**Delhi Administration Delhi Vs. Sunil Kumar and anr**

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**Court** : Delhi

**Decided On :** Jan-28-2014

**Judge** : Indermeet Kaur

**Appellant** : Delhi Administration Delhi

**Respondent** : Sunil Kumar and anr

**Judgement** :

R-21 * IN THE HIGH COURT OF DELHI AT NEW DELHI % + Judgment reserved on :

20. 01.2014 Judgment delivered on:

28. 01.2014 CRL.A. 59/2006 DELHI ADMINISTRATION, DELHI Through ..... Appellant Mr. Varun Goswami, APP, Adv. versus SUNIL KUMAR AND ANR. Through ..... Respondents Mr. Sanjeev Narang, Adv. CORAM: HON'BLE MS. JUSTICE INDERMEET KAUR INDERMEET KAUR, J.

1 This appeal has been preferred against the impugned judgment dated 02.9.2004 wherein appellants {Sunil Kumar and Lajwanti, convicted by the learned Metropolitan Magistrate under Sections 7 and 16 of the Prevention of Food Adulteration Act (hereinafter referred to as the PFA Act) had been sentenced to undergo rigorous imprisonment for one year each and to pay a fine of Rs.1000/- each in default of payment of fine to undergo simple imprisonment for two months}. The impugned judgment had set aside the order of the learned

Metropolitan Magistrate; both the respondents have been acquitted. 2 The case of the complainant is that on 10.12.1992 at about 3.15 p.m. Food Inspector Sanjeev Gupta (PW-2) had purchased a sample of atta for analysis from respondent no.1 i.e. Sunil Kumar at M/s Prakash Store FPS No.2093, S. No.51 Khanna Market, Lodhi Colony, New Delhi. The sample was taken from a gunny bag bearing no level declaration; it was taken after proper mixing with the help of clean and dry jhaba. The sample was divided into three equal parts; each parts and its counter-part were packed, fastened and sealed as per PFA rules. One of the said samples were sent to the Public Analyst who found the sample adulterated. 3 This sample was analyzed after eleven days. The analysis took place on 21.12.1992. The result of the analyst reads as under :

Moisture at 130-133 degree C for 2 hrs -10.06% Total ash on dry wt. basis- 1.40% Ash insoluable in dilute Hcl. on dry wt. basis -0.13 Gluten on dry wt. basis -8.44 % Alcoholic acidity with 90% alcohol expressed as H2 SO4 on dry wt.-.0.135% Rodent hair & excreta - nil Insect infestation- 8 living insects in 200 gms. Sample i.e. 40 insets per kg. (examined on 11.12.1992).

4 The Public Analyst examined as PW-4 has opined that the sample was adulterated; it was insect infested. This sample, however, otherwise conforms to the standards as prescribed under the PFA Rules, 1955. 5 Before proceedings further it would be necessary to examine the definition of the word adulterated as contained in the said Act. This definition is contained in Section 2(ia)(f); reads as under:

2.Definitions- In this Act unless the contest otherwise requires.. (ia) Adulterated - an article of food shall be deemed to be adulterated. (f) If the article consists wholly or in part of any filthy, putrid, rotten, decomposed or diseased animal or vegetable substance or is insect-infested or is otherwise unfit for human consumption; 6 The standards which have to be conformed for articles of food are contained in the Rules i.e. the Prevention of Food Adulteration Rules, 1955 (hereinafter referred to as the said Rules). A.18.01 which is the standard prescribed for atta reads as under: A.18.01- ATTA OR RESULTANT ATTA means the coarse product obtained by milling or grinding clean wheat free from rodent hair and excreta. It shall conform to the following standards: (a) Moisture Not more than 14.0 per cent (when determined by heating at 130 degree C-133 degree C for 2 hours (b) Total ash Not more than 2.0 per cent ( on dry weight basis) (c) Ash insoluble in dilute HCL Not more than 0.15 per cent ( on dry weight basis) (d)Gluten ( on dry weight basis) (e) Alcoholic acidity (with 90 per cent alcohol) expressed As H2 SO4 (on dry weight basis) Not more than 6.0 per cent (on dry weight basis) Not less than 0.18 per cent It shall be free from Rodent hair and excreta.

7 In the instant case the sample as per the report of the Public Analyst had met all standard requirements except that it was insectinfested; there were 8 living insets in the 200 gram sample which had been taken. It was opined that the sample was adulterated because it was insect infested with a large number of insects. 8 Learned counsel for the appellant submits that the impugned judgment suffers from an inherent infirmity; it has relied upon the judgment of the Supreme Court reported as 1985 (2) CLR483State Vs. Puran Mal which has been mis-understood by it. It is pointed out that for a food article to be adulterated it must either be insect infested or unfit for human consumption; these words are to be read disjunctively; insect infestation and unfit for human consumption have to be opined in the alternate; it is not necessary to prove both together. It is pointed out that in the present case the Public Analyst has given a clear opinion in favour of the prosecution holding that the presence of 8 worms in the sample of atta had made it adulterated. It was not necessary for the prosecution to additionally prove that this atta was also unfit for human consumption. Learned counsel for the appellant to support his submission has relied upon the judgment of Andhra Pradesh High Court reported as 2004 CRI L.J1849 The Food Inspector, Division-V. Nizamabad Vs. Neela Ramesh. Submission being that the facts in this case are in parimateria with the facts of the instant case and once the sample of atta had been found to be adulterated because of the presence of insects on no count could an order of acquittal have been passed. 9 Arguments have been refuted by the learned defence counsel. It is stated that this Court must be slow in interfering with an order of acquittal. Unless and until there are compelling reasons which border on perversity interference in the order passed by the Sessions may not be called for. To support this submission reliance has been placed upon a judgment of a

Coordinate Bench of this Court decided on 18.02.2009 State Vs. Anil Kumar Sodhi and Anr. Reliance has also been placed upon the judgment of Puran Mal (supra) as also a judgment of Bench of this court report as AIR1980 Delhi 224 New Delhi Municipal Committee Vs. Hardev Singh & Ors.. Submission being that in this case wherein in the sample of Besan the Analyst had reported that there was a very high insect infestation but details of as to whether the insects were living or dead not having been given, such a report being vague the acquittal of the appellant was confirmed. It is pointed out that in this case also the impugned judgment on no count calls for any interference. 10 As noted supra learned Metropolitan Magistrate had convicted the appellant. The impugned judgment has set aside the order of conviction. It has acquitted the appellants. There is doubt to the proposition of law which has been cited by the learned counsel for the respondent. The principles that an appellate court, while dealing with an acquittal order have to follow were reiterated by the Apex Court in 2007 4 SCC415Chandrappa Vs. State of Karnataka. These guidelines read as under:

(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 interefere 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.

11 It is on this touchstone that the argument of the respective parties have been heard and appreciated. 12 The Public Analyst had noted that there were 8 live insects in the 200 gram sample of atta which had been taken. Other standards and parameters as per A.18.01 of the said Rules were within normal limit. This is an admitted position. 13 In the judgment of Puran Mal (supra) what had weighed in the mind of the Apex Court while maintaining the order of acquittal was that there was no opinion by the Public Analyst in his report stating that the sample of Lal Mirchi was either insect infested or on account of worms the sample was unfit for human consumption. 14 The impugned judgment had quoted with approval the following two paragraphs from Puran Mal (supra). They read herein as under:

Even if the nine worms found by the Public Analyst in the sample are considered to be insects, the certificate of the Public Analyst does not support the case of the prosecution that the lal mirchi powder was adulterated, for the Public Analyst has not expressed his opinion that the lal michi powder was either worm-infested or insect-infested or that on account of the presence of the meal worms the sample was unfit for human consumption. Even if worms and insects are the same the appellant is not out of difficulty in this case. As already stated the Public Analyst has found in the sample only nine living meal worms and he has neither stated that it is insectinfested nor that it is unfit for human consumption on account of the presence of the meal worms nor that it is otherwise unfit for human consumption. 15 In the instant case, PW-4 (Public Analyst) in her cross- examination admitted that since there are many species of insects it is not possible to identify specific species. The Food Inspector was examined as PW-1. He admitted that ants are insects; he had not seen ants travelling on the atta; he could not say if eggs of insects are visible or invisible to the naked eye. PW-2 has also joined PW-1 in the sample collection. In his cross-examination he stated that he could not say if the eggs were stuck to the empty bottle. 16 Further facts show that the sample was taken on 10.12.1992; it was analyzed after 11 days i.e. on 21.12.1992. 17 In (1975) 1 FAC281Mukund Lal Vs. State where a sample of maggajkeddu remained unexamined and unanalyzed for 12 to 13 days it was held that there was a possibility that the sample became infested with insects during that period. The court had reiterated that the possibility of the sample food article being infested with insects after it was purchased by the Food Inspector in the intervening period cannot be ruled out. It was noted that an egg normally takes 1 to 14 days to develop into an insect; larvae are a second stage of eggs and their incubation is 4 to 7 days; the presence of eggs in an article cannot make the article of food insect-infested. Thus the arguments of the learned counsel for the respondents that the eggs in the instant case after the seizure of sample atta had developed into insects in this intervening period of 11 days cannot be ruled out. This is also clear from the deposition of the witnesses as noted above. There was admittedly no positive evidence that the Food Inspector had seen living worms or insects at the time of taking the sample. It is also an admitted position that the incubation period for an egg to become an insect is 14 days; for larvae which is the second stage it is 4-7 days. 18 Sample in this case was analyzed after 11 days. Larvae having matured into insects in this intervening period as noted supra was not ruled out by any positive evidence. It was bounden duty of the prosecution to rule out this possibility by producing expert opinion on the file which has not been done. Benefit of this must accrue to the accused. 19 In 1973 Cri LJ1859 Municipal Corporation of Delhi Vs. Ram Sarup Shivnath Rai where the Public Analyst in his report had stated that the sample of Besan was very highly insect infested and was, therefore, adulterated, a Bench of this Court while noting that this report suffers from vagueness had set aside the conviction. It has been noted that the words very highly infested are relative words and the report should have specifically and with scientific precision stated that the foreign ingredient was either living or dead insects or larva or eggs were found in the article. This not having been done; this report was not relied upon. 20 In another judgment reported as State of Maharashtra Vs. Jathala Devshi and other 1979(i) 158 it was held that: Mr.Ganatra rightly urges that there must be evidence to show that these insects were present on the date the sample was taken. He contends that is living larvae were visible to the naked eye of the analyst, the Food Inspector who collected the sample on 9.1.1973, ought to have also seen them and in as much as he has made no such note, the report would be insufficient to hold that such insects were present when the sample was collected.

21 In this background the acquittal order passed by the Sessions Judge does not suffer from any infirmity. It is not a case where miscarriage of justice has occurred calling for any interference in the impugned order. 22 Appeal dismissed. INDERMEET KAUR, J JANUARY28 2014 ndn