



\$~28

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

%

Date of Decision: 3rd May, 2024+ **CRL.L.P. 399/2015****DELHI ADMINISTRATION**

..... Petitioner

Through: **Ms. Richa Dhawan, APP for State.**

versus

BALAK RAM

..... Respondent

Through: **Mr. M.N. Dudeja, Mr. Rishabh Tyagi,
Mr. Nikhil Kaushik, Mr. Prashant Mohan,
Mr. Rishabh Sharma, Mr. Jitender Kumar,
Mr. Dinesh Kumar, Mr. Avnish Kasana, Ms. Relena
Rai, Mr. Pradeep Choudhary, Mr. Yogesh Khari &
Mr. Pradeep Kumar Kasana, Advocates.****CORAM:****HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J. (ORAL)****Crl. M.A. (to be registered and numbered)**

1. Registry is directed to number the application.
2. This is an application seeking condonation of delay of 1460 days in filing the appeal. It is explained that on receiving the certified copy of the judgment on 13.07.2009, file was processed by the prosecution branch and it took time for approvals in the office of the concerned SDM/LHA and thereafter, in the office of Director (PFA). After the necessary approvals, the file moved back through various channels to the prosecution branch and was



received on 15.12.2009. The details furnished in the application show that there is no unnecessary delay and Petitioner has made out sufficient cause for condonation.

3. For the reasons stated in the application, the same is allowed. Delay in filing the petition for leave to appeal is condoned.

4. Application stands disposed of.

CRL.L.P. 399/2015

5. By this petition, State seeks leave to appeal against the judgment dated 14.05.2009 passed by the learned ACMM-II, New Delhi, whereby Respondent was acquitted of the charged offence, giving benefit of doubt. Bail bond was cancelled and the surety was discharged.

6. This case has its genesis in a complaint filed by Delhi Administration through Food Inspector ('FI') Jeet Ram against the accused Balak Ram/ Respondent herein, who was the Vendor-cum-Proprietor of M/s Kaushik Dairy, for prosecution of offence under Sections 7 and 16 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the 'PFA Act').

7. As per allegations in the complaint, on 17.04.2001 at about 6:00 PM, FI Jeet Ram purchased a sample of 'Cow milk', a food article, for analysis from the Respondent, who had stored the same for sale, for human consumption. Approximately 750 ml of Cow's milk was taken as a sample from an open container bearing label 'Cow's Milk'. Sample was collected after proper homogenization with the help of clean and dry plunger. FI divided the sample on the spot into three equal parts and placed them in three separate clean and dry bottles. 20 drops of formalin were added in each bottle containing the sample. Thereafter, each bottle was separately packed,



fastened, marked and sealed in consonance with the provisions of PFA Act and the Rules made thereunder. Respondent's signatures were obtained on the LHA slip and wrapper of the sample bottles. Notice in Form VI was given to the Respondent and *Panchnama* was prepared at the spot. All documents prepared by FI Jeet Ram were signed by the Respondent and Ranjeet Singh, FI, who was also present at the time of collecting the sample and was a witness before the Trial Court.

8. As per the prosecution case, before initiating the sampling procedure, efforts were made to join public witnesses but none came forward. Sample was taken under the supervision/direction of Dr. P.S. Batra, SDM/LHA (Vivek Vihar). One part of the sample was sent to the Public Analyst and two counter parts were deposited with the LHA in intact condition. Public Analyst analysed the sample on 25.04.2001 and found that the sample did not conform to the standard as milk solids not fat (SNF) was less than the prescribed minimum limit of 8.5%.

9. After conclusion of investigation, entire case file including the statutory documents and Public Analyst's report along with report of the FI was sent to Director (PFA), Delhi Administration, Government of NCT of Delhi, who granted approval under Section 20 of PFA Act for institution of the case and authorized FI Jeet Ram to file the present complaint. Summons of the case were served upon the Respondent. Notice under Section 251 Cr.P.C. was framed and issued to the Respondent for contravention of provisions of Section 2(ia)(a)(m) punishable under Section 16(1)(a) read with Section 7 of PFA Act, to which he pleaded not guilty and claimed trial.



