

**Kanshi Nath Vs. State**

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**Court :** Delhi

**Decided On :** Sep-19-2005

**Reported in :** 124(2005)DLT413; 2005(84)DRJ506

**Judge :** Badar Durrez Ahmed, J.

**Acts :** [Prevention of Food Adulteration Act, 1954](#) - Sections 2, 7, 13(2), 13(3), 13(5) and 16; Prevention of Food Adulteration Rules, 1955 - Rule 53

**Appeal No. :** Crl. Rev. 302/2003

**Appellant :** Kanshi Nath

**Respondent :** State

**Advocate for Def. :** Sunil Sharma, Adv.

**Advocate for Pet/Ap. :** R.N. Mittal,; Pawan Kumar Mittal and; Shahida Begam, Ad

**Disposition :** Petition allowed

**Judgement :**

**Badar Durrez Ahmed, J.**

1. This revision petition is directed against the judgment and/or order dated 17.04.2003 passed by the learned Additional Sessions Judge whereby the petitioner's appeal against the judgment dated 29.10.1990 and order on sentence

dated 31.10.1990 was dismissed. By the judgment dated 29.10.1990, the Metropolitan Magistrate, New Delhi, had convicted the petitioner for violation of Section 2(ia)(m) of the [Prevention of Food Adulteration Act, 1954](#) (hereinafter referred to as the 'PFA Act') which is punishable u/s 7/16 of the PFA Act. The petitioner was accordingly sentenced on 31.10.1990 by the said Metropolitan Magistrate to undergo six months RI and a fine of Rs.3,000/- was also imposed on him.

2. It is alleged that on 09.11.1987, Food Inspector S.K. Nagpal, took a sample of Dhania powder from the petitioner Kanshi Nath who was carrying on business under the name and style of M/s Kanshi Nath Motilal at 6549C, Khari Baoli, Delhi. It is the case of the complainant that the sample was divided into three equal parts after homogenising it and that the process of mixing, sealing, fastening and packing, etc. was carried out in accordance with the provisions of PFA Act and Rules made there under. One of the counterparts of the sample was sent to the Public Analyst for analysis. The report of the Public Analyst dated 17.11.1987 disclosed the result of the analysis as under:-

'Moisture' 6.8%  
'Total Ash' 8.32%  
'Ash insoluble in dil. HCL' 1.47%  
'Test for coal tar dye' Negative  
'Test for Sodium Chloride' Positive  
'Sodium Chloride content' 2.56%  
'Microscopy EX 'Dhania Structure' seen

3. On the basis of the aforesaid analysis, the Public Analyst was of the opinion that the sample of Dhania powder was adulterated because 'total ash exceeds the prescribed maximum limit of 7.0%'. As the petitioner had desired to get the sample analysed by the Central Food Laboratory invoking the provisions of Section 13(2) of the PFA Act, the same was sent to the Central Food Laboratory, Mysore for analysis. Certificate No.150/PFA/88 issued by the Director, Central Food Laboratory, Mysore 27.05.1988 indicated the test results as under:-

1. Physical appearance = Pale brown coarse powder, free from insect infestation.  
2. Moisture = 5.82% by weight  
3. Total Ash = 9.86% by weight  
4. Ash insoluble in Dil. Hcl = 1.68% by weight  
5. Added artificial coloring matter = Absent  
6. Test for the presence of added starch (I 2 test) = Negative  
7. Test for the presence of added common salt (Agony 3 test) = Positive  
8. Quantity of common salt present in

the sample (as NaCl) = 3.4% by weight<sup>9</sup>. Microscopic examination of the sample revealed the presence of structure of coriander infested with mould.'

In view of the aforesaid test results, the Director, Central Food Laboratory, was of the following opinion:-

'And I am of the opinion that the sample does not conform to the standards laid down for coriander (Dhania) powder under the provisions of PFA 1954 and rules thereof, in that:-

- (a) Total Ash contents exceeds the maximum specified limit of 7.0% by weight
- (b) The amount of ash insoluble in dil. Hcl exceeds the maximum specified the limit of 1.5% by weight.
- (c) It is not free from fungal infestation.
- (d) It is not free from foreign ingredients identified as common salt.'

4. The Director, CFL, who had conducted the test analysis, was examined as CW-1. Mr Mittal, who appeared on behalf of the petitioner raised the following three issues:-

1) He contended that common salt (NaCl) is a class I preservative as indicated in Rule 53 of the Prevention of Food Adulteration Rules, 1955 (hereinafter referred to as 'the PFA Rules'). He submitted that since common salt was a class I preservative, its addition to any food article was not restricted unless otherwise provided in the rules. He also contended that as Sodium Chloride (common salt) is regarded as a part of ash, it must be deducted from the total content of ash. And, if that were done, the content of ash in the sample taken would be within the prescribed limits of the standards given in Appendix 'B' of PFA Rules in respect of coriander (Dhania) powder (A.05.08.01). The total ash prescribed in the standard was to be not more than 7.0% by weight. It was his contention that if the content of Sodium Chloride (common salt) was deducted from total ash, then as per the report of the Director, CFL, the content of total ash would become 6.4% by weight (9.86% - 3.4%). Similarly, in respect of the report of the Public Analyst, the ash

content after deducting Sodium Chloride would amount to 5.76% (8.32%-2.56%). therefore, according to Mr Mittal, the sample would clearly conform to the standards prescribed under the PFA Rules insofar as the total ash content was concerned. For this proposition, he referred to the cross-examination of the Director of CFL itself wherein the said Director has stated that 'Sodium Chloride is an inorganic salt contributes towards total ash only'. The Director further stated in cross-examination: 'It is correct to suggest Sodium Chloride is Class I preservative. If Sodium Chloride is subtracted (3.4%) from total ash content of 9.86% by weight it meets the requirement of total ash content of 7% by weight as per PFA Act and Rules'. Mr Mittal also relied upon the decision of the Bombay High Court in State of Maharashtra v. Bhalachandra Gangadhar Akul and Anr: 1989 (I) FAC 26 to indicate that