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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRL.L.P. 363/2022

STATE OF NCT OF DELHIPetitioner
Through: Mr. Pradeep Gahalot, APP
for the State

versus

ANIL GARG AND ANR.Respondent
Through:

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **09.04.2025**

1. The present petition has been filed under Section 378 of the Code of Criminal Procedure, 1973 ('CrPC') seeking grant of leave to challenge the judgment dated 06.07.2020 (hereafter 'the **impugned judgment**'), in Complaint Case No. 45432/2016, whereby the learned Trial Court had acquitted the accused/respondents for the offence under Section 16(1)(c) of the Prevention of Food and Adulteration Act, 1954 ('PFA Act').

2. The brief facts are that on 07.08.2010 at about 4:30 p.m., Sh. Hukum Singh, Food Inspector ('FI') along with Sh. Naubat Singh, Food Assistant ('FA') under the supervision of Local (Health) Authority Sh. Hukum Singh, Sub Divisional Magistrate, Preet Vihar ('SDM') visited the premises, A – 1/161, Main Road, New Kondli, Delhi – 110096 belonging to Respondent No. 1.

3. After reaching the said premises, the FI disclosed his identity to Respondent No. 1, pursuant to which the SDM directed to take a sample of "Dal Arhar" which was kept in a gunny bag for sale in the shop for human consumption. The FI

disclosed his intention to Respondent No. 1 for taking the sample

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of the said food article, but he refused him to lift the sample and started shouting.

4. Thereafter, a crowd gathered around the shop and from the crowd, Respondent No. 2 entered the shop who introduced himself as the President of the New Kondli Trader Association. Both Respondent Nos. 1 and 2 refused the team members to take any samples and threatened them with dire consequences.

5. Members of the inspection team requested them to allow to do their duty. However, Respondent No. 1 had lifted the said gunny bad and handed it over to some person who was asked to run away with the same.

6. The accused/ respondents thereafter man handled the members of the inspection team and pushed them out of the shop. Pursuant to which the nearby Police Station was contacted. However, by the time the police reached the shop, the accused/ respondents had fled away from there.

7. Thereafter, a compliant was lodged at the Police Station and the FI and FA were sent to Lal Bahadur Shahstri Hospital for medical examination and MLC's were prepared. Investigation of the present case concluded and consent under Section 20 of the PFA Act was obtained and the present complaint was filed.

8. The learned Trial Court framed charges under Section 10(1) of the PFA Act read with Rule 9(c) of the Prevention of Food and Adulteration Rules, 1955 ('**PFA Rules**') punishable under Section 16(1)(c) of the PFA Act.

9. The accused/ respondents in their statement under Section 313 of the Code of Criminal Procedure, 1973 ('**CrPC**') denied all the incriminating circumstances against them and had

expressed their intention to lead evidence in defence.

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10. The learned Trial Court after examining the evidence acquitted the accused persons noting the inconsistencies in the evidence.

11. The learned Additional Public Prosecutor for the State submits that the learned Trial Court failed to appreciate that the ingredients of offence had been duly proved by all three prosecution witnesses and hence there was no illegality for conviction of the accused/ respondents.

12. He further submits that the learned Trial Court had not appreciated the fact that, the accused/ respondents had not allowed the FI to lift and examine the gunny bag containing “*Dal Arhar*” and thereby restricted them in performing their official duty.

13. The learned Additional Public Prosecutor for the State lastly submits that learned Trial Court had wrongly observed regarding the non – joining of public witnesses, since public witnesses saved themselves from governmental proceedings.

14. I have heard the learned Additional Public Prosecutor for the State and perused the record.

Analysis

15. It is trite law that this Court must exercise caution and should only interfere in an appeal against acquittal where there are substantial and compelling reasons to do so. At the stage of grant of leave to appeal, the High Court has to see whether a prima facie case is made out in favour of the appellant or if such arguable points have been raised which would merit interference.

The Hon’ble Apex Court in the case of ***Maharashtra v. Sujay Mangesh Poyarekar*** : (2008) 9 SCC 475 held as under:

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“19. Now, Section 378 of the Code provides for filing of appeal by the State in case of acquittal.” Sub-section (3)

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declares that no appeal “*shall be entertained except with the leave of the High Court*” is, therefore, necessary for the State where it is aggrieved by an order of acquittal recorded by a Court of Session to file an application for leave to appeal as required by sub-section (3) of Section 378 of the Code. It is also true that an appeal can be registered and heard on merits by the High Court only after the High Court grants leave by allowing the application filed under sub- section (3) of Section 378 of the Code.

