

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Partha Sarathi Sen

CRA 42 of 1999

**The Calcutta Municipal Corporation
Vs.
Radhanath Paul & Anr.**

For the appellant	:	Mr. Goutam Dinda Mr. Anindyasundar Chatterjee
For the respondent no. 1	:	Mr. Partha Sarathi Bhattacharyya Mr. Bhaskar Seth
For the respondent no. 2	:	Ms. Supriti Sarkhel (<i>Amicus Curiae</i>)
Heard on	:	12.08.2024
Judgement on	:	12.08.2024

PARTHA SARATHI SEN, J.:

1. In this appeal, the judgment and order dated 11.11.1997 passed by the learned Senior Municipal Magistrate, Calcutta in Case No. 5D of 1993 has been assailed by the Calcutta Municipal Corporation.
2. By the impugned judgment, learned trial Court found the accused persons, namely, Radhanath Paul and Narayan Chandra Paul 'not

guilty' under Section 16(1)(a)(i) read with Section 7 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the said Act of 1954) and thus acquitted them under Section 248 (1) Cr.P.C.

3. The complainant, the Calcutta Municipal Corporation felt aggrieved and thus preferred the instant appeal.
4. For effective disposal of the instant appeal, the facts leading to initiation of Case No. 5D of 1993 before the learned trial Court is required to be discussed in a nutshell.
5. Before the learned trial Court, it is the case of the complainant/appellant that on 18.11.1992 at about 4.15 p.m., one Dr. S. K. Basu, a Food Inspector of the appellant/corporation went to the sweetmeat shop of the accused persons where he found that accused Narayan Chandra Paul was selling sweetmeats and from the certificate of enlistment, he noticed that another accused, Radhanath Paul was the proprietor of the said shop. It is the further case of the complainant that in course of inspection, he noticed that the accused persons were selling Amriti. The said Food Inspector suspected that the said Amriti to be of sub-standard quality and accordingly, he call a local witness and in his presence he served a notice and after observing all the formalities he purchased some quantity of Amriti as sample and

after complying with the formalities with regard to the sampling as mentioned in the said complaint, he sent those materials for obtaining Public Analyst Report.

6. The trial Court record reveals that after obtaining Public Analyst Report, sanction for prosecution was obtained and accordingly, the learned trial Court took cognizance of offence under the aforesaid sections of the said Act of 1954.
7. The learned trial Court on the basis of the evidence of the witnesses as recorded under Section 244 Cr.P.C. and the other materials framed charge under Sections 16(1)(a)(i) read with Section 7 of the said Act of 1954 and thereafter, the trial proceeded.
8. In order to bring home the charges as against the accused persons, the prosecution has examined three witnesses in all and some documents have been exhibited on their behalf. On behalf of the defence, no evidence was adduced but from the trend of cross-examination of the prosecution witnesses and the answers as given by the accused persons under Section 313 Cr.P.C., it reveals that the defence case is based on clear denial and false implication.

9. In course of his argument Mr. Dinda, learned advocate for the appellant/corporation at the very outset draws attention of this Court to the oral evidence of the prosecution witnesses vis-à-vis the exhibits on behalf of the prosecution. It is submitted that in absence of any contrary material, learned trial Court is not justified to overlook the Exhibit 7, i.e., the report of the Public Analyst as submitted by him under Rule 7(3) of the Prevention of Food Adulteration Rules, 1955 (hereinafter referred to as the said Rules of 1955).
10. In Course of his argument, Mr. Dinda further submits that learned trial Court has failed to visualize the provision of Section 13(2) read with sub-Section 5 of the self-same Section. It is submitted that on conjoint perusal of the said two sub-sections of Section 13, it would reveal that it is the intention of the legislature that a report duly signed by a Public Analyst unless it has been superseded under Section 13(3) or by any document duly signed by the Director of Centre Food Laboratory, may be used as evidence.
11. It is argued by Mr. Dinda that learned trial Court while passing the impugned judgment has failed to take note of the Section 13(2) read with Section 13(5) of the said Act and thus, a serious miscarriage of justice occurred in appreciating the evidence of the

prosecution witnesses both oral and documentary. It is further argued on behalf of the appellant/corporation that the evidences of the prosecution witnesses are very much consistent with each other and thus, learned trial Court is not justified to overlook such corroborative piece of evidence. Mr. Dinda submits that it is a fit case for allowing the instant appeal by setting aside the impugned order. He further submits that the findings of the learned trial court may be reversed and the same may be converted into a judgment of conviction.

12. Mr. Partha Sarathi Bhattacharyya, learned advocate on behalf of the respondent no. 1 and Ms. Supriti Sarkhel, learned advocate for the respondent no. 2, in course of their argument submit before this Court that learned trial Court is very much justified in not giving much importance over the Exhibit 7 being the Public Analyst Report in view of the fact that said report has been exhibited at the instance of P.W. 1 i.e., the complainant. It is submitted that learned trial Court ought not to have marked the said document as exhibit since the author of the said document has not entered into the witness box to prove the said report.
13. It is further submitted by both the learned advocates for the respondents that since the Public Analyst who has prepared the report has not entered into the witness box, the accused persons

have been deprived of their valuable right to cross-examine the Public Analyst over whose report the prosecution is placing much reliance. It is thus submitted that learned trial Court while passing the impugned judgment has duly noticed such prejudice of the appellant and thus rightly passed the impugned judgment.