10. In support of its case, prosecution examined three witnesses i.e. PW1 FI Jeet Ram; PW2 FI Ranjeet Singh and PW3 P.S. Batra, Joint Resident Commissioner. Statement of the Respondent was recorded under Section 313 Cr.P.C. on 02.02.2009, wherein he claimed innocence but did not lead evidence in defence.

11. Learned Trial Court vide impugned judgment dated 14.05.2009 acquitted the Respondent of the charge giving benefit of doubt and his bail bond was cancelled and the surety was discharged. On the issue of non-joining of public witness, Trial Court rendered a finding in favour of the prosecution based on the testimonies of PW1 and PW2 that despite efforts to join public witnesses i.e. passers-by and neighbours, before sampling, none agreed to join. Additionally, Trial Court observed that the factum of the FI lifting the sample from the vendor and sealing it, was not in dispute.

12. On the merit of the charge, Trial Court referred to the report of the Public Analyst Ex.PW1/G, as per which the sample of Cow's milk did not conform to the standards because SNF was less than the prescribed minimum limit of 8.5% and upon a detailed analysis of the report; other evidence on record; categorical stand of the defence that there was no method available in the world by which one could extract SNF from the milk; deficiency of 0.2% in the analysis could be due to wrong sampling or on account of analytic error by the Public Analyst; settled position of law that if the difference is marginal, benefit of doubt may be given to the accused; and considering the judgment of the Allahabad High Court in *Nagar Swasthya Adhikari v. Subhash Chandra & Others, 1982 (1) PFA Cases 97*, acquitted the Respondent.



13. Ms. Richa Dhawan, learned APP for the State submits that the impugned judgment is wholly erroneous and cannot be sustained in law. The sample of Cow's milk collected from the Respondent did not conform to the standard as SNF was less than the prescribed minimum limit of 8.5%. This was confirmed by the report of the Public Analyst and there was no scope of any error since the sample was collected after proper homogenisation and with the help of clean and dry plunger. The sample was stored in clean and dried bottles, sealed in the presence of the Respondent and PW2 and PW3. Respondent did not lead evidence in defence and therefore the allegations were unrebutted. Under Section 2(ia)(a) of PFA Act, there is a statutory presumption that an article of food shall be deemed to be adulterated if it is not of the nature, substance or quality demanded by the purchaser or is not of the nature, substance or quality which it purports or is represented to be. Reliance is also placed on provisions of Section 2(ia)(a)(m) to argue on the aspect of presumption.

14. Learned counsel for the Respondent supports the impugned judgment and at the outset, submits that Appellate Court should interfere in the judgment of acquittal only if there are compelling circumstances and substantial reasons or grounds to do so. The grounds of appeal by the State are totally vague and do not bring out any illegality or infirmity in the impugned judgment warranting interference by this Court.

15. It is further argued that in the present case, there is a clear violation of Section 13(2) of PFA Act read with Section 47(1)(c) of the Food Safety and Standards Act, 2006, which mandates sending the copy of the report of the Public Analyst to the person from whom the sample is taken. Admittedly,



copy of the report was not sent to the Respondent, depriving him of a valuable right to apply to the Court for examination by the Central Food Laboratory (CFL). In *Narayana Prasad Sahu v. State of Madhya Pradesh, (2022) 1 SCC 87*, Supreme Court held that if mandatory requirement of Section 13(2) of PFA Act is not complied with, conviction cannot be sustained.

