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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on : 01st May, 2017

+ CRL.A. 164/2006

STATE

..... Appellant

Through: Mr. Amit Chadha, APP with Mr.
Murli Krishna, Dy. Legal Advisor, Food
Department

versus

DAYA NAND SHARMA

..... Respondent

Through: Mr. SAhil Mongia, Advocate

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. Mr. Gopal Singh (PW-1), then functioning as Local Health Authority (LHA) under the erstwhile Delhi Administration had purchased a sample of *khoya* from the shop of the respondent at about 6.00 p.m. on 07.01.1992. The sample statedly was divided into three parts, one of which was sent to public analyst where upon it being tested resulted in report (Ex. PW1/E) dated 14.01.1992 being issued to the effect that it did not conform to the standards prescribed because the milk fat was less than the prescribed minimum limit of 20.0%, it having been found to the extent of 17.5% only. The trial court record reveals that on 02.06.1992, complaint on the basis of these allegations (Ex. PW1/G) was submitted in the court of the Metropolitan

Magistrate by PW-1 seeking prosecution of the respondent and one other person Giriraj Sharma for offence under Section 16 of the Prevention of Food Adulteration Act, 1954 ("PFA" for short). The record further reveals that on 03.06.1992, an intimation was given, amongst others, to the respondent, about the report of the public analyst dated 14.01.1992 calling him upon to approach the court of the Metropolitan Magistrate by appropriate application within ten days of the receipt of the said communication in case he desired to get the sample analysed by the Central Food Laboratory (CFL). It appears that on 25.06.1992, the respondent moved such an application before the Metropolitan Magistrate which was allowed and the second counterpart of the sample which had been drawn was sent to CFL. The report of CFL eventually came, it being dated 20.07.1992 (Ex. PX) indicating the milk fat content in the sample to have been found to be 17.2% and thus, below the minimum prescribed limit of 20%. It is, primarily, on the basis of this evidence that the trial court by its judgment dated 05.03.2003 held the respondent guilty and by subsequent order dated 15.03.2003 sentenced him to undergo rigorous imprisonment for one year with fine of Rs.3,000/-.

2. The respondent assailed the judgment of conviction and the order on sentence by criminal appeal no.04/2003 in the court of sessions. His appeal was accepted and the impugned judgment and order on sentence of the trial court were set aside, he being acquitted by judgment dated 13.01.2005.

3. The State is now in appeal before this court to challenge the view taken by the first appellate court, leave to appeal in terms of Section 378(4) of the Code of Criminal Procedure, 1973 (Cr. PC) having been granted by order dated 07.03.2006.

4. Arguments at length have been heard and with the assistance of the learned counsel on both sides, record has been perused.

5. Though there are other reasons cited by the first appellate court in accepting the appeal and acquitting the respondent, in the opinion of this court, the appeal must fail for the short reason that there was inordinate and unexplained delay in intimating to the respondent, the result of the analysis by the public analyst and about his statutory right to have the second counterpart of the sample tested by CFL. For this, what needs to be highlighted here is that the food item of which the sample was taken was a milk product, similar to the food item which were subject matter of certain similarly placed previously decided cases including *Chanan Lal Vs. State, 1972 Prevention of Food Adulteration Cases, 293, State Vs. Vinod Kumar Gupta, II (2010) DLT Delhi High Court and State of Deepak Bansal, 2014 (DLT SOFT) 653 Delhi High Court.*

6. The LHA (PW-1) in the present case admitted during his cross-examination on 23.03.1999 that the counterparts of the sample which had been retained, one having sent to the public analyst, were stored in an almirah at room temperature. In identical fact-situation, in the case of *Chanan Lal* (supra), where the food item was *paneer*, another milk product, the Supreme Court declined returning finding of guilty in the

face of expert's evidence indicating that such food items were required to be kept in refrigerated conditions and even there, provided requisite preservative in the form of drop of formalin have been added, the same would remain fit for analysis for about one month. It is the said view on the basis of which similar appeals by the State in the cases of *Vinod Kumar Gupta* (supra) and *Deepak Bansal* (supra) in matters involving other milk products like *paneer* and *chhenna* were repelled.

7. In the present case, the sample had been drawn on 07.01.1992 and the public analyst had given the report on 14.01.1992. The LHA who had the statutory responsibility to take the matter further to prosecution, for reasons not explained, sat over the case till he filed complaint on 02.06.1992 followed by intimation to the respondent on 03.06.1992 about the possibility of retest under the statutory right by CFL. The period of five months that had lapsed itself justifies the view taken by the first appellate court in rejecting the prosecution case.

8. In these circumstances, the view taken by the first appellate court cannot be said to be suffering from any error or infirmity or to be perverse. The appeal is dismissed.

R.K.GAUBA, J.

MAY 01, 2017

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