14. On perusal of the entire materials as placed before this Court and after hearing the learned Counsel for the contending parties, it appears to this Court that the learned trial Court while passing the impugned judgment has come to a finding that the Exhibit 7 being the report of the Public Analyst cannot be considered as an evidence in view of the fact that the said Public Analyst was not examined by the prosecution. Learned trial Court further expressed that the Public Analyst is the best person to give reply on the point of Chromatographic Test. Learned trial Court further noticed that no explanation was forthcoming from the side of the prosecution for withholding the Public Analyst.
15. At this juncture, I propose to look to the relevant portion of Exhibit 7 and the same is reproduced hereunder in verbatim:

“I further certify that I have caused to be analysed the afore-mentioned sample and declare the result of the analysis to the as follows:-

Phy.Exam.: Deep orange coloured Amriti in a glass phial.

Test for Case Sugar : Positive.

Analysis of Extracted Fat From Amriti :-

B.R. at 40°C : 55.8

Analysis of Orange Colour Extracted from Amriti :-

Test for Coal tar dye : Positive.

Chromatographic Test conforms to two unpermitted Coal tar dyed.

(1) Orange does not conform to any of the permitted colours.

(2) Yellow conforms to Metanil Yellow.

and am of the opinion that The sample of Amriti contains two unpermitted Coal tar dyes. One of which is Metanil Yellow (Injurious to Health) & other is an unidentified one. Hence, it is adulterated & unfit for Human consumption.”

16. On perusal of the aforesaid portion of Exhibit 7, it transpires to this Court that the Public Analyst in its report dated 15.12.1992 had not only conducted physical examination of the sample in question but also he has performed chemical examination report. In course of his chemical examination report, the said Public Analyst found that the orange colour as found in the sample does not conform to any of the permitted colours and the colour yellow conforms to metanil yellow.

17. As rightly noticed by the learned trial Court that there is no material before the learned trial Court as to how the Public Analyst in conducting such test came to such finding and what is the effect, either good or adverse with regard to such finding. As rightly pointed out by the learned advocates for the respondents that learned trial Court has correctly noticed that no explanation has been given by the prosecution as to what prevented them to tender the Public Analyst to enter into the witness box as prosecution witness to prove such report especially when the accused persons have been charged with such a nature of offence which is dependent upon the opinion expressed by the Public Analyst.
18. Admittedly, in its report dated 15.12.1992, the Public Analyst after conducting physical and chemical examination came to a finding that the sample of Amriti is adulterated and unfit for human consumption but as rightly pointed out by the learned advocates for the respondents as well as by learned trial court in its impugned judgment that the Public Analyst Report cannot be accepted as sacrosanct unless he proves the same by himself in accordance with law as per the provision of the Evidence Act.
19. Before parting with, this court must not be forgetful with regard to the duty of a superior Court while dealing with an order of

acquittal. In the reported decision of **State of Rajasthan Vs. Naresh** reported in **(2010) 1 C.Cr.L.R. (SC) 8**, the Hon'ble Apex Court while dealing with a judgment of acquittal, expressed the following view:

“There is no embargo on the appellate court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from the acquittal of the guilty is no less from the conviction of an innocent.”

20. The same view is taken by the Hon'ble Apex Court in the decision of **Anil Kumar Vs. State of U.P.** reported in **(2004) 13 SCC 257**.
21. As discussed in the aforesaid reported decision, this Court considers that in the event, this Court places much reliance upon Exhibit 7 being the Public Analyst Report overlooking that such

documents have been admitted into evidence without calling its author and thereby depriving the accused from cross-examining the said Public Analyst, it appears to this Court that would cause serious miscarriage of justice which is not permissible pursuant to the dictum of the Hon'ble Apex Court as discussed supra.

22. This Court thus find no merit in the instant appeal.
23. Accordingly, the instant appeal being **CRA 42 of 1999** is dismissed.
24. The judgment and order dated 11.11.1997 as passed by the learned Senior Municipal Magistrate, Calcutta in Case No. 5D of 1993 is hereby upheld.
25. Before parting with, this Court must not forget to express heartfelt thanks to Ms. Supriti Sarkhel, learned advocate who has been appointed by this Court to represent the respondent no. 2 in arguing this appeal with Mr. Partha Sarathi Bhattacharyya, learned advocate for the respondent no. 1.
26. Department is directed to sent down LCR along with a copy of this judgment forthwith.
27. Department is further directed to forward a copy of this judgment to the Secretary, Calcutta High Court Legal Services Committee

who on receipt of the same, shall disburse the admissible amount of honorarium to Ms. Supriti Sarkhel, learned advocate as per her entitlement preferably within a month from the date of receipt of the copy of this order.

28. Urgent photostat certified copy of this order, if applied for be given to the parties, upon compliance of necessary formalities.

Sourav
A.R. (Court)

(Partha Sarathi Sen, J.)