16. On merits, it is argued that in the present case, there is a marginal difference of 0.2% between the prescribed limit of SNF and SNF in the milk sample taken from the Respondent, which as rightly held by the Trial Court could be due to various reasons such as technical errors in conducting the analysis or error in drawing the sample and Proviso to Section 2(ia)(m) of PFA Act envisaging this situation, provides that where the quality or purity of the article, being primary food, falls below the prescribed standards, solely due to natural causes or causes beyond human control, such articles shall not be deemed to be adulterated under sub-clause (m) of Clause 2(ia) of PFA Act. Taking all these factors into account including the marginal difference of 0.2%, Trial Court has acquitted the Respondent, giving benefit of doubt and the judgment deserves to be upheld. It is also argued that Respondent is a Senior Citizen and without any reason is suffering the ordeal of trial since 2001, when the complaint was instituted.

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

18. Learned counsel for the Respondent has, at the outset, raised an important issue regarding the scope and ambit of interference by an Appellate Court in a judgment acquitting the accused. There is no doubt that



the 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 accused 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.”*

19. 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.)”*
20. 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.....”*
21. 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.”*
22. 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, reappreciate 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.”

23. Following the aforementioned observations of the Supreme Court and this Court and treading carefully and cautiously in dealing with the impugned judgment acquitting the accused, this Court now proceeds to look into the testimonies of the witnesses and rival arguments of the parties.

24. Learned counsel for the Respondent contended that Section 13(2) of PFA Act provides that on receipt of the report of the Public Analyst under Section 13(1), the local health authority shall, after the institution of prosecution against the person from whom the sample of the article of food was taken, provide a copy of the report of the result of the analysis to such person, informing him that if he so desires, he may make an application to the Court within 10 days to get the sample of the article of food kept by the local health authority analysed by the CFL. The Supreme Court in **Narayana Prasad Sahu (supra)**, held that Section 13(2) of PFA Act makes it mandatory to send the copy of the report of the Public Analyst to the person from whom the sample is taken as apart from the right of the accused to contend that the report is not correct, he has right to exercise an option of sending the sample to the CFL for analysis by making an application to the Court within 10 days from the date of receipt of the report and if the copy is not delivered, the consequences are that his right to challenge the report will be defeated, which in turn, will defeat his right to defend himself. It is significant to note that the Supreme Court has held that if the mandatory



requirement of Section 13(2) of PFA Act is not complied, the trial itself vitiates and on this ground, the Supreme Court had set aside the conviction and sentence of the Appellant. Relevant paragraphs are as follows:-

“6. Under sub-section (2) of Section 13, it is mandatory for the Local (Health) Authority to forward a copy of the report of the Public Analyst to the person from whom the sample of the food has been taken in such a manner as may be prescribed. Further mandate of sub-section (2) of Section 13 is that a person to whom the report is forwarded should be informed that if it is so desired, he can make an application to the court within a period of ten days from the date of receipt of the copy of the report to get the sample analysed by the Central Food Laboratory. The report is required to be forwarded after institution of prosecution against the person from whom the sample of the article of food was taken. Apart from the right of the accused to contend that the report is not correct, he has right to exercise an option of sending the sample to the Central Food Laboratory for analysis by making an application to the court within ten days from the date of receipt of the report. If a copy of the report of the Public Analyst is not delivered to the accused, his right under sub-section (2) of Section 13 of praying for sending the sample to the Central Food Laboratory will be defeated. Consequently, his right to challenge the report will be defeated. His right to defend himself will be adversely affected. This Court in Vijendra [Vijendra v. State of U.P., (2020) 15 SCC 763 : (2020) 4 SCC (Cri) 901] held that mere dispatch of the report to the accused is not a sufficient compliance with the requirement of sub-section (2) of Section 13 and the report must be served on the accused.

xxxx

xxxx

xxxx

xxxx

9. On the basis of endorsements of the postman appearing on the postal envelope containing the report, the High Court has recorded a finding of refusal on the part of the appellant to accept the report. The said finding is obviously erroneous as the endorsements on the postal envelope were not proved by examining the postman. Moreover, the High Court has glossed over the mandatory requirement under sub-section (2) of Section 13 of serving a copy of the report on the accused. Evidence adduced by the prosecution was of mere dispatch of the report. Hence, the mandatory requirement of sub-section (2) of Section 13 was not complied with. Therefore, the conviction and sentence of the appellant cannot be sustained.”

