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

+ CRL.L.P. 373/2015

FOOD INSPECTOR

..... Petitioner

Through: Ms. Radhika Kolluru

versus

SUKHPAL SINGH

..... Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

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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 08.12.2011 has been passed by the learned ACMM-II in CC NO. 21/2002 titled Food Inspector v. Sukhpal Singh 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) of the PFA. By the impugned judgment, the respondent/accused has been acquitted.

3. The petitioner purchased a sample of 'Toned Milk', a food article on 17.05.2001 from the respondent. The food article was found stored for sale, and the respondent was found conducting business of the same. The petitioner purchased 750 ml of the toned milk which was divided into three equal parts in separate dry bottles, separately packed, fastened, marked and sealed. 20 drops of Formalin were added in each bottle. 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 28.05.2001 and opined that 'milk solids not fat' were found the tune of 8.3% as opposed to the prescribed limit of 8.5%. Thus, there was a deficiency to the tune of 0.2%.

4. Upon a complaint being preferred and the accused being summoned, he appeared but did not exercise his right to get the second counterpart of the sample analyzed from the Central Food Laboratory. The material on record, therefore, was appreciated in the light of the PA's Report.

5. The Ld. ACMM relied upon *Darshan Lal vs State of Haryana, 1995(1) FAC 79(P&H)* wherein the Punjab and Haryana High Court considered a deficiency to the tune of 0.4% to be a negligible deficiency and not sufficient enough to sustain conviction. In light of the aforesaid judgement, the Ld. ACMM acquitted the accused as the deficiency in the present matter was only of 0.2%.

6. 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