$~R-36.

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

\+ CRL.A 192/2005

% ***Judgment dated 10.12.2013***

DELHI ADMINISTRATION, DELHI ..... Appellant
Through : Mr.Manoj Ohri, Adv.

versus

SURAJ ..... Respondent
Through

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (*ORAL*)

1. Present appeal has been filed by the petitioner/Delhi Administration against the judgment dated 4.8.2004 passed by learned Metropolitan Magistrate, whereby the respondent has been acquitted.
2. The case of the prosecution as noticed by the trial court is as under:

> "*The present complaint has been filed by Mr.Gopal Singh, Local (Health) Authority, Delhi Administration, Delhi against Mr.Suraj, the accused person, for prosecution of the offence under Section 16 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the PFA Act.)*
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> *The complainant has submitted that on 03.03.1993 at about 15-45 hours, Mr.V.P.S. Chaudhary, Food Inspector purchased a sample of "Paneer", a food article for analysis from Mr.Suraj s/o Mr.Shyam Lal at janta Paneer Bhandar, 1/11, Chhoti Subze Mandi, Janakpuri, New Delhi-58 where the said food article was found*

stored for sale. Mr.Suraj, the accused, was found conducting the business of the said shop at the time of sampling. The sample of paneer was taken from an open tray. The sample of Paneer was taken by cutting it into small pieces with the help of a clean and dry knife in a clean and dry tray and mixing properly. The Food Inspector divided the sample then and there into three equal parts and put them in separate clean and dry bottles and 20 drops of formalin were added to each bottle. Each bottle containing the sample was separately packed, fastened, marked and sealed according to the PFA Act and Rules. Vendor's Notice was given to the accused and the price of the sample was given to him. The panchnama was prepared at the spot. All the documents were prepared by Mr.V.P.S. Chaudhary, Food Inspector, were signed by the accused and the other witness, Mr.A.K. Dhir, Food Inspector. Before starting the sample proceedings efforts were made to join the public witnesses but none came forward. The sample was taken under his supervision. One counterpart of the sample was sent to the Public Analyst in intact condition and the two counterparts were deposited with the L.H.A. in the intact condition. The Public Analyst analysed the sample and found the same to be adulterated and non-conforming to the standards prescribed under the PFA Act and Rules. The opinion of the Public Analyst is as under:

"The sample does not conform to the standard because milk fat of dry matter is less than the prescribed minimum limit of 50%."

3. The case of the prosecution, as noticed by the trial court, was that the respondent has violated the provisions of section 2(ia)(a)(m) and

committed an offence punishable under Section 16(1) read with Section 7 of the PFA Act. After receiving summons, the respondent exercised his right under Section 13(2) of the PFA Act and sent the second counterpart of the sample to the Director, Central Food Laboratory, for analysis. The Director, Central Food Laboratory, vide report dated 24.6.1993 reported that the sample is adulterated as the milk fat on the dry matter basis is 47.5%. Notice under Section 251 Cr.P.C. for the offences under Section 2(ia)(a)(m) of the PFA Act punishable under Section 16(1) read with Section 7 of the PFA Act was framed against the respondent on 9.9.1993 to which he pleaded not guilty.

4. The complainant examined three witnesses. Statement of the respondent was recorded under Section 313 Cr.P.C. Besides recording of the statement, the respondent examined himself as DW-1.

5. As per the grounds raised in the appeal, the impugned order dated 4.8.2004 is bad in law, it is not based upon evidence, the same is based on surmises and conjectures and, thus, the same is liable to be set aside. The second ground urged in the appeal is that it was not necessary to take the sample from all the bricks of paneer in the tray by cutting the entire lot and, thus, the learned trial court has incorrectly held that the sample was not of the entire lot and has erroneously acquitted the respondent. Another ground, which has been raised in this appeal, is that the trial court has wrongly come to the conclusion that there was no positive evidence to show that the knife, with which the paneer was cut, and the tray, in which it was mixed up, were not clean.