20. In our opinion, however, in deciding the question whether requisite leave should or should not be granted, the High Court must apply its mind, consider whether a prima facie case has been made out or arguable points have been raised and not whether the order of acquittal would or would not be set aside.

21. It cannot be laid down as an abstract proposition of law of universal application that each and every petition seeking leave to prefer an appeal against an order of acquittal recorded by a trial court must be allowed by the appellate court and every appeal must be admitted and decided on merits. But it also cannot be overlooked that at that stage, the court would not enter into minute details of the prosecution evidence and refuse leave observing that the judgment of acquittal recorded by the trial court could not be said to be “perverse” and, hence, no leave should be granted.”

(emphasis supplied)

16. The learned Trial Court *vide* the impugned judgement had acquitted the accused/ respondents on the ground that the complainant failed to prove that the accused/ respondents prevented the members of the inspection team from performing their official duty.

17. It was noted by the learned Trial Court that all the three prosecution witnesses in their chief examination deposed on the lines of the compliant registered. However, at the time of cross – examination, material inconsistencies arose which were grave enough to cast a suspicion on the case made out by the prosecution.

18. In the cross – examination of PW – 1, FI, he had deposed

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Respondent No. 1 for about 30 to 40 minutes. However, he had denied the suggestion that the SDM did not remain in the shop for more than 5 to 7 minutes.

19. PW – 2, SDM at the time of cross – examination deposed that he remained in the shop of Respondent No. 1 for only about 5 to 7 minutes.

20. FI had further deposed that Respondent No. 2 had entered the shop of Respondent No. 1 within 15 to 20 minutes of the inspection team reaching the shop. However, to the contrary, SDM had deposed that Respondent No. 2 entered the shop within 5 to 7 minutes of them reaching there.

21. With regard to the issue of man handling and pushing of the team members outside the shop, FI had deposed that both the accused/ respondents man handled him, SDM and FA and the members of the inspection team were pushed out of the shop of Respondent No. 1 after 30 to 45 minutes. However, SDM in his cross – examination deposed that he had not received any injuries on his body and Respondent No. 2 had personally not man handled him. He further admitted that after 5 to 7 minutes he was pushed out of the shop by the gathered crowd.

22. It was noted by the learned Trial Court that the accused/ respondents had denied the entire incident and had taken a stand that, the members of the inspection team had entered the shop and intended to take a sample of “*Dal Arhar*”. He had offered to provide them the bills of the same, which was refused by the members of the inspection team.

23. Although the stand of the accused/ respondents was denied by the FI and FA. The SDM had admitted that he heard noises

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coming from inside the shop wherein Respondent No. 1 claimed that he had the bills pertaining to the food article.

24. However, both the defense witnesses had corroborated the version of the accused/ respondents and had deposed that Respondent No. 1 had tried giving the bills regarding the food articles, but they refused to take the same.

25. The learned Trial Court further noted that the prosecution had failed to join any public witnesses in the investigation of the present case. Though the FI and FA had deposed that they had requested public witnesses, but none had agreed to join the investigation. However, SDM had deposed that no occasion had arisen for the public witnesses to join the investigation.

26. Therefore, in the view of this Court, all the material inconsistencies that came around in the cross – examinations of the prosecution witnesses defeat the case of the complainant that the accused/ respondents had prevented them from taking a sample of “*Dal Arhar*”.

27. Further it is an admitted case that a crowd of 15 to 20 persons had gathered around the shop of Respondent No. 1. From a perusal of their statements, it is clear that no efforts was made by the FI to request public witnesses to join the investigation. The Hon’ble Apex Court in the case of ***Shri Ram Labhaya v. Municipal Corporation of Delhi and Another : (1979) 4 SCC 491***, had held that provisions of Section 10(7) of the PFA Act are mandatory and cast a duty on the Food Inspector to call one or more persons as public witnesses when he takes action. Assuming that few of the people were not forthcoming in order to join the investigation, there could have been few persons who

could have been roped in by the members of the inspection team.

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28. In view of the aforesaid discussion, this Court is of the opinion that there is no infirmity with the impugned judgment passed by the learned Trial Court and the State has not been able to establish a *prima facie* case in its favour and no credible ground has been raised to accede to the State's request to grant leave to appeal in the present case.

29. The leave petition is dismissed in the aforesaid terms.

AMIT MAHAJAN, J

APRIL 9, 2025

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