25. In the present case, a categorical position is taken by the Respondent that the report of the Public Analyst was not made available to the



Respondent within the stipulated time, as a result of which Respondent was unable to avail of a very valuable right of applying to the Court for sending the sample to the CFL and needless to state, this has adversely affected his defence in the case. There was a possibility that on an analysis by the CFL, the earlier opinion that there was a marginal difference of 0.2% may have been otherwise. Factually, this position is uncontroverted by the State and following the observations of the Supreme Court on this ground alone, Petitioner has no case to seek conviction of the Respondent.

26. Insofar as non-joining of the public witnesses under Section 10(7) of the PFA Act is concerned, Trial Court has held in favour of the Petitioner that efforts were made by PW1 and PW2 to associate public witnesses before collecting the sample in question. Learned counsel for the Respondent has fairly and candidly not joined issues on this, in view of the factual finding based on evidence of the two FIs, PW1 and PW2.

27. The third and the only other issue that needs adjudication is whether the Trial Court has rightly acquitted the Respondent for offence under Sections 7 and 16 of the PFA Act by giving benefit of doubt basis a finding that the marginal difference of 0.2% in the SNF, between the laid down standard and the sample in question could be an outcome of a technical error in the analysis or improper homogenization while drawing the sample and/or the possibility of the sample having been drawn from the uppermost layer of milk, which is rich in fat.

28. Case of the Petitioner is primarily predicated on the report of the Public Analyst dated 25.04.2001 Ex.PW1/G, as per which sample of the Cow's milk did not conform to the standards because SNF was less than the



prescribed minimum limit of 8.5% and there was a marginal difference of 0.2%. Reliance was placed on Section 2(i)(ia) of PFA Act to argue that an article of food shall be deemed to be adulterated if it is not of the nature, substance or quality demanded by the purchaser and is to his prejudice or is not of the nature, substance or quality which it purports or is represented to be. Further argument was that as per Section 2(ia)(m) of PFA Act, an article of food is adulterated if the quality or purity falls below the prescribed standard or its constituents are present in quantities not within the prescribed limits of variability but which does not render it injurious to health.

29. It is an admitted position that the difference in SNF in the sample in question as analysed by the Public Analyst and the minimum prescribed standard of Cow's milk was 0.2%. Respondent urged before the Trial Court and reiterates before this Court that scientifically, there is no fool-proof method available in the world by which one can extract SNF from the milk and the marginal difference could be due to wrong sampling or analytic errors by the Public Analyst. This position is unrebutted by the Petitioner, both factually and scientifically. In *Nagar Swasthya Adhikari (supra)*, the Allahabad High Court has noted this position and observed as under:-

"5. The member of the public P.W. 3 Shanker Lal did not support the prosecution version and rather supported the defence version. The learned Magistrate, for reasons enumerated in his judgment, did not find the statements made by the Food Inspector and Mahendra Singh to be reliable. The age of Subhash Chandra has been noted to have been 12 years at the time of the trial. He, therefore, was a very young boy and could hardly have realised what the Food Inspector did. The Food Inspector should have waited for Om Prakash to be called by Subhash Chandra and then taken the sample. Moreover, the report of the Public Analyst does not appear to be reliable. The Public Analyst did not find any foreign matter in the sample of milk. There is no known method by which non-fatty solids could be extracted from milk without disturbing the fat



content in it. The report of the Public Analyst under the circumstances is far from convincing.”

