

#25

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

Judgment delivered on: April 21, 2016

+ CRL.L.P. 228/2015

FOOD INSPECTOR/FSO

..... Petitioner

Versus

VIJAY PARKASH TIWARI & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Ravi Nayak, 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 17.10.2012 passed by Shri Mohinder Virat, Additional Chief Metropolitan Magistrate-II, New Delhi, in CC No. 255/04 whereby the respondents have been acquitted of the charges levelled against them under sections 2(ia)(a)&(m) punishable under section 16(1)(a) read with section 7 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the 'PFA Act').

2. The facts herein briefly are, the Food Inspector Shri D.P. Singh purchased a sample of 'Paneer' from the respondent No. 1, Vijay Parkash Tiwari at M/s Fujiya Chinese Food, 12/48, Malcha Marg Market, New Delhi- 110021 on 03.06.2004 at about 04.00 p.m. Thereafter, the Food Inspector divided the sample into three equal parts; putting the samples into three clean dry bottles. Twenty (20) drops of Formalin were added in each sample bottle with the help of a dropper; each bottle containing the sample was separately packed, fastened and sealed according to the PFA Act and Rules. One counterpart of the sample was sent to the Public Analyst (hereinafter referred to as 'PA') in intact condition and two counter parts were deposited with the LHA. Upon analysis it was found by the PA, vide report dated 24.06.2004, that the sample did not conform to standards as Milk fat on dried weight basis was found to be to the tune of 48.95% which is less than the prescribed minimum limit of 50%.

3. The respondents were charged under Sections 2(ia)(a) and 2(ia)(m) punishable under Section 16(1) read with Section 7 of the PFA Act and Rules, to which they pleaded not guilty.

4. On appearing in the Court of the Ld. ACMM, respondent no. 1 moved an application u/s 13(2) PFA Act, consequent upon which, the second counterpart of the sample was directed to be examined by the Director, CFL, Pune. As per the report of the Director, CFL, dated 21.02.2005, the sample did not conform

to the standards of Paneer as Milk Fat was found to be 33.20% which is less than the prescribed minimum limit of 50%.

5. The first contention that was raised before the Trial Court on behalf of the respondents was whether the sample taken was representative or not. It was pointed out on behalf of the respondents that there was a vast variation between the report of PA and the Director, CFL which establishes that the sample was not representative.

6. The second contention made on behalf of the respondents before the Trial Court was that there was a time gap between the analysis of the two counterparts despite the sample in question being a perishable article having a short shelf life. In this regard, it was urged that sample proceedings were conducted on 03.06.2004, whereas the complaint was filed on 14.12.2004, i.e. six months thereafter. It was pointed out that owing to the delay in filing the complaint, respondent no. 1 could get the second counterpart of the sample analysed only after the institution of the case.

7. On the other hand, there was no explanation forthcoming regarding the variation between the reports of the PA and the Director, CFL, as well as the delay in filing of the complaint in the instant case.

8. The Trial Court relied upon the decision of this court in **State v. Ramesh Chand**, reported as **2010 (2) JCC 1250 (Delhi)** and acquitted the respondents of the charges levelled against them. Placing reliance upon the aforesaid decision of this court in **State v. Ramesh Chand** (*supra*), the Trial Court observed as follows:-

“11. Now, appreciating the material on record in the light of respective submissions made on behalf of both the parties, the first and the foremost thing which requires to be looked into, is the very Reports given by two Experts, analysing the respective counterparts. In the PA’s Report the milk fat on dry weight basis was adjudicated to the tune of 48.95% against the requirement of not less than 50% whereas, the CFL found the same to be 33.20%. The standard requires that the ‘milk fat’ on dry weight basis should not be less than 50% in the given food article. Thus, it is clear that there is huge variation between the two reports of the experts.

12. The aforesaid two reports gives rise to two contentions:-

(i) either the representative nature of the sample becomes questionable or;

(ii) the time gap between the analysis of these two counter parts;

13. In both the eventualities the contentions raised in defence and as summarised herein-above, become significant more particularly, when the accused in no way were at fault, for any sort of delay etc. As a matter of fact, the sample proceedings had taken place on 03.06.2004 whereas, the complaint was filed on 14.12.2004 i.e. more than 6 months, despite knowing the fact that the sample in question is a perishable article and the accused could analyse the second

counterpart of the sample from CFL only after institution of the case. No plausible defence has been put forth by any of the prosecution witnesses as to how and why such a large span of time was taken to file complaint in the court.

14. Further, the defence contentions also do find support from the cited case law titled as **State vs. Ramesh Chand 2010 (2) J.C.C. 1250 (Delhi)**. In the said case, Hon'ble High Court of Delhi had upheld the order of acquittal passed by the Ld. ASJ; affirming the view points that the delay in filing the Complaint as well as the variation between the Reports of PA and CFL (in respect of fat contents in the sample of Paneer), could be fatal so as to materially prejudice the defence of the accused more particularly, when the article in question (even to the knowledge of PFA Officials) was of perishable nature.

16. Thus a doubt stands casted upon the prosecution story that either the sample in question was not a representative one or the delay in initiating the proceedings had a clear bearing on the analysis of the second counterpart; to the prejudice of the accused. The accused persons deserve to be given the benefit thereof. Accordingly, the accused are **acquitted** of the charges levelled against them.”

9. Consequently, the Trial Court came to the conclusion that the petitioner herein has failed to prove that the sample was representative and failed to explain the delay in filing the complaint, resultantly acquitted the respondents.

10. Mr. Nayak, learned Additional Public Prosecutor on behalf of the leave petitioner/State in order to explain the delay in filing the complaint argued that the procedure prescribed for lifting the sample, analysing the same by PA,

conducting of investigation and grant of sanction by the Director PFA takes its own time. Learned Additional Public Prosecutor on behalf of the leave petitioner/State further argued 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.

11. On the question whether the sample was representative or not, it would be beneficial to quote the relevant portion of the judgment of this court in Kanshi Nath v. State, reported as 2005 (2) FAC 219, Delhi High Court,

“..... 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.”

12. In view of the decisions of this court in *State v. Ramesh Chand* (*supra*) and in *Kanshi Nath* (*supra*), the submissions made on behalf of the State by the learned APP to the effect that the trial court should only have considered the CFL report and not the PA report holds no water, as a perusal of the trial court judgment dated 17.10.2012, clearly delineates substantial variance between the report of the PA and the Director CFL in relation to the Milk Fat contents on dried weight basis in the sample of ‘Paneer’; and the substantial delay in filing of the complaint despite the sample being of a perishable nature; which circumstance materially prejudiced the respondents. The State has not satisfactorily explained the said variance and the admitted delay in filing the complaint.

13. 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

APRIL 21, 2016
sd