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

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Date of Decision: 8th May, 2024

+ CRL.L.P. 328/2015

DELHI ADMINISTRATION

..... Petitioner

Through: Ms. Richa Dhawan, APP for State.

versus

RAJ KUMAR GUPTA

..... Respondent

Through: Mr. Arjun Mahajan, Ms. Rashi Kanha
and Mr. Raghvendra N. Budholia, Advocates**CORAM:****HON'BLE MS. JUSTICE JYOTI SINGH****JUDGMENT****JYOTI SINGH, J. (ORAL)**

1. This petition seeking leave to appeal has been filed on behalf of the State challenging the impugned judgment dated 10.07.2009, whereby the learned Trial Court has acquitted the accused/Respondent herein. Judgment impugned herein is a common judgment deciding complaint case No.51/1996 and FIR No. 316/1995 registered under Sections 353/186 IPC at PS: Lahori Gate. The two cases were clubbed vide order dated 16.04.2001.
2. Complaint No. 51/1996 was filed by Delhi Administration through Local (Health) Authority ('LHA'), K.G. Rao against the Respondent Raj Kumar Gupta for prosecution of offence under Section 16(1)(c) read with Section 7 of Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the 'PFA Act'). Complaint was submitted on 12.12.1995 at 11:30 AM alleging that when Food Inspectors ('FI') of the Department namely, Sompal



Singh and N.N. Sharma under the supervision of LHA K.G. Rao and under orders of the Director of the Department, went to Shop No. 3987, Naya Bazaar, Delhi-06, which was run by M/s. Gupta Trading Co., for the purpose of lifting samples of food articles like chana and arhar *dal* suspected to be adulterated, for the purpose of analysis, one person was present there, who disclosed his name as Raj Kumar Gupta and partner of M/s. Gupta Trading Co. He was found conducting business of the shop, wherein variety of food articles were stored for human consumption including *dals*. FI Sompal disclosed his identity and the purpose of visit i.e. to purchase a sample of arhar *dal* as per PFA Act. On coming to know of the identity and the purpose of visit, Respondent became furious and refused to permit the team to take the samples. He physically pushed one of the FIs out of the shop, and used abusive language. Matter was reported to the police station Lahori Gate upon which case FIR No. 316/1995 was registered against the Respondent.

3. As per the case of the Petitioner, Respondent prevented the FIs and K.G. Rao, who were public servants, from taking samples of food articles for analysis and assaulted and obstructed them in lawful discharge of their duties, thus committing an offence punishable under Section 16(1)(c) of PFA Act. After investigation was concluded, entire case file including statutory documents and report of the FI were sent to Director (PFA), Delhi Administration, who accorded consent under Section 20 of the PFA Act for institution of the case and present complaint was filed.

4. Summons of the case were served upon the Respondent and upon his appearance, notice was framed under Section 251 Cr.P.C. for contravention of provisions of Sections 186/353 IPC and Section 16(1)(c) read with Sections 7/16 of PFA Act, to which the Respondent pleaded 'not guilty'.



Complainant examined PW-1 K.G. Rao; PW-2 FI S.P. Singh and PW-3 FI N.N. Sharma. Statement of Respondent was recorded on 03.10.2005 in CC No. 51/1996 under Section 313 Cr.P.C. Learned Trial Court vide impugned judgment acquitted the Respondent of the charge giving benefit of doubt. Bail bonds of the Respondent were cancelled and surety was discharged.

5. On the issue of non-joining of public witnesses under Section 10(7) of PFA Act, the Trial Court held that no efforts were made by the complainant to call any public witness at the time when the team entered and inspected the shop for lifting the sample, which is fatal to the complainant's case. To come to this finding of fact, Trial Court relied on the testimonies of the witnesses PW-1 and PW-2 who were members of the raiding party and who deposed that before inspecting the food articles in the shop, they did not associate public witnesses. Trial Court relied on the judgment of the Supreme Court reported as *Shri Ram Labhaya v. Municipal Corporation of Delhi and Another, 1974 PFA Cases SC 102*, wherein it was held that provisions of Section 10(7) are mandatory and cast a duty on the Food Inspector to call one or more persons when he takes action. Certainly, if the public persons do not join after efforts are made by the Food Inspector, prosecution cannot be faulted with. On merits of the charge that the Respondent prevented the FIs from lifting the sample of dal arhar, Trial Court held that there was a serious dent in the story of the complainant inasmuch as no explanation has come on record as to why no police assistance was sought to lift the sample of the food article, when the shop was lying open and FIs visited the SHO, PS: Lahori Gate to lodge an FIR.

