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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 2nd May, 2017

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CRL.L.P. 276/2015

FOOD INSPECTOR

..... Petitioner

Through: Tarang Srivastava, APP for the
State.

versus

SUSHIL GUPTA

..... Respondent

Through: Mr. Sukhvinder Singh,
Advocate with respondent in
person.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The respondent stood trial in the court of Metropolitan Magistrate on the complaint instituted by the petitioner on 29.11.2002 (Ex.PW-1/O), it having been registered as Complaint Case No.226/2002 on the allegations of he having committed offences punishable under Section 16 of the Prevention of Food Adulteration Act, 1954. The trial ended in judgment dated 18.08.2010 whereby the respondent was acquitted.

2. The petitioner had first brought a challenge by way of criminal appeal no.147/2010 invoking Section 378 (1) (a) of the Code of Criminal Procedure, 1973 (Cr.P.C.) before the Sessions Judge. The said appeal, however, was transferred to this court and has been

treated as a petition for leave to appeal under Section 378(4) Cr.P.C. On notice, the respondent has appeared through counsel.

3. Learned Additional Public Prosecutor representing the petitioner and the learned counsel for the respondent have been heard at length and the trial court record has been perused.

4. It appears that the respondent at the relevant point of time was engaged in the business of manufacturing of packaged drinking water meant for sale for human consumption, in the name and style of M/s. HI-LIFE Pure Drinking Water at plot no.59, FIE Industrial Area, Patparganj, Delhi. The Food Inspector (PW-1) and the Local Health Authority (PW-2) with other officials of the concerned department of the Govt. of NCT of Delhi had visited the premises on 04.02.2002 at about 4:30 p.m. and samples of the said packaged drinking water were purchased. The Local Health Authority submitted one counter part of the said samples to the analysis of Public Analyst. The report of the Public Analyst is stated to have found the food article adulterated in that it was found to contain yeast and mould count which were not permissible and the aerobic microbial count exceeding prescribed maximum limit of 20 per ml. The Public Analyst also noted that the label on the sample packaged drinking water bottle would not reveal proper certification by Bureau of Indian Standards (BIS), in terms of Rule 49 (28) of the Prevention of Food Adulteration Rules, 1955.

5. When the complaint was instituted in the court of Metropolitan Magistrate against the above backdrop, the respondent applied for retest by the Central Food Laboratory (CFL). The second counterpart

sample at his request was thus submitted to CFL which gave its report dated 04.03.2003. It is conceded by the learned Additional Public Prosecutor that the contents of the said sample contained in bottle were found to be within the standards prescribed for such food article (packaged drinking water for human consumption), the only infraction confirmed by CFL by its report (Ex.PX) being that the label on the bottle would not show the certification mark issued by BIS as per the requirement of Rule 49 (29).

6. The learned trial Judge thus found the CFL report to have superseded the report of the Public Analyst with regard to deficiencies in the contents of the packaged drinking water (food article). But the case was pressed further for the breach of the requirement of Rule 49 (29) of PFA Rules on the subject of certification mark of BIS.

7. Though the respondent had also taken the plea that he had applied for BIS certification under the aforementioned rule on 08.10.2001, the rule itself having come into effect from 29.03.2001, also claiming that the certificate had been eventually granted by BIS on 13.05.2002, the leave petition must be dismissed for a different reason, it being the absence of proper sanction for prosecution in terms of Section 20 of the Prevention of Food Adulteration Act, 1954 which is *sine qua non* for such criminal charge to be taken cognizance of or proceeded with.

8. The prosecution has relied upon the sanction order under Section 20 of the Prevention of Food Adulteration Act, 1954 granted by the Director (PFA) of the Govt. of NCT of Delhi (Ex.PW-1/N).

Pertinent to note here that, in the said sanction order, the concerned authority did not even take note of the allegations that the food article was found deficient for the reason there was no proper certification mark obtained from BIS. There is a reference to violation of the provision of Rule 49 (28) of Prevention of Food Adulteration Rules, 1955. The said reference to Rule 49 (28) cannot be treated as one relatable to the infraction which has been found in the present case.

9. The plea of typographical error cannot be accepted in the absence of necessary facts in the sanction order. It appears the sanction order was signed without proper application of mind which renders it vitiated.

10. In above facts and circumstances, the petition for leave to appeal is dismissed.

R.K.GAUBA, J.

MAY 02, 2017

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