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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRA-S-97-SB of 2009

Date of decision: May 02, 2017

State (Food Inspector, Chandigarh Administration)

.....Appellant

Versus

Manvinder Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: Mr. Sukant Gupta, Addl. P.P. U.T., Chandigarh.

None for the respondent.

A.B. CHAUDHARI, J (Oral)

This is a criminal appeal against the judgment of acquittal dated 17.05.2007 by which the accused-respondent was acquitted of the charge framed against him.

This Court had granted leave to appeal. With the assistance of the learned counsel for the appellant, I have perused the impugned judgment and the reasons recorded therein.

Learned counsel for the appellant vehemently contended that since this Court had granted leave to appeal and the respondent had chosen to remain absent and since the issue is covered by full bench decision of this Court in the case of **Budh Ram (deceased) versus State of Haryana**, AIR 1986 Punjab and Haryana 130, the present appeal should be admitted.

The trial Court recorded the finding of acquittal of accused-respondent by merely finding fault with the public analyst report on the ground that the report did not mention the tests conducted. Learned counsel for the appellant is right in saying that the said finding regarding absence of

tests in the public analyst report is contrary to the full bench decision in **Budh Ram's case (supra)**.

However, this Court is entitled to look into the entire impugned judgment to find out whether the order of acquittal could be upheld for any other reason, of-course on admitted facts and evidence. Therefore, having gone through the impugned judgment carefully, I find that the trial Court did not at all address on the factual foundation though stated by him in Para-11 of its judgment. I quote the said Para-11, which read thus:-

“11. PW2 Parakaram Chand, Sr. Assistant deposed that he has brought the original record relating to the present case and one copy of the report of the Public Analyst along with forwarding letter Ex.PW2/A was sent to the accused at his given address by the office of Local Health Authority, U.T., Chandigarh through registered post vide postal receipt No.982 dated 19.5.2004 Ex.PW2/A. He further stated that the envelope was not received back undelivered. He has also led in evidence that postal receipt Ex.PW2/B vide which the letter was sent through registered post. He further deposed that the registered letter received back undelivered with the remarks of postal authorities “shop locked” and proved the same Ex.PW2/C.”

The factual foundation on evidence mentioned in Para-11 above shows that the mandatory provision of Section 13(2) of the Food Adulteration Act, 1954 (for short 'Act') was violated in the sense that the accused is entitled to copy of report of public analyst in order to avail of his right under Section 13(2) of the Act for sending sample for further analysis by the Central laboratory. That provision about right of the accused has been held to be mandatory and in violation thereof, the accused is required

to be acquitted. Reading of Para-11 above of the impugned judgment shows that the report of the public analyst that was sent by Registered Post A.D. (Exhibit PW2/C) to the accused was not served on him because shop was locked. There is no presumption that merely because shop was locked, the service of the report by Registered Post A.D. could be said to have been made; particularly in the context of rigours of criminal law. The shop might have been locked for some time, but that would not discharge initial burden of proof on the prosecution to prove that the mandatory provision was complied with even if the accused person did not take objection during trial. As stated earlier, it was for the prosecution to prove by affirmative evidence that the copy of the report of public analyst was actually served on the accused. The complainant could have, on having received the postal Department's report, immediately taken other modes of service to serve the accused with the public analyst report instead of keeping quiet. Since the provision has been held to be mandatory whether the accused took objection or not, would make no difference. The accused is entitled to keep silent and take advantage of the defects, if any, in the prosecution case. In my opinion, on the basis of admitted facts and evidence on record stated in Para-11 above of the impugned judgment, the acquittal of the respondent-accused will have to be thus, upheld, though, for different reason.

In the result, the appeal stands dismissed.

(A.B. CHAUDHARI)
JUDGE

May 02, 2017

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Whether speaking/ reasoned: Yes/No
Whether Reportable: Yes/No