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

Judgment delivered on: April 8, 2016

+ CRL.L.P. 400/2015

FOOD INSPECTOR

..... Petitioner

Versus

PAWAN KUMAR AGGARWAL & 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 28.01.2010 passed by Shri Sanjeev K. Malhotra, Additional Chief Metropolitan Magistrate-II, New Delhi, in CC No. 169/98 whereby the respondents have been acquitted of the charges levelled against them under sections 2(ia)(a)(l)&(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 Bal Mukund purchased a sample of 'Mustard Oil' from the respondent No. 1, Pawan Kumar Aggarwal s/o Sh. Shiv Gopal at M/sGopal Provision Store, Shop No. M-1 Prithvi Raj Lane near Khan Market, New Delhi on 23.08.1998 at about 03.30 p.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 (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 that the sample did not conform to standards laid down under item No. A.17.06 of Appendix B of PFA Rules, 1955 because the sample showed the presence of argemone oil. On 17.12.1998, the respondent no. 1 moved an application u/s 13(2) PFA Act, and a second counterpart of the sample was examined by the Director, CFL. As per the report of the Director, CFL, the sample did not conform to the standards as the BTT value was found to be 28.2 Deg. C as against maximum 27.5 Deg C and the saponification value was found to be 178 as against maximum of 177. However, as per the report of the Director, CFL, there was no argemone oil in the sample.

3. The respondents were charged under Sections 2(ia)(a), 2(ia)(m) and 2(ia)(l) punishable under Section 16(1) read with Section 7 of the PFA Act and Rules, to which they 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 respondents 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 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:-

“16. 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 ascertain whether the sample was representative or not. In the present case as per report of the Public Analyst dated 01.09.98 wherein the opinion given by the Public Analyst, Delhi was that the sample does not conform to the standards and the result of the Public Analyst was as follows:

B. R at 40 Deg. C.:	60.0
Iodine Value:	110.58
Saponification Value:	169.12
Acid Value:	1.74
Test for Argemone Oil:	Positive
BTT (Acetic Acid Method):	26.8 Deg. C.

17. The second Counterpart of the same sample was analysed by the Director, Central Food Laboratory, Calcutta on dated 21.1.1999, the result of analysis of second counterpart of the sample commodity is as under:

Butyrefractometer Reading at 40 Deg. C.-	59.8
Saponification Value-	178
Iodine Value-	109.7
Acid Value-	3.67

Test for Argemone Oil by TLC:	Negative
BTT (Acetic Acid Method):	28.2 Deg. C.

18. The two analytic reports of the Public Analyst and the Director, CFL in respect of the same counterpart of the sample commodity are divergent to a great extent. One counterpart of the sample commodity shows BTT value and saponification value in the prescribed limit, while another counterpart of the same sample commodity shows BTT value and saponification value above the prescribed limit. Further, Public Analyst finds the test for Argemone Oil “Positive” and due to only this reason declared the sample non-conforming to the standard of Mustard Oil, while Director, CFL finds the test for Argemone Oil “Negative” in the counterpart of the same sample commodity. Complainant has failed to explain how the two analytic reports in respect of the same counterpart of the sample commodity are divergent to such an extent. Thereby, relying upon **Kanshi Nath vs. State (Supra)**, I am of the considered view that the sample was not representative as to why divergent reports have been given by two Analysts.”

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 between the report of the PA and the Director CFL in terms of the presence of argemone oil, the BTT value and the saponification value. 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.

APRIL 8, 2016

SIDDHARTH MRIDUL, J