6. On the third issue arising in the matter i.e. whether Respondent was partner/proprietor of M/s. Gupta Trading Co. or had any concern with the



shop in question, case of the defence was that Respondent was neither the proprietor nor a partner/salesman and had no authority to give any sample as he was himself waiting for the partner of the shop to arrive. Complainant's case was that Respondent disclosed himself to be a partner of M/s. Gupta Trading Co. and was found conducting the business of the shop at the time of sampling. Trial Court relied on the testimony of Rajiv Ranjan from Sales Tax Office, who brought the office record and deposed that at the time of registration, there were three partners of the firm and Respondent had never been a partner in the firm. On this basis, Trial Court rendered a finding that Respondent was not a partner of the firm, which supported the plea of the Respondent that he had no concern with the firm and was not found conducting the business of the firm at the time of sampling. On all three counts, Trial Court gave benefit of doubt to the Respondent and acquitted him.

7. Ms. Richa Dhawan, learned APP for the State submits that the impugned judgment is wholly erroneous and cannot be sustained in law. Relying on the grounds of appeal, it is urged that Trial Court has erred in delving into the question whether Respondent was a partner in the partnership firm M/s. Gupta Trading Co., which was wholly extraneous to prosecution under Section 16(1)(c) of the PFA Act. From a plain reading of the provision, it is clear that it provides that whosoever prevents the FI from taking a sample as authorized by the Act, shall in addition to the penalty to which he may be liable under the provisions of Section 6 is punishable with imprisonment for a term which shall not be less than six months. Therefore, the necessary ingredient of the offence is obstruction of the public servant in discharge of his duty and it does not matter whether the person obstructing is



a partner or not and the testimony of the Sales Tax officer, heavily relied upon by the Trial Court was of no consequence. It is further argued that all the prosecution witnesses have corroborated the case of the prosecution that the Respondent pushed PW-2 from inside the shop to obstruct and prevent him from collecting the sample, which was sufficient to constitute an offence under Section 16(1)(c) of PFA Act.

8. It was contended that as per Section 10 of the PFA Act, FI has the power to take samples from any person selling such article or in the course of conveying, delivering or preparing to deliver such article to the purchaser or the consignee. In this case, as brought out in the evidence, Respondent was selling the articles and when the FIs attempted to collect the samples of the *dal*, Respondent pushed one of them. Trial Court has acquitted the Respondent ignoring the provisions of Sections 10 and 16(1)(c) and (d) of the Act as well as the prosecution evidence on record, wherein all the three prosecution witnesses, PW-1, PW-2 and PW-3 have supported that PW-2 was pushed by the Respondent, while discharging his duty. Insofar as non-joining of public witnesses is concerned, Ms. Richa Dhawan submits that there is a wealth of judicial precedent on the point that non-joining of public witnesses is not fatal to the case of the prosecution in view of the ground reality that no public person wants to be dragged into criminal cases and/or other matters involving the police for reasons of long drawn trials, unnecessary harassment etc.

9. Learned counsel for the Respondent supports the impugned judgment and urges the Court not to interfere with the judgment acquitting the Respondent, in view of the settled law that an Appellate Court should interfere in the judgment of acquittal only if there are compelling



circumstances and substantial reasons or grounds to do so. On merits, it is contended that the Respondent had nothing to do with the food articles in the shop from where the sample was to be collected as he was neither the partner nor proprietor in M/s. Gupta Trading Co. and was only waiting at the shop at the relevant time for the owner to come. Hence no liability can be affixed on the Respondent. It is further argued that there is non-compliance of Section 10(7) of the PFA Act which provides that where the FI takes action under clause (1) of sub-sections (1), (2), (4) or (6) of Section 10, he shall call one or more persons to be present at the time when such action is taken and take his or their signatures. The objective is to ensure that there is fairness in the action of FI. The provision is mandatory inasmuch as the FI must make genuine efforts to get independent witnesses at the time of collecting samples *albeit* once such an effort is made but is unsuccessful, it cannot be said that there is non-compliance of Section 10(7).