6. As far as the first ground raised by the appellant is concerned that it is not necessary to take the samples from all the bricks of paneer the learned trial court has relied upon the decision rendered in ***State of Haryana v. Jagdish***, reported at 1993 (I) All India Prevention of Food Adulteration

Journal 76 wherein it has been held that where there is failure on the part of the Food Inspector to mix the entire contents before taking the sample, the benefit of doubt has to be given to the accused. The trial court has also relied upon the judgment rendered in ***Chaman Lal v. MCD and State***, reported at 1979 (II) Prevention of Food Adulteration Cases 86, wherein it has been held that it is of utmost importance to ensure that three samples are of uniform quality; otherwise the whole value of the check and counter-check is completely lost. It was, therefore, held that in the event of sample not being of uniform and representative character, it would be unsafe to convict the accused.

7. On perusal of testimony of PW-1, V.P.S. Chaudhary, who was a part of the PFA staff, that raided the shop of the respondent, it is clear that out of the eight to ten bricks of panner that were lying in the tray only one brick was chosen as a sample at random and it was cut into small pieces. PW-2, who was also a part of the raiding staff on 3.3.1993 has also deposed on the same lines as PW-1 and stated that one brick of paneer was selected at random and cut into small pieces. PW-3, who was also part of the raiding staff, deposed on similar lines as PW-1 and PW-2 by stating that 750 gms. of paneer in the shape of a single brick was purchased by PW-1 for the purpose of sampling.

8. The evidence of PW-1, PW-2 and PW-3 would thus show that only one brick was taken from the tray of the respondent and the sample was taken solely from that one brick, which was cut into small pieces. The testimony does not suggest that the sample was taken from the entire lot and, thus, it cannot be treated as a representative sample.

9. The trial court has rightly reached a conclusion that the entire lot of bricks of paneer lying in the tray was not cut into pieces and the sample was not taken from the entire lot, which is in contradiction to the provisions of the

PFA Act, as per which the Food Inspector was required to homogenize the entire lot of bricks of paneer and then take a sample from the same. In view thereof, the first ground, which has been urged by the appellant i.e. there was no necessity to take the sample from all the bricks of paneer is without any merit.

10. As far as the second ground with respect to the hygiene of tray and knife is concerned, in my view, it has been correctly observed by the trial court that there is no evidence on record to show that the vessel used for taking the sample was either dry or clean. Furthermore, there is no positive evidence that the knife used to cut paneer sample in the tray was clean and dry.

11. In order to bring home the importance of hygiene of the vessels and instruments used by complainant while collecting the sample, the trial court has relied upon a plethora of judgments. In the case of ***Corporation of Calcutta v. M/s Gopal Chandra Dey and Anri***, reported at 1980 All India Prevention of Food Adulteration Journal 320, it has been held that where a sample of mustard oil had been taken and found to be adulterated, it can be concluded that the sample was not taken in an appropriate manner as there was no scintilla of evidence on record to show, in what manner the mug in question was cleaned. The chheni which was supplied by the seller was an old instrument which appeared not to have been clean at all. Since the same came in contact with the sealed oil, sample of which was taken, it cannot be held beyond doubt that the same was taken properly and in a hygienic manner. The piercing instrument was an old one and the mug was not clean due to which benefit was given to the accused.

12. In the case of ***Sardarmal Jain v. Nagar Nigam and Another***, reported at 1996 (2) Prevention of Food Adulteration Cases 203, the sample of Burfi

taken from the respondent's shop was found adulterated with Rhodamine-B which is a material used in printing process. While taking the sample, the Food Inspector placed the whole lot of "BURFI" on a newspaper which had been given by the servant of the appellant. The possibility cannot be ruled out that the Rhodamine-B used in printing of that newspaper may after coming in contact with the "Burfi" have got transmitted on the "Burfi", the newspaper after becoming soggy, normally transmits its imprint on the other objects coming in contact with it. Hence, the benefit of doubt was given to the accused.

13. Further in the case of ***R.N. Tyagi v. State of Haryana***, reported at 1999 (1) Prevention of Food Adulteraton Cases 311, two crates of carbonated bottles taken from the accused were found to be adulterated with saccharine. The tub in which the contents of the sample carbonated bottles were poured, had earlier been used for emptying saccharine in it. It was concluded that the tub was not cleaned properly as the possibility of tub containing some saccharine deposits cannot be ruled out. The lack of evidence of the tub being cleaned before the contents of the bottles were emptied in the tub creates a doubt. If such a doubt is created, the benefit of it has to go to the accused.

