

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

% Decided on: 24th September, 2018

+ **CRL.L.P. 534/2015**

FOOD INSPECTOR

..... Petitioner

Represented by: Ms. Meenakshi Chauhan, APP
for the State

versus

B.B. GARG & ORS.

..... Respondent

Represented by: Mr. Anurag Ahluwalia, CGSC
for UOI/respondents.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. Aggrieved by the judgment dated 11th May 2010 whereby the learned Additional Chief Metropolitan Magistrate acquitted the respondents for the offences punishable under Sections 7/16 of the Prevention of Food Adulteration Act, 1954 (in short PFA Act), State has preferred the present leave to appeal petition.

2. Brief facts of the case as stated in the complaint are that on 6th August 2003 at about 4:45 A.M. R.K. Bhaskar purchased a sample of 'Pasturized Double Toned Milk' for analysis from respondent No.1 from M/s Delhi Milk Scheme, Shadi Pur, West Patel Nagar, New Delhi, where the said food article was stored for sale and respondent No.1 was found conducting the business of the said food article at the time of sampling. The sample consisting of 1500 ml of Pasteurized Double Toned Milk was taken out from three sealed polythene packets having identical label declaration. The label declaration had no indication of "Best Before" on the label packages of the milk in question. The sample was taken under the supervision/direction of

one Mr. S.K. Nanda, LHA. The sample was collected after proper homogenization, that is, by cutting the polythene packets and pouring the contents in a clean and dry *Patila* and pouring and re-pouring the milk with the help of other clean and dry *Patila*. The Food Inspector divided the sample into equal parts by putting them in three separate clean and dry bottles. Thereafter, 40 drops of formalin were added in each sample bottle. Each bottle was separately packed, fastened, and sealed according to the PFA Act and Rules. Vendor's signatures were obtained on the LHA slip and the wrapper of the sample bottles. Notice was given to respondent No.1 and the price of the sample was also given to him vide vendor receipt dated 6th August 2003. Before beginning the sample proceedings, efforts were made to join the public witnesses but none of them came forward. One counter part of the sample was sent to the Public Analyst in intact condition and two counter parts were deposited with the LHA in intact condition. The Public Analyst analyzed the sample on 26th August 2003 and opined that the sample conforms to standard.

3. After the investigation was complete, the entire case file was sent to Director (PFA) Delhi Administration, Government of NCT of Delhi who accorded consent under Section 20 PFA Act for institution of the case.

4. Notice under Section 251 Cr.P.C. was issued to the respondents for offences under Section 2 (ix) (g) (k) PFA Act and Rules 32 (i) and 37 of PFA Rules punishable under Section 16(1)(a) read with Section 7 PFA Act to which they pleaded not guilty and claimed trial.

5. In support of its case, prosecution examined 3 witnesses.

6. Complaint in the present case was registered as there was no indication of "Best Before" on the label of packages of milk in question. Mr.

S.K. Nanda, LHA deposed that previous warning was issued to the respondents and this being the second default, they were recommended for the prosecution for second violation of Rule 32 of PFA Rules. In his re-examination under Section 311 Cr.P.C., he deposed that the first warning for violation of Rule 32 was issued to the respondents on 22nd July 2003. On examination of the first warning it appeared that the same was given for a sample of Pasteurized Toned Milk, which was lifted on 24th July 2001 from Raj Kumar Gupta.

7. Purpose of the policy of department for issuing warning for first violation of Rule 32 PFA Rules was to give an opportunity to the alleged offender to rectify the discrepancy on the label of food article so that Rule 32 can be complied with. In the facts before us the first violation of Rule 32 is in respect of one sample of Pasteurized Toned Milk of Delhi Milk Scheme which was lifted on 24th July 2001. But for a period of two years, the department did not issue any warning to the Delhi Milk Scheme as per its policy for violation of Rule 32, and the first warning was issued by registered post on 22nd July 2003 and the second sample was lifted on 6th August 2003 that is after fifteen days of issuing the first warning. There is no explanation on record to show that why the warning for the first violation was not issued by the department for two years from the date of lifting of the first sample in which violation of Rule 32 was noticed. There is no evidence on record to show that prior to the sample in the present case being taken, the first warning was received by the respondents.

8. No evidence having been led by the petitioner to prove that the first warning was received by the respondents prior to the lifting of the second sample which was lifted after fifteen days from the issuance of warning

letter for first violation of Rule 32 only, findings of the learned Additional Sessions Judge this Court and the impugned judgment acquitting the respondent cannot be said to be perverse warranting interference by this Court.

9. Leave to appeal petition is dismissed.

10. Trial Court record be sent back.

(MUKTA GUPTA)
JUDGE

SEPTEMBER 24, 2018

‘vn’