10. Heard learned APP for the State and learned counsel for the Respondent.

11. Learned counsel for the Respondent has raised an important point regarding the scope and ambit of interference by an Appellate Court in a judgment acquitting the Respondent. There is no doubt that an Appellate Court has wide powers to re-appreciate the evidence in an appeal against acquittal and come to its own conclusion, both on facts and law, but it is equally settled that the power must be exercised with due care and caution because the presumption of innocence is strengthened by acquittal of the Respondent by a judicial order. The Supreme Court in *Ghurey Lal v. State of Uttar Pradesh*, (2008) 10 SCC 450, elucidated and crystallized the principles that the Courts are required keep in mind as guiding light, when



deciding an appeal against a judgment of the Trial Court acquitting the accused and relevant passages from the said judgment are as under:-

“69. *The following principles emerge from the cases above:*

- 1. The appellate court may review the evidence in appeals against acquittal under Sections 378 and 386 of the Criminal Procedure Code, 1973. Its power of reviewing evidence is wide and the appellate court can reappreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law.*
- 2. The accused is presumed innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.*
- 3. Due or proper weight and consideration must be given to the trial court's decision. This is especially true when a witness' credibility is at issue. It is not enough for the High Court to take a different view of the evidence. There must also be substantial and compelling reasons for holding that the trial court was wrong.*

70. *In light of the above, the High Court and other appellate courts should follow the well-settled principles crystallised by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal:*

- 1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has “very substantial and compelling reasons” for doing so.*

A number of instances arise in which the appellate court would have “very substantial and compelling reasons” to discard the trial court's decision. “Very substantial and compelling reasons” exist when:

- (i) The trial court's conclusion with regard to the facts is palpably wrong;*
- (ii) The trial court's decision was based on an erroneous view of law;*
- (iii) The trial court's judgment is likely to result in “grave miscarriage of justice”;*
- (iv) The entire approach of the trial court in dealing with the evidence was patently illegal;*
- (v) The trial court's judgment was manifestly unjust and unreasonable;*
- (vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying*



declarations/report of the ballistic expert, etc.

(vii) This list is intended to be illustrative, not exhaustive.

2. The appellate court must always give proper weight and consideration to the findings of the trial court.

3. If two reasonable views can be reached—one that leads to acquittal, the other to conviction—the High Courts/appellate courts must rule in favour of the accused.

71. Had the well-settled principles been followed by the High Court, the accused would have been set free long ago. Though the appellate court's power is wide and extensive, it must be used with great care and caution."

12. In *Bannareddy and Others v. State of Karnataka and Others*, 2018 SCC OnLine SC 289, the Supreme Court observed as under:-

"10. Before we proceed further to peruse the finding of the High Court, it is relevant to discuss the power and jurisdiction of the High Court while interfering in an appeal against acquittal. It is well-settled principle of law that the High Court should not interfere in the well-reasoned order of the trial court which has been arrived at after proper appreciation of the evidence. The High Court should give due regard to the findings and the conclusions reached by the trial court unless strong and compelling reasons exist in the evidence itself which can dislodge the findings itself. This principle has further been elucidated in Sambhaji Hindurao Deshmukh v. State of Maharashtra, (2008) 11 SCC 186 : (2009) 2 SCC (Cri) 464, SCC para 13, wherein this Court observed that: (SCC pp. 190-91)

"13. ... The High Court will interfere in appeals against acquittals, only where the trial court makes wrong assumptions of material facts or fails to appreciate the evidence properly. If two views are reasonably possible from the evidence on record, one favouring the accused and one against the accused, the High Court is not expected to reverse the acquittal merely because it would have taken the view against the accused had it tried the case. The very fact that two views are possible makes it clear that the prosecution has not proved the guilt of the accused beyond reasonable doubt and consequently the accused is entitled to benefit of doubt...."

11. It is not in dispute that the presumption of innocence is further reinforced, reaffirmed and strengthened against the acquitted accused by the judgment in his favour. (Vide Dara Singh v. Union of India, (2011) 2 SCC 490 : (2011) 1 SCC (Cri) 706 (SCC in para 94.)"



13. The Supreme Court in ***Mohd. Akhtar alias Kari and Others v. State of Bihar and Another, (2019) 2 SCC 513***, observed:

“19.Interference with an order of acquittal is not permissible on the ground that a different view is possible. If the acquittal is justified on a probable view taken by the trial court, it should not be interfered with.....”