14. In the case of ***Shashi Kant v. State of UP***, reported at 1983 (1) Prevention of Food Adulteration Cases 90, it was held that where the sample was taken out in a "Bhogna" and then weighed and no evidence was examined to show, whose "Bhogna" it was and whether it was clean and dry, the accused could not be convicted.

15. In the case of ***Satyanarain Gupta v. Keshav Deo***, reported at 1984 Prevention of Food Adulteration cases 370, it was held that where the milk was poured into a jug and therefrom in the sample bottles, there was no evidence to prove that the jug was clean and dry and also that the three

sample bottles were clean before the contents were poured into them. The accused could not be convicted.

16. In the case of ***Shew Chander Mathur and Anr. V. State of Assam & Anr.***, reported at 1991 (1) Prevention of Food Adulteration Cases 9, it was held that the prosecution had not proved that the polythene containers had been cleaned before the SUJI LADDOO sample had been weighed and kept therein. In such a scenario the accused is entitled to the benefit of doubt and is to be acquitted.
17. In the case of ***State of Punjab v. Paramjit Singh***, Vol. XIX-1992, The Criminal Law Times 234, it was observed that the witness was required to categorically state that he had used a clean stick for the purpose of measuring and stirring the milk.
18. In ***State of Haryna v. Krishan Kumar***, Vol. XIX-1992, The Criminal Law Times 559, the accused had been acquitted on the ground that there is no evidence that the sample was weighed with clean weighing scales and the possibility of remnants of starch of other items of sweets getting stuck to the sample during the process of weighing it cannot be ruled out.
19. In the case of ***Varghese v. Food Inspector***, reported at 1989 (II) Prevention of food Adulteration Cases 236, it was observed by the Court that it must be the endeavour of the Food Inspector to use clean and dry implements in sampling the articles of food. If unhygienic methods are adopted, it will affect the result of analysis.
20. During the course of hearing, the counsel for the appellant has been unable to show that the aforesaid judgments are not applicable to the facts of the present case.
21. Applying the above law to the facts of the present case and in the light of the testimonies of PW-1, PW-2 and PW-3 it is clearly proved that neither was the sample of Paneer representative in nature as required under the

PFA Act, as it was not taken after homogenization of the entire lot, nor is there any evidence on record to prove good hygiene condition of the instruments used at the time of sampling of Paneer. Therefore, the possibility of the implements used in sampling being unhygienic and hence contaminating the sample cannot be ruled out.

22. In ***Arulvelu and Anr. vs. State represented by the Public Prosecutor and Anr.***, ***2009 (10) SCC 206***, while referring with approval the earlier judgment in ***Ghurey Lal vs. State of Uttar Pradesh, (2008) 10 SCC 450***, the Supreme Court reiterated the principles which must be kept in mind by the High Court while entertaining an Appeal against acquittal. The principles are:-

> "1. 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.
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> 2. The power of reviewing evidence is wide and the appellate court can re-appreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law, but the Appellate Court must give due weight and consideration to the decision of the trial court.
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> 3. The appellate court should always keep in mind that the trial court had the distinct advantage of watching the demeanour of the witnesses. The trial court is in a better position to evaluate the credibility of the witnesses.
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> 4. 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.
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> 5. If two reasonable or possible 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.

> 6. Careful scrutiny of all these judgments lead to the definite conclusion that the appellant court should be very slow in setting aside a judgment of acquittal particularly in a case where two views are possible. The trial court judgment cannot be set aside because the appellate court's view is more probable. The appellate court would not be justified in setting aside the trial court judgment unless it arrives at a clear finding on marshalling the entire evidence on record that the judgment of the trial court is either 'perverse' or wholly unsustainable in law."

23. In my view the trial court has rightly applied the law laid down to the facts of the present case. The grounds, which have been urged before the Court, are without any merit. Accordingly, no grounds are made out to interfere in the judgment passed by the trial court. The appeal is without any merit and the same is accordingly dismissed.

G.S.SISTANI, J

DECEMBER 10, 2013
msr