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

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Judgment delivered on: 20.02.2019

+ CRL.REV.P. 415/2015

DELHI ADMINISTRATION

..... Petitioner

versus

ARUN GUPTA & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Ms. Meenakshi Dahiya, Addl. PP for the State
Mr. C.M. Krishna, DLA Food Safety

For the Respondent : Mr. Rahul Shyam Bhandari and Ms. Bhavya Vijay
Tangri, Advs.

CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner-State impugns order dated 07.12.2009 whereby the respondent has been discharged under Section 245 Cr. P.C. for the offence under Section 13(2) to (2D) of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the act).

2. The case of the prosecution is that sample of *Khoya Burfi* was lifted on 18.11.1997 and it was tested on 20.11.1997 in the laboratory at Delhi and presence of fungus was found in the sample.

3. The authorities again got the subject sample tested from another laboratory at Lucknow, which gave its report dated 20.02.1998 opining the presence of carbonate in the *Burfi*.

4. Sanction for filing a complaint was received on 19.01.2000 and the complaint was filed on 31.01.2000.

5. The case of the defense was that since there were divergent reports of the two laboratories, no charge could have been framed against the petitioner. It was also contended that respondent had a right to get the sample tested from a central laboratory under Section 13(2) of the Act. The right to have the sample re-tested was defeated because the complaint was filed after a gap of over two years.

6. It is submitted that as the right of respondent under Section 13(2) to have the article re-tested was defeated, the entire proceedings are vitiated.

7. By the impugned order, the trial court notices that there were divergent views of the Public Analyst; the Public Analyst at Delhi found fungus in the sample commodity; whereas the Public Analyst at Lucknow, who tested food article after over two months did not find any fungus but stated that the article tested positive for carbonate.

8. Trial court further notices that Section 13(2) (e) of the Act provides that if after considering the report of Public Analyst, the local health authority is of the view that the report of Public Analyst is

erroneous, the authorities shall forward one part of the sample to any other Public Analyst. The Trial court notices that from the record no reason was discernible as to why the sample was sent for re-testing and why the report of the Public Analyst at Delhi was found to be erroneous.

9. This Revision Petition was initially filed before the Sessions Court, however, subsequently this petition was transferred to this Court.

10. It is an admitted position that sample was lifted on 18.11.1997 and the subject complaint was filed on 31.01.2000 after a gap of over two years.

11. Section 11(4) of the PFA Act stipulates that any article of food seized, inter-alia, under Section 4 of Section 10 of the Act shall be produced before a Magistrate as soon as possible and in any case not later than seven days after the receipt of the report of the Public Analyst.

12. Section 13 (2), inter-alia, provides a right to a person who is prosecuted to be informed of his right to make an application to the Court within a period of 10 days from the receipt of copy of the report to get the sample re-analysed.

13. The right provided under Section 13(2) has been held as an indefeasible right and in case such a right is defeated on account of

delay in filing the complaint, the proceedings are liable to be quashed.

14. Reference may be had to the judgment of the Supreme Court in '*State of Haryana Vs. Unique Farmaid (P) Ltd. & Ors.*' (1999) 8 SCC 190 wherein the Supreme Court has held that in order to safeguard the right of the accused to have the sample tested from a Central Insecticides Laboratory, it is incumbent on the prosecution to file a complaint expeditiously so that the right of the accused is not lost.

15. The Supreme Court referred to the judgment in '*State of Punjab Vs. National Organic Chemical Industries Ltd.*' (1996) 11 SCC 613, wherein the Supreme Court stressed on the need to lodge a complaint with utmost despatch so that the accused may opt to avail the statutory defence and if the accused had been deprived of the valuable statutory right available to him, criminal complaint cannot be permitted to be proceeded with.

16. Reference may also be had to the judgment of the Supreme Court in '*Municipal Corporation of Delhi Vs. Ghisa Ram*' (1967) 2 SCR 116, wherein the Supreme Court has held that in every case, where the right of the vendor to have his sample tested by the Director of the Central Food Laboratory is frustrated, the vendor cannot be convicted on the basis of the report of the Public Analyst.

17. Keeping in view of the law as laid down by the Supreme Court and also the fact that there was a substantial delay in lodging the

complaint resulting in the right of the vendor to have his sample tested by the Director of Central Food Industries, I am of the view that the trial court has rightly discharged the respondent. The prosecution in the facts of the present case cannot be permitted to continue.

18. In view of the above, I find no merit in the petition. The petition is accordingly dismissed.

19. Order *dasti* under signatures of the Court Master.

FEBRUARY 20, 2019
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SANJEEV SACHDEVA, J