14. A Division Bench of this Court in ***State v. Kaishar Ali, 2019 SCC OnLine Del 9875***, held:-

“12. It is also settled law that any acquittal order cannot be lightly interfered with by the Appellate Court, though it has wide powers to review the evidence and to come to its own conclusion. The power to grant leave must be exercised with care and caution because the presumption of innocence is further strengthened by the acquittal of an accused.”

15. It would be relevant and useful to allude to the observations of this Court in ***Niraj v. Ramesh Pratap Singh @ Raju Singh, 2012 SCC OnLine Del 3813***, which are extracted hereunder, for ready reference:-

“6. It is also well settled that the Appellate court should reverse an acquittal only for very substantial and compelling reasons. In the event, two views are possible on the evidence adduced before the trial Court and the view taken by the trial Court is a plausible view, the Appellate Court should not interfere and substitute its own view against the plausible view taken by the trial Court. In fact, the Supreme Court in Chandrappa v. State of Karnataka, (2007) 4 SCC 415 while referring to previous cases laid down the following general principles regarding the powers of appellate court while dealing an appeal against an order of acquittal: -

“42. From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;

(1) An appellate Court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded;

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;

(3) Various expressions, such as, ‘substantial and compelling reasons’, ‘good and sufficient grounds’, ‘very strong circumstances’,



'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

7. The Supreme Court in a subsequent judgment in *Arulvelu v. State Represented by the Public Prosecutor*, (2009) 10 SCC 206 has held as under: -

"40. Unquestionably, the Appellate Court has power to review and re-appreciate the entire evidence on record. The appellate court would be justified in reversing the judgment of acquittal only if there are substantial and compelling reasons and when the judgment of the trial court is found to be perverse judgment. Interfering in a routine manner where other view is possible is contrary to the settled legal position crystallized by aforementioned judgments of this Court. The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent. This fundamental principle must be kept in view while dealing with the judgments of acquittal passed by the trial court."

16. Following the aforementioned observations of the Supreme Court and this Court and treading carefully and cautiously in dealing with the impugned judgment acquitting the Respondent, this Court now proceeds to examine the rival arguments of the parties and in that context, the testimonies of the witnesses.



17. Coming first to the contention of the learned APP that Trial Court has erroneously delved into finding out whether Respondent was the partner of M/s. Gupta Trading Co., I find merit in the same and to this extent the observations of the Trial Court cannot be sustained. Plain reading of Section 16(1) shows that the expression used is ‘any person’ and thus the person who prevents the FI from taking a sample need not be the owner or a licensee of the business for conviction under the said provision. Therefore, it was irrelevant whether the Respondent was a partner in M/s. Gupta Trading Co. and to this extent, the Trial Court posed to itself a wrong question and travelled on a wrong path to answer it. Even if Respondent was not a partner, if he obstructed the FIs in collecting samples, he would be liable under Section 16(1)(c). In this context, I may refer to the judgement of the Kerala High Court in **George v. State of Kerala, 2002 SCC OnLine Ker 231** and relevant passages from the said judgment are as under:-

“4. Now I shall consider how far the argument of the learned counsel for the revision petitioner that a person can be held liable for an offence under Sec. 16(i)(c) and (d) of the Act only if he is the owner of the business is correct. Sec. 16(1) of the Act reads as follows:—

“Penalties:—(1) Subject to the provisions of sub-section (1-A) if any person—

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(c) prevents a food inspector from taking a sample as authorised by this Act; or

(d) prevents a food inspector from exercising any other power conferred on him by or under this Act; or

xx

xx

xx”.

5. So it is clear that “any person” who prevents a Food Inspector from taking sample or prevents the Food Inspector from exercising any power conferred on him is liable to be punished. There is absolutely nothing in Sec. 16 of the Act to show that only the owner of the business or licensee can be prosecuted for the offences punishable under Secs.



16(1)(c) or (d). If this argument of the learned counsel for the revision petitioner is accepted a person who conducts the business without obtaining the licence cannot be convicted for an offence under Sec. 16(1)(c) even if he physically prevents the Food Inspector from taking sample.

