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

+ CRL.A. 1342/2019

DELHI ADMINISTRATION / FOOD SAFETY OFFICER

..... Appellant

Through: Ms. Meenakshi Dahiya, APP for
State.

versus

RAVI CHITKARA

..... Respondent

Through: Mr. D.K. Mathur, Advocate.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

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23.01.2020

Vide the present appeal, the appellant i.e. Delhi Administration through its Food Safety Officer has assailed the impugned judgment dated 12.09.2019 of the learned ACMM-I, New Delhi in case No.58784/2016 titled as *Delhi Administration (FSO) Vs. Ravi Chitkara* whereby the respondent herein though convicted vide the impugned judgment for the commission of the offences punishable under Section 26(2)(i) of FSS Act r/w Section 3(1)(zz)(v), (vii) and (viii) of FSS Act punishable u/s 59(i) of FSS Act, 2006 and for violation of Section 26(2)(i) of FSS Act r/w Section 3(i)(zf)(C)(i) of FSS Act and Regulation No. 2.2.2.2, 2.2.2.3, 2.2.2.5, 2.2.2.8, 2.2.2.10 and 2.3.2.1(a) of FSS (Packaging and Labelling) Regulation, 2011 punishable u/s 52 of FSS Act, 2006 which are offences in relation to adulteration with the convict i.e. the respondent having been given the benefit of the New Adulteration Act and having been thus,

sentenced to TRC i.e. Till the Rising of the Court and to pay a fine of Rs.35,000/- and to undergo Simple Imprisonment for a period of 15 days in default of the payment of the said fine, with the appellant having thus assailed the impugned order on the aspect of inadequacy of the fine imposed by the learned Trial Court.

Notice of the appeal was issued to the respondent for the date 15.01.2020 on which date the learned counsel for the respondent submitted to the effect that the present appeal is not maintainable before this forum, in as much as, the appellant needs to seek redressal in terms of Section 377(1)(a) of the Cr.P.C., 1973 to the Court of the Sessions.

The learned APP for the State thus sought time to seek instructions in relation to the said aspect.

On behalf of the State now, reliance has been placed on the verdict of the Hon'ble Supreme Court in ***“State of Karnataka Vs. Krishna alias Raju” AIR 1987 SC 861*** submitting to the effect that the appeal preferred in this case to the High Court of Karnataka in which the High Court of Karnataka declined to exercise its powers under Section 377 of the Cr.P.C., 1973, was nevertheless considered by the Hon'ble Supreme Court and that thus, there would be no embargo to this Court invoking its powers in terms of Section 377 of the Cr.P.C., 1973.

It is needless to observe that the verdict of the Hon'ble Supreme Court in ***“State of Karnataka Vs. Krishna alias Raju”*** (supra) is in relation to an appeal preferred by the State of Karnataka is under Article 136 of the Constitution of India seeking a special leave to appeal to the Hon'ble Supreme Court in which the Hon'ble Supreme Court has wide powers in its

discretion to grant special leave to appeal from **any judgment, decree determination, sentence or order in any cause or matter passed or made by any Court or Tribunal in the territory of India**, in view thereof, the reliance placed on the said verdict on behalf of the State, is wholly misplaced.

Reliance has also been placed on behalf of the State on the verdict of this Court in “*State Vs. Amar Singh*” 2016 CRL.L.J.583 with specific reference to observations in paragraphs 7, 8 & 9 of the said verdict, which read to the effect:-

“7. Be that as it may, this Court notes that the power of the Sessions Court and the High Court are concurrent. Section 377(1)(a)&(b) states that the State Govt. in a case of conviction on a trial held by any court can direct the Public Prosecutor to present the appeal against the sentence on the ground of its inadequacy to the Court of Sessions (a) if the sentence is passed by any other Court. Sub clause (1) (b) encompasses the powers of the High Court to answer an appeal if the order has been passed by any Court.

8. In view of the aforementioned position, this Court is inclined to entertain this appeal.

9. Even otherwise, no useful purpose would be served in remanding the matter back to the Sessions Court as the pleadings are complete and the arguments have already been addressed.”,

In relation to the said aspect, it is essential to observe that vide paragraph 9 of the said verdict, it has been observed to the effect that even otherwise , no useful purpose would be served in remanding the matter back to the Sessions Court as the pleadings were complete and the arguments had already been addressed and in the instant case, neither are the pleadings

complete nor have the arguments yet been addressed with the matter having now been considered at the stage of maintainability itself, reliance thus, placed on the said verdict on behalf of the State is equally misplaced.

Reliance has been placed on behalf of the State on the verdict of this Court in ***“Delhi Administration Through Designated Officer Vs. Ishwar Das” 2015 LawSuit (Del) 2807*** to submit to the effect that in a similar case under the Prevention of Food Adulteration Act, 1954, the appeal had been filed under Section 377 of the Cr.P.C., 1973 on the ground of inadequacy of sentence awarded by the Court of the **ACMM-02**, PHC, New Delhi as in the instant case, which appeal was considered by this Court and it has thus been submitted on behalf of the State that the present appeal in its present form before this Court is maintainable.

It is essential to observe that paragraph 5 of the said verdict relied upon on behalf of the State which is an ultimate paragraph categorically observes therein to the effect:-

“5. Learned counsel for the respondent has raised the preliminary objection that it is a petty offence. The appeal, if any, ought to have been filed before the Session Court and not before the High Court. The same is not maintainable. Even otherwise, no permission from the State Government has been taken by the petitioner.”

observing thus, to the effect that the appeal, if any, ought to have been filed before the Sessions Court and not before the High Court, the same was not maintainable, however, vide paragraph 6 of the said verdict taking the nature of the order passed by the learned Trial Court as also the objection raised by the learned counsel for the respondent in that case which included the

objection in relation to the maintainability of the appeal before the High Court of Delhi, it was held that there was no merit in the appeal.

It is apparent that in the instant case too, the said observation holding to the effect that the contentions of the respondent to the effect that the appeal before this forum in terms of Section 377(1)(a) of the Cr.P.C., 1973 is essentially to lie to the Court of Sessions against the impugned judgment dated 12.09.2019 of the learned Trial Court of the ACMM-I, New Delhi in case No. 58784/2016 in relation to the prayer made by the State qua the contention that the sentence imposed by the learned ACMM-I, New Delhi was inadequate has essentially to lie with the Court of Sessions and not before this Court.

The appeal is thus, dismissed and it is in the interest of justice, however, the appellant may seek redressal before the appropriate forum of the Court of Sessions, if so advised.

Copy of the order be given Dasti under the signatures of the Court Master.

ANU MALHOTRA, J

JANUARY 23, 2020

'neha chopra'