was argued on behalf of the appellant that since the CFL report was conclusive on all aspects, there was no need for the trial Court to have looked at the PA report in this behalf.
6. 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.”

7. 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 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 find whether the sample was representative or not. In the present case, as per report of the Public Analyst dated 03.03.93 wherein the opinion given by the Public Analyst was that the sample does not conform to the standard and the result of the Public Analyst was as follows:-

Milk fat - 5.8%

Milk solids not fat - 8.6%

19. The second counterpart of the same sample was analysed by the Director, Central Food Laboratory, Mysore dated 15.10.93, the result of analysis of second counterpart of the sample commodity is as follows:-

Milk fat - 5.2%

Milk solids not fat - 9.4%

20. The difference of analysis in respect of milk fat and milk solids not fat in respect of sample of Pasteurized Full Cream Milk by the report of two analysts are not within acceptable range of .3%.

Complainant has failed to show any explanation in respect of variation of more than .3% in the analytic data of the counterpart of the same sample analysed by two Analysts. Thereby relying upon *Kashi Nath versus State* (supra), I am of the considered view that the sample was not representative due to which divergent reports were given by two experts in respect of counterpart of the same sample.

21. In view of the above discussions and reasons, I am of the considered opinion that the complainant has failed to prove that the sample commodity was representative in nature. Therefore, all accused stand acquitted of the charge. Bail bonds stand cancelled. Sureties discharged. File be consigned to the record room.”

8. 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.

9. 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.

10. 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

MARCH 11, 2016
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