6. The word used is “any person”. To constitute an offence under Sec. 16(1)(c) of the Act, all that is necessary that a person should prevent the Food Inspector from taking sample. A plain reading of Sec. 16(1)(c) of the Act shows that the liability is not cast on the owner or the salesman alone, but even a stranger. It is clear that even if a customer present in the shop prevents the Food Inspector from taking sample, he is liable under Sec. 16(1)(c) or (d) of the Act. It is always possible that a clever or unscrupulous vendor or seller to hire a person to prevent a Food Inspector from taking sample and such a person can plead that he has nothing to do with the business. If such persons are allowed to escape from penal liability on the ground that he has nothing to do with the business conducted in the premises, the Food Inspectors will not be able to discharge their function properly. So, it is not possible to accept the argument of the counsel for the revision petitioner that to proceed under Sec. 16(1)(c) or (d) of the Act the offender must be either the proprietor of the business or salesman in the shop.”

18. Preventing a Food Inspector from taking a sample of an article of food as authorized by the PFA Act, is an offence punishable under Section 16(1)(c) with imprisonment for a term which shall not be less than six months but which may extend to 3 years with fine which shall not be less than Rs.1,000/-. Section 10(2) gives the FI power to enter any place where the article or food is exposed for sale and sub-section (4) provides for seizure of adulterated food. FI also has power to break open the door or any packet in which the food article is kept and for all these purposes, he can exercise power of search and seizure. Section 10(7) is an important provision in the PFA Act and the objective is to ensure that there is fairness in action by the FI. This safeguarding provision entails that the FI must join an independent person while taking an action of collection of sample of food article suspected to be adulterated. In ***Vijendra v. State of Uttar Pradesh***,



(2020) 15 SCC 763, the Supreme Court was seized of an appeal arising from the judgment of the High Court of Allahabad dismissing the revision filed by the Appellant affirming his conviction under Sections 7(i)/16(1)(a) (i) of PFA Act. Prosecution had examined 3 witnesses out of whom PW-3, the independent witness had not supported the case of the prosecution that there was non-compliance of Section 10(7) and had turned hostile. Case of the Appellant was that since no independent witness supported the case of the prosecution there was non-compliance of Section 10(7) of the Act *albeit* there were other grounds also raised in the appeal. High Court rejected the objection holding that as far as Section 10(7) is concerned, the objective was to ensure actual or genuine transactions of sale and provision is mandatory to the extent that FI must make genuine efforts to get corroboration of one or more persons present on the spot to witness his act of taking samples and completion of other formalities. Once the effort was made but in vain, it cannot be said that there was non-compliance. Examining the issue, the Supreme Court held as under:-

“16. In the instant facts, though it is contended on behalf of the prosecution that as per the requirement under Section 10(7) of the 1954 Act one Shri Radhey Shyam, an independent person had also witnessed the taking over of the sample, the said witness did not support the case of the prosecution. Though the learned Magistrate has in that circumstance held that it would be sufficient to rely on the evidence of PW 1 despite not being supported by any other witness as PW 1 has no enmity with the accused, that by itself would not be sufficient in the instant facts since the very requirement of the provision is to collect the sample in the presence of an independent witness and when such independent witness has not supported the case of the prosecution. The manner as to whether the sample was appropriately taken after properly stirring the milk and whether the same was sent for analysis also in such manner has, therefore, not been established. This is more so in the circumstance where milk which is a primary product has fat content and the fat content would also depend on the appropriate manner in which the sample is taken after stirring.”



17. In this regard, it is apposite to take note of the decision rendered by this Court in *K. Harikumar v. Punaloor Municipality* [1995 Supp (3) SCC 405 : 1995 SCC (Cri) 933] relied upon by the learned counsel for the appellant, wherein while considering the provisions of the 1954 Act with regard to the sample of curd which was the subject-matter therein, it was held that in order to attain homogeneity in curd, stirring and churning may become necessary for the ingredients of the milk solid non-fat and milk solid fat getting consistency in order to determine the percentage in their completeness.

18. In that background, in the instant case, as already noticed the Public Analyst had opined that the milk sample was deficient by 12% in milk fat and 27% in non-fatty solids. The said results would become relevant only if it is established that the sample taken for such analysis was also in a proper manner after stirring which would make the fat and non-fat into homogeneous mixture. Hence, in that regard appropriate evidence was necessary more particularly, when PW 3 who was claimed to be an independent witness has not supported the prosecution. In the facts and circumstances of the present case, in our view, the uncorroborated testimony of PW 1 Food Inspector cannot be relied upon to sustain the conviction.”

