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

\+ CRL.L.P. 370/2015

FOOD INSPECTOR ..... Petitioner

Through: Ms. Anita Abraham, APP

versus

VINOD PAL ..... Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

O R D E R

% **12.08.2016**

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 26.11.11 has been passed by the learned ACMM-II in CC NO. 1950/2009 titled Food Inspector v. Vinod Pal in the complaint preferred by the petitioner under Section 7/16 of the Prevention of Food Adulteration Act, 1994 (PFA) for the violation of provisions of Section 2(ia)(a) & (m) read with Section 7 of the PFA and Rule 14A of the PFA Rules, 1955. By the impugned judgment, the respondent/accused has been acquitted.

3. The petitioner purchased a sample of 'Toned Milk', a food article on 04.06.2009 from the respondent. The food article was found stored for sale, and the respondent was found conducting business of the same. The petitioner took 1500 ml of the toned milk which was 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 12.06.2009 and opined that the 'milk solids not fat' was to the tune of 7.97% as against the prescribed minimum limit of 8.5%.

4. Upon a complaint being preferred and the accused being summoned, he exercised his right to get the second counterpart of the sample analyzed from the Director, CFL, Pune. According to the certificate dated 10.12.09 of the Director, CFL, the 'milk fat' was found present to the tune of 2.6% and 'milk solids not fat' to the tune of 11.18%.

5. Thus, there is a variation appearing in the two reports in respect of the counterpart of the same sample. Consequently, the Ld. ACMM acquitted the accused as the complainant was unable to prove that the sample was representative in character.

6. This Court in Kanshi Nath v. State, 2005 (2) FAC 219, held as follows:

> *"12. Coming to the next controversy, i.e., with regard to the representativeness of the sample,* ***it is clear from the Full Bench decision in MCD v. Bishan Sarup (supra) that if the samples are not representative, then any test report based on it would not indicate the true position. That being the case, a conviction cannot be founded on such a test report.*** *Upon an examination of the cases mentioned by Mr Mittal, it also becomes clear that* ***although in terms of Section 13(3) of the PFA Act, the Director's certificate would supersede the Public Analyst's report, the difference in the two can still be looked into by the courts for ascertaining as to whether the samples were representative or not.*** *Mr Sharma had placed reliance on the Supreme Court decision in Calcutta Municipal Corporation (supra) and particularly on paragraph 14 thereof which reads as under:-*
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> > *"14. Thus the legal impact of a certificate of the Director of Central Food Laboratory is three-fold. It annuls or replaces the report of the Public Analyst, it gains finality regarding the quality and standard of the food article involved in the case and it becomes irrefutable so far as the facts stated therein are concerned."*
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> *13. A careful reading of the Supreme Court decision reveals that the certificate of the Director, CFL supersedes the report of the Public Analyst and is conclusive as regards the quality and standards of the sample tested. There is no quarrel with this and there can be none. But, this does not enable us to detract from the ratio of the Full Bench decision of this court in the case of MCD v. Bishan Sarup (supra) that even after such a certificate is issued by the*

Director, CFL, it would still be open to the accused to establish, if he can do so on concrete grounds, that the sample tested was not a representative one. 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 0.3%, 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 0.3%. 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".* (Emphasis Supplied)

7. The ratio of the aforesaid judgement squarely applied in the facts at hand. In view of the aforesaid position, I find no perversity in the impugned judgment of lack of appreciation of the evidence by the learned ACMM. I find no merit in this petition.

VIPIN SANGHI, J

AUGUST 12, 2016