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

+ CRL.L.P. 434/2015

FOOD INSPECTOR

..... Petitioner

Through: Ms. Radhika Kolluru, APP

versus

AMIT BANSAL & ORS.

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

11.11.2016

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1. The present leave to appeal is directed against the order of acquittal passed by the Ld. ACMM under Section 378(4) Cr.P.C., 1973. The same was initially filed before the Court of Sessions as a Criminal Appeal under Section 378(1)(a), Cr.P.C. During pendency of the said criminal appeal, the Supreme Court in *Subhash Chand v. State (Delhi Administration)* (2013) 2 SCC 17, held that the complainant can challenge the order of acquittal by filing an application for leave to appeal in the High Court, and not in the Sessions Court. In pursuance of this direction by the Supreme Court, the present leave to appeal has been preferred under Section 378(4) of Cr.P.C.

2. The impugned judgment dated 07.10.11 has been passed by the learned ACMM-II in CC NO. 43/2005 titled Food Inspector v. Amit

Bansal & Odrs. in the complaint preferred by the petitioner under Section 7/16 (1A) of the Prevention of Food Adulteration Act, 1994 (PFA) for the violation of provisions of sub-clause (ix) (k) of Section 2 of the PFA. By the impugned judgment, the respondent/accused has been acquitted.

3. The petitioner purchased a sample of '*Dal Urad*', a food article, on 25.03.2004 from the respondent no. 1. The food article was found stored for sale, and the respondent was found conducting business of the same. The petitioner purchased 1.5 kg of the food article which was taken from a gunny bag and divided into three equal parts in separate dry bottles, separately packed, fastened, marked and sealed. One counter part of the sample was sent to the Public Analyst (PA) and two counter parts were deposited with the LHA. The PA analysed the sample on 19.04.2004 and found the sample to be conforming to the standards.

4. The proceedings in the present case were initiated against the accused not on the basis of the PA Report but, on the basis of the contents as appearing in the form of label declaration on the gunny bag, containing the Dal in question. The PA's Report also indicated that the sample had been received in the Lab without the original label. Thus the sample was allegedly violative of Rule 32 (c) (d) (e) (f) & (i).

5. Rule 32 of PFA Rules, at the time of commission of the offence, was subject to a departmental policy bearing No. F.6(228)/85/Enf./PFA dated 23.09.1985. As per the said policy, in case of first violation of Rule 32, the alleged violator were to be only issued a warning and it is on a second/subsequent violation that such violator shall be punished. Since the accused had not been given any earlier warning it was conceded by the prosecution that the accused could not be prosecuted for violation of

Rule 32 of the PFA Rules, 1955. The prosecution also alleged violation of Rule 42 (ZZZ) (17) of the PFA Rules 1955, which insofar as it is relevant, reads as follows:

“(ZZZ) (17) Every package of Vegetarian Food shall bear the following symbol in green colour on the principal display panel just close in proximity to name or brand name of the Food, namely:- ”

6. The case of the prosecution was that the sample of a green dot had not been affixed on the gunny bag containing the ‘Dal Urad’. The Trial Court held that the material on record and more particularly Form 6 exhibited as Ex.PW-1/B does not reveal that the sample in green colour was not present on the principal display panel. The Trial Court held that the declaration on the package that it contains Dal of a particular kind was itself sufficient to disclose the very nature of the product. The package/ gunny bag containing the product in question itself showed that it was made of a single constituent/ ingredient, i.e. Dal and it did not have several ingredients. That being the position, the requirement of displaying the green dot could not be insisted upon. It was held that the provisions of the Act have a specific purpose. The Trial Court in the impugned judgment held as follows:

“14. It is alleged that the ‘symbol in green’ was not there on the gunny bag. The material on record and more particularly Form VI exhibited as Ex. PW 1/B does reveal that the symbol in ‘green color’ was not there on the Principal Display Panel. It was argued by the Ld. SPP that the provisions of the Act are to be strictly construed. On the other hand, the Ld. Defence Counsel insisted upon the very nature of the given product and on the aspect that the given product was a standardised item and not a Proprietary Food. The undersigned does find more substance and weight in the

submissions made by the Ld. Defence Counsel. The provisions of the Act are undoubtedly required to be construed strictly. However, the Act does nowhere provide or envisage that such sort of application of the given provisions would be there even if, it goes against the very common sense. As a matter of fact the label declaration to the effect that the package was containing such 'n' such Dal was in itself sufficient to disclose the very nature of the product. Furthermore, the package / gunny bag, containing the product in question was containing such a product, which was made of a single constituent / ingredient i.e. the Dal. Had it been a product, containing various ingredients, the requirement might have been on an entirely different footing. Every provision of the Act does have some specific purpose(s) behind its enactment and the given provision might have been inserted in the Act / Rules, so as to make sure that the Manufacturer gives necessary details in the form of label declaration, so that an intending purchaser might well be apprised of regarding the (nature of) same. However, in the given context there was not at all a chance of any sort of duping by merely describing on the package that it was containing such 'n' such Dal, manufactured by such 'n' such person along with other requisite details, except the 'green symbol'. The contention to the effect that the product in question was a standardised product and not a Proprietary Food, coupled with the fact that the same fulfilled all the requisite parameters and was found conforming to the standards vide Report Ex. PW 1/F further makes the defence version more forceful. The accused persons thus, deserve to be treated accordingly."

7. The submission of Ms. Kolluru is that the reasoning adopted by the learned Magistrate does not appear to be correct inasmuch as a food article does not necessarily mean a composition of different ingredients and even a single ingredient is classified as a food article under the definition of "food" contained in Section 2(v) of the Prevention of Food Adulteration Act, 1954. Merely because a food article may compose of only a single ingredient does not mean that Rule 42(ZZZ) (17) need not

be complied with. In the present case, the food article itself, namely, '*Dal Urad*' was found to be of acceptable standard. The only violation that is alleged is on account of non-compliance of Rule 42(ZZZ) (17) of the PFA Rules, 1955. Even in that respect, the evidence is lacking inasmuch as Form VI, i.e. Exhibit PW-1/B does not report the non-availability of the green dot on the principal display panel of the packaging of the food article in question. That being the position, it could not have been assumed that the food article in question did not contain the green dot in compliance of Rule 42(ZZZ) (17) of the PFA Rules, 1955. Though there may be some merit in the submission of Ms. Kolluru that Rule 42(ZZZ) (17) would have application even to a food article consisting of a single ingredient and to that extent the reasoning adopted by the Trial Court may not be entirely correct.

8. In the facts and circumstances of the case, I am not inclined to interfere with the impugned judgment acquitting the respondent accused.

9. Dismissed.

VIPIN SANGHI, J

NOVEMBER 11, 2016