19. In this context, I may refer to the judgment of the Allahabad High Court in *Ramesh Chandra Srivastava v. State of U.P.*, 2017 SCC OnLine All 4809, which I am persuaded to follow and relevant paragraphs are as under:-

“11. Record shows that Food Inspector has mentioned in its report that he requested persons present on the spot for evidence but no one was ready and therefore he proceeded further. This finding of fact recorded by Court below has not been disputed or challenged before this Court. Mere absence of independent witness would not vitiate the proceedings and it cannot be said that there is non compliance of section 10(7) of Act, 1954. Whether mention of fact that persons available on spot did not come forward to cooperate with the Officer concerned when he collected the sample and proceeded to seal the same is sufficient compliance of section 10(7) has been considered time and again.

12. Section 10(7) of Act, 1954 reads as under:

“Section 10(7)- Where the Food Inspector takes any action under clause (1) of sub-section (1), subsection (2), sub-section (4), or subsection (6), he shall call one or more persons to be present at



the time when such action is taken and take his or their signatures.”.

13. *The objective of section 10(7) of Act, 1954 is to ensure that actual or genuine transaction of sale of sample and its formalities have been observed. The provision is mandatory in so much so that Food Inspector must make genuine efforts to get the corroboration of one or more persons present on the spot to witness his act of taking sample and completion of other formalities. Once such an effort has been made, but in vain, it cannot be said that there is any non-compliance of section 10(7) of Act, 1954.*

14. *Section 10(7) was amended in 1964 and prior thereto there were words “as far as possible call not less than two persons”. The words “as far as possible” were deleted by amendment of 1964. It was sought to be argued, therefore, that deletion means that if the independent witnesses do not corroborate the action of Food Inspector in taking sample etc. it shall vitiate the Trial*

15. *A learned Single Judge of Kerala High Court in The Food Inspector, Palakkad v. M.V. Alu,¹ considered it and in para 2 of the judgment said that sub-section (7) of section 10 is only intended as a safeguard to ensure fairness of action taken by Food Inspector. What he is obliged to do is only to call one or more independent persons to be present and attest when he takes action. If independent persons were available and even then the Food Inspector did not want their presence or attestation, it could be said that he violated section 10(7). If independent persons available did not care to oblige him in spite of his ‘call’, he cannot be said to have violated section 10(7). The duty is only to make an earnest attempt in getting independent witnesses. If that earnest attempt did not succeed on account of refusal of independent persons, it cannot be said that section 10(7) is violated. In such a contingency, nothing prevents the uncorroborated evidence of the Food Inspector being accepted, if found acceptable.*

16. *In another matter arisen from, State of Uttar Pradesh itself, the three Judges Bench of Apex Court had occasion to consider this aspect in Shri Ram Labhaya v. Municipal Corporation of Delhi,² and in paras 5 and 6 thereof the Court said:*

“5. We are of the opinion, particularly in view of the legislative history of section 10(7), that while taking action under any of the provisions mentioned in the sub-section, the Food Inspector must call one or more independent persons to be pre-sent at the time when such action is taken. We are, however, unable to agree that regardless of all circumstances, the non-presence of one or more independent persons at the relevant time would vitiate the trial or conviction. The obligation which section 10(7) casts on the Food



Inspector is to 'call' one or more persons to be present when he takes action. The facts in the instant case show that the Food Inspector did call the neighbouring shopkeepers to witness the taking of the sample but none was willing to co-operate. He could not certainly compel their, presence. In such circumstances, the prosecution was relieved of its obligation to cite independent witnesses. In Babu Lal Hargovindas v. State of Gujarat,³ it was held by this Court after noticing that section 10(7) was amended in 1964, that noncompliance with it would not vitiate the trial and since the Food Inspector was not in the position of an accomplice his evidence alone, if believed, can sustain the conviction. The Court observed that this ought not to be understood as minimizing the need to comply with the salutary provision in section 10(7) which was enacted as a safeguard against possible allegations of excesses or unfair practices by the Food Inspector.

6. As stated earlier the Food Inspector was unable to secure the presence of independent persons and was therefore driven to take the sample in the presence of the members of his staff only. It is easy enough to understand that shopkeepers may feel bound by fraternal ties but no Court can countenance a conspiracy to keep out independent witnesses in a bid to defeat the working of laws."