30. In ***MCD v. Jawahar Lal; 1980 (II) FAC 145 (Del)***, this Court has recognized that there is a possibility that the test conducted by the Public Analyst may not be error proof due to various technical issues while testing or that in a given case there could be an imbalance in the fodder fed to the cow, resulting in high percentage of fat and lower percentage of SNF. It is significant to note that Courts have, from time to time, held that negligible difference in the sample and the standard required should not be over-emphasized as this could be a result of several factors contributing to the adulteration of the milk sample including the accepted position worldwide that it is not possible to take out SNF from milk without reducing or affecting the fat content. [Ref.: ***Isham Singh v. State of Haryana, 2009 (1) RCR (Criminal) 692***]. It would be useful to allude to an order of the Supreme Court in ***Administrator of the City of Nagpur v. Laxman and Another, 1995 SCC (Cri) 354***, wherein the Supreme Court dismissed an appeal challenging an order of acquittal passed by the learned Magistrate where the fat percentage was found to be 6% as against 3.5%. Relevant paragraph is as follows:-

“2. This appeal against acquittal arises under Prevention of Food Adulteration Act. The whole question is whether the sample of cow milk is adulterated so as to attract the penal provision of the Act. Learned Magistrate who acquitted the respondent who was a small milk vendor noted that the fat percentage is 6% as against 3.5% which is more than the standard prescribed for cow milk. The only shortfall was that S.N.F. was 7.3% where it ought to have been 8.5%. Further, it noted that the total solids are 13.37 which is again more than the satisfying standard of cow milk. Under these circumstances, we cannot say that courts below have erred in acquitting them giving the benefit of doubt to the respondents. The appeal is, therefore, dismissed. However, other questions of law which



have been debated by the courts below do not really matter, therefore, we do not propose to examine the same.”

31. It is apposite to mention the observations of the Supreme Court in ***P.S. Sharma v. Madanlal Kasturichandji and another, 2002(2) FAC 224*** in this context and the same are extracted hereunder:-

“2. On the basis that the samples of the milk taken from the respondents contained 6.6% of milk fat and 7.5% of milk solids non-fat, the proceedings were initiated. As per the report of the Public Analyst, the sample contained 3.01% milk fat and 11.02% milk solids non-fat. The difference ultimately came down to only one per cent from the standard quantity. On this aspect, the contention put forth on behalf of the respondents is that the difference in percentage is on account of the circumstance that the distribution of fat in the milk in separate sample bottles will not be even as a result of violent churning of the milk. When marginal difference like one per cent was noticed by the Public Analyst or by the Central Food Laboratory, the courts have taken the view that it is possible that there may be some error creeping in the conclusion reached thereto. In somewhat similar circumstances, this Court has upheld the orders of the courts below acquitting the accused in Administrator of the City of Nagpur v. Laxman [1995 Supp (1) SCC 247 : 1995 SCC (Cri) 354]. The view taken by the High Court of Gujarat in State v. Bhagubhai Ramjibhai [(1982) 2 Guj LR 624] followed by the High Court is also on the same lines.”

32. In view of the plethora of judicial precedents holding that report of Public Analyst is open to technical errors and the marginal differences in the SNF from the standards may occur in very many cases due to samples not being properly homogenized or taken from the fat rich top layer of the milk etc., this Court finds no infirmity in the findings of the Trial Court. In fact, Proviso to Section 2(ia)(m) of PFA Act envisaging this situation and possibility, provides that where the quality or purity of the article, being primary food, falls below the prescribed standards, solely due to natural causes or causes beyond human control, such articles shall not be deemed to be adulterated under sub-clause (m) of Clause 2(ia) of PFA Act. I am also



unable to gloss over the fact that the difference in the standard and the sample was marginal i.e. 0.2% and in light of the judgements referred to above, the impugned judgement warrants no interference.

33. No ground for grant of leave to appeal is made out. Petition seeking leave to appeal is hereby dismissed.

JYOTI SINGH, J

MAY 3, 2024

B.S. Rohella/kks