

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 356 of 2001

**Calcutta Municipal Corporation
-Vs-
Annapurna Oil Mill (P) Ltd.**

For the Appellant	: Mr. Goutam Dinda Mr. Anindya Sundar Chatterjee
For the Private Respondent	: Mr. Dinabandhu Chowdhury Mr. Amal Kumar Saha Mr. Iresh Pal Mr. Soumyadip Panda Ms. Granthana Kayal
For the State	: Mr. Binoy Panda Mr. Subham Bhakat
Heard on	: 15.12.2023, 18.01.2023
Judgment on	: 19.03.2024

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against an order dated 13th August, 2001 passed by this Hon'ble High Court in connection with CRM No. 2679 of 2001 granting special leave to appeal against the judgment and order dated 07th December 2000 passed by the Learned Municipal Magistrate, 2nd Court, Calcutta in connection with the Case No. 18642C of 1993 acquitting the respondent of a charge under Section 16 (1)(a)(i) of the Prevention of Food Adulteration Act.

2. By an order dated August 13, 2001 passed in connection with CRM No. 2679 of 2001, the Hon'ble Justice was pleased to grant Special Leave to prefer an appeal against the aforesaid order of acquittal.
3. The Learned Advocate for the appellant submitted that:-
 - (i) The article of Food Til Oil being a homogenous substance shall remain in same state of condition even if stored or not.
 - (ii) The Ext. 2 clearly show that the sample of food was sold to the Food Inspector and a sale for analysis to the Food Inspector is a sale within meaning of P.F. Act.
 - (iii) In any event the evidence of the Food Inspector that sample was taken after obtaining all formalities as provided under the said Act and such evidence of Food Inspector not being challenged in his cross-examination, complaint that sample was not taken in terms of the provision of the said Act cannot be sustained.
4. Heard the submissions of the Learned Advocate for the Opposite party.
5. The Inspector S. Chatterjee, on behalf of the C.M.C. filed a petition of complaint alleging violation of the provisions by Annapurna Oil Mill (P) Ltd., Director of which is S. Sadhukhan of 121, Raja Dinendra Street, in Ward No. 12, with reference to the demand of Rs.2000/- under Section 435 of the C.M.C. Act, 1980 for the year 1992-93. Annapurna Oil Mill (P) Ltd. is said to be a manufacturing concern run by electricity, requiring a Health Licence under Section 435 of the C.M.C. Act for carrying out it's business. Non-payment of the said demand till 31.03.1993 constituted an offence under Section 435 of the C.M.C. Act for the year 1992-93.

6. PW-1 Subhendu Chatterjee is the concerned Inspector, who filed the petition of complaint (marked Ext. 6) in that case. According to PW-1 accused persons did not pay the required Licence fee under Section 435 of the C.M.C. Act amounting to Rs.2000/- was fixed on the basis of fair-rent. The relevant entry in the demand register under Section 435 of the C.M.C. Act has been marked as Ext. 1 in that case. It was known from PW-1 that the accused Annapurna Oil Mill sent a cheque of Rs.500/- in order to renew the Health Licence for the year 1992-93 (exbt.-2). The envelope containing the said letter has been marked as Exbt.-2/1. It transpires from the evidence of PW-1 that the C.M.C. by a letter 23.03.93 returned the said cheque to Annapurna Oil Mill asking to send Rs.2000/- instead of Rs.500/- for the purpose of renewal of Health Licence for the year 1992-93. (vide Ext. 3). A/D card (exbt.-3/1) shows the acceptance of the said letter by Annapurna Oil Mill. The Licence fee under Section 435 of the C.M.C. Act was stated to have been enhanced from 1989. Ext.-4 was the 'xerox-copy' of the order passed by the Hon'ble High Court in the matter no. 4462 of 1989 dated 14.11.91 and Ext. 5 was order of the Division Bench arising out of the order passed in the matter no. 4462 of 1989 in civil appellate jurisdiction dated 15.04.92. As per direction of the Division Bench the entire observation passed in the matter no. 4462 of 1989 remained unaltered save and except the observation directing reduction of the ad-hoc payment by the Annapurna Oil Mill to the C.M.C. Thus, Division Bench simply reduced the amount of ad-hoc payment from Rs.2000/- to Rs.500/- with effect from 14.11.91 keeping other observations unchanged. PW-2 Subal Kr. Gangopadhaya was the Special

Officer, Assessment Collection at the relevant point of time. His testimony reveals the particulars of the Annapurna Oil Mill and the fair-rent value governing the annual valuation. It transpires from PW-2 and the one Chinmoyee Pandit completed fresh assessment as per direction of the Hon'ble High Court on 13.05.92. PW-3 Sankarlal Mukherjee, is the assistant Licence Officer, who produced several documents marked as Exbt. 7 to 11 respectively, dealing with elaborate details of the procedure undertaken for making fresh assessment for determination of the annual valuation as per order of the Hon'ble High Court. It was manifested from Ext. 7 to 11 that assessment for annual valuation was made complete on 13.05.92.

7. Perused the contentions of the appellant in the memo of appeal, the evidence on record and the exhibited documents.
8. The Learned Trial Court has rightly observed that *"there was nothing on record to show that there was proper service of notice upon Annapurna Oil Mill in order to ensure the opportunity of hearing as contemplated by the Hon'ble High Court in matter no. 4462 of 1989, the demand to the extent of Rs.2000/- cannot be allowed to stand. As has already stated that the C.M.C. failed to discharge the duties in the matter of service of notice in order to ensure opportunity of hearing in two phases, as casted upon by the order of the Hon'ble High Court. So for this glaring defects the demand of Rs.2000/- for 1992-93 giving rise to the instant prosecution for non-payment thereof is not good in the eye of law. The demand has been tainted with defects. The offences, as alleged, cannot be said to have been determined for non-payment till 31.03.93."*

9. The instant criminal appeal is dismissed.
10. There is no order as to costs.
11. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
12. Photostat certified copy of this judgment, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)