17. From the above it is clear that Apex Court also took the view that what is important to attract section 10(7) is that the Food Inspector atleast should try to secure presence of one or more independent witness when he take actions under any of the provisions mentioned in section 10(7). Once that has been done evidence of Food Inspector himself, even if not corroborated by independent witnesses, can be relied if the Trial Court finds it otherwise acceptable and is not to be discarded only for the reason that independent witnesses have not signed the sample and seizure documents.

18. This Court also considered this aspect in Nagar Swasthya Adhikari Nagar Mahapalika v. Mohammad Wasim.¹ Here the Court further said that object of indicating section 10(7) is to ensure that particular sample is taken from the accused. The object is to keep the act of taking sample above suspicion. Compliance of sub-section (7) of section 10 is necessary only for satisfying the Court that requisite sample was taken as alleged. Court's scrutiny of such compliance becomes unnecessary when the accused admits taking of such sample.

19. Once the efforts have been made by Food Inspector to call for one or more independent witnesses but none agreed or cooperated, then it cannot be said that there is any breach of requirement of section 10(7) and it



will not vitiate the prosecution at all. Here I am fortified by a decision of Madras High Court in Public Prosecutor v. Ramachandran.

20. *It is the duty of Food Inspector to call one or more independent persons to be present at the time of taking sample and once that is done by him it is sufficient but if the witnesses are not ready to come forward and sign the documents the Food Inspector cannot compel them and, therefore, where the attempt has been made but failed, lack of signature by independent witness would not vitiate the trial.*

21. *The Apex Court in State of U.P. v. Hanif, said that there is no such law that the evidence of Food Inspector must necessarily need corroboration from independent witnesses. His evidence is to be tested on its own merits and if found acceptable the Court Would be entitled to accept and rely on to prove prosecution case.”*

20. Seen in the light of the aforementioned judgments, there is merit in the contention of the Respondent that in the facts of this case, non-compliance of Section 10(7) cannot be ignored. PW-1 K.G. Rao, under whose supervision sample was lifted confirmed in his cross-examination that before inspecting the food articles neither he nor the FI tried to associate public witnesses. PW-2 FI S.P. Singh also confirmed in his cross-examination that no efforts were made to call public witnesses before inspection of the shop. In light of these testimonies, Trial Court rendered a finding that there was non-compliance of Section 10(7). As noted above, Section 10(7) is a safeguarding provision to ensure that the process of sample collection is fair as that forms the basis of the prosecution case and ultimately the conviction or acquittal of an accused. The provision is mandatory to the extent that the FI shall have to make an earnest effort to join independent witnesses. If the attempt is made and the witness does not join, FI cannot be blamed. But where no such attempt is made, it is a violation of Section 10(7) which assumes significance due to the reason that proceedings by the FI may get authenticity during trial and prosecution



version may be believed. Importance of Section 10(7), a safeguarding provision meant to ensure fairness in sampling procedure, becomes pronounced in a case like the present where the allegation of causing obstruction in performance of duty is premised on an alleged physical act of pushing the FI. Prosecution witnesses deposed that Respondent pushed PW-2 out of the shop while the Respondent categorically denied the same. An independent witness would have corroborated the version of either side. Moreover, the Trial Court doubted the prosecution case as there was no explanation why police assistance was not taken to collect the sample when the raiding team had gone to the nearby police station to lodge a complaint. It was not the case of the prosecution that the *dal* or other suspected food articles were thrown away or the shop was closed and it cannot be overlooked that there were 2 other members in the raiding team, who were admittedly not prevented from taking the sample and yet no samples were taken. Court finds no reason to interfere in the finding of the Trial Court that there is non-compliance of provision of Section 10(7) of PFA Act in the given facts of the case. In *State of Uttar Pradesh v. Punni and Others, (2009) 1 SCC (Cri.) 372*, the Supreme Court observed that if two views are reasonably possible, Appellate Court would not normally interfere in the acquittal.

21. No ground is made out to grant leave to appeal. Petition seeking leave to appeal is dismissed and consequentially, FIR No. 316/1995 registered under Sections 353/186 IPC at PS: Lahori Gate is quashed.

JYOTI SINGH, J

MAY 08, 2024/kks/shivam