

**State Vs. Deepak Bansal**

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**Court :** Delhi

**Decided On :** Mar-25-2014

**Judge :** Indermeet Kaur

**Appellant :** State

**Respondent :** Deepak Bansal

**Judgement :**

\* IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Judgment:- 25.03.2014. + CRL.A. 197/2006 STATE Through ..... Appellant Ms. Kusum Dhalla, APP versus DEEPAK BANSAL ..... Respondent Through Mr. Puneet Mitta, Mr. M.C. Sanghi, Mr. Ankit Goel, Mr. Nitin Sharma and Mr. Ankur Aggarwal, Advs. CORAM: HON'BLE MS. JUSTICE INDERMEET KAUR INDERMEET KAUR, J.

(Oral) 1 This appeal is directed against the impugned judgment dated 25.10.2004 wherein the respondent Deepak Bansal has been acquitted of the offence under Section 16 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the PFA Act). 2 Record shows that on 23.10.1997, a sample of Chenna was purchased by the Food Inspector (F-1) from the shop of the respondent which was in the name Madhuban Sweets, 3 MJ Sweet Centre, Shop No.10 Madhuban Road, Shakarpur. The cost of the sample was offered to the respondent but the respondent refused to take the money stating that the Chenna was not for sale; it was being used for preparation of sweets. The Food Inspector after having taken the sample divided it into three parts putting them into three clean and dry bottles;

20 drops of formalin were added in each of the bottles. 3 In the course of investigation, the sample was sent to the Public Analyst who gave its report on 13.11.1999. The said report reads herein as under:

Milk fat on dry weight basis- 39.13% Moisture- 67.02% B.R. of the extracted fat- 43 Baudouin test of the extracted fat- Negative Test for colour- Negative Test for starch- Negative Test for sugar- Negative and am of the opinion that the sample does not conform to the standards laid down under item No.A.11.02.05 of Appendix B of the PFA rules because the milk fat of the dry matter is less than the minimum prescribed limit of 50 % 4 The milk fat on dry weight basis was 39.13%. The moisture content was 67.02%. The sample was adulterated in terms of item No.A.11.02.05 of Appendix B of the PFA Rules because the milk fat of the dry matter was less than the minimum prescribed limit of 50% 5 . During trial, the respondent exercised his statutory right under Section 13 (2) of the PFA Rules; a second counter part of the sample was sent to the Central Food Laboratory (CFL). The CFL analyzed the sample and submitted its report on 11.04.1998. The said report reads herein as under:

Physical Examination Milk fat: : White soft mass 30.4% (of dry matter) Milk solids not fat: Moisture 66.1% Cane Sugar: Absent Starch: Absent Formalin: Present Urea: Absent Vegetable Oil: Absent Added colouring mater: Absent Residual pesticides (in ppm): HCH OP-DDT: Aldrin: HCH PP-DDT Heptachlor: HCH PP-DDE Dieldrin: HCH PP-TDE DDT (in combination) Opinion: The sample of Chhana is adulterated.

6 The milk fat content was 30.4% of dry matter and moisture was 66.1%. The same was noted to be adulterated. 7 On the basis of the aforementioned evidence, the Magistrate had convicted the respondent. The learned Sessions Judge had however acquitted the respondent noting that the sample being a milk product i.e. Chenna had not been refrigerated during the continuous period between 23.10.1997 (when the sample was taken) to 04.03.1998 (when the sample was sent to the Director, CFL) and in the absence of which the sample was not fit for analysis as has been laid down by the Apex Court in case of Chanan Lal Vs. State 1972 Prevention of Food Adulteration Cases 293. The Sessions Judge had given

benefit of doubt to the respondent and acquitted him. 8 It is this judgment which has been impugned by the State. 9 On behalf of the State, it has been submitted that both the samples were adulterated and the report of the Public Analyst and the Director, CFL have confirmed this fact. It is pointed out that the margins between the two reports are minimal; further submission being that the sample was not putrefied; there was no fungal growth upon it and as such nonrefrigeration of the food article did not affect its contents. The impugned judgment acquitting the respondent calls for an interference. It necessarily has to be set aside. 10 Arguments have been refuted by the learned counsel for the respondent. It is pointed out that on no count, does the impugned judgment call for any interference. 11 The present case is admittedly a case of milk product being paneer/Chenna; the standards of which are laid down in A.11.02.05. The said standards read herein as under:

A.11.02.05-CHHANNA OR PANEER means the product obtained from cow or buffalo milk or a combination thereof by precipitation with sour milk, lactic acid or citric acid. It shall not contain more than 70.0 per cent moisture, and the milk fat content shall not be less than 50.0 per cent of the dry matter.

12 The Supreme Court in the case of Chanan Lal (supra) had the occasion to examine a sample of paneer. They were dealing with the evidence of Dr. Narang who was a member the Central Committee for Food Standards set up by the Government of India. The Apex Court in para 13 of this judgment had inter-alia noted as under:

On the basis of the abovementioned evidence, it is safe for me to assume that the sample of Panir to which requisite drops of formalin have been added and which is kept in a refrigerator would remain fit for analysis for about one month

1. Thus a sample of paneer to which requisite drops of formalin have been added would remain fit for analysis for a period of one month and that too if it is kept in a refrigerator. 14 In this case, it has come on record (it is also not disputed by the learned public prosecutor) that the sample of Chenna which had been picked up from the shop of the respondent was never refrigerated between the period from 23.10.1997 to 04.03.1998 i.e. for almost four months. The sample had thus lost its

shelf-life; this had weighed in the mind of the Sessions Judge while giving benefit of doubt to the respondent. The Court had noted that Chenna is another form of paneer and analysis can be correctly given only if it is done within 30 days of the taking of the sample and that also if the sample is kept in a refrigerator. 15 In this case, the sample was not kept in the refrigerator for the aforementioned period. It was thus not fit for analysis. It was correctly noted that there was an inordinate delay in filing the complaint; in this case, the complaint was filed on 20.02.1998 after the sample had been drawn on 23.04.1997 this had frustrated the right of the respondent under Section 13 (2) of the PFA Act as the sample had become unfit for analysis. 16 In this background, the Director, CFL noting that the sample was not putrefied would not be an argument which could come to the aid of the appellant. It was obligatory upon the Food Department to have refrigerated this sample of Chenna if it indeed wanted a fair investigation. The judgment of the trial Court is sustainable on this ground alone. 17 That apart in view of the law laid down by the Apex Court in case of Kanshi Nath Vs. State 2005 (3) 1637 which has been followed by a Bench of this Court in 2010 (2) JCC1250 State Vs. Ramesh Chand and 2012 (4) JCC2688 State Vs. Satish Kumar wherein the proposition that where there are marked variations in the report of the Public Analyst and the Director, CFL; which being significant would entitle a benefit of doubt to the appellant. 18 In this case, the report of the Public Analyst has noted milk fat on dry weight basis was 39.13%; the moisture content was 67.02%. The Director CFL had noted milk fat as 30.4% and moisture content as 66.1%. Variation being more than 0.3% was significant. Moreover the food article is a milk product; which by its very nature is perishable; the Director, CFL had given its report on 11.04.1998. The summer months had also set in. 19 In this background, on both counts i.e. the sample being a milk product and not having been refrigerated from 23.10.1997 to 04.03.1998 as also the fact that the report of the Public Analyst and report of the Director, CFL were at marked variance on material points, the order of acquittal passed by the Sessions Judge against the respondent suffers from no manifest error or perversity. It calls for no interference. Appeal is without any merit. Dismissed. INDERMEET KAUR, J MARCH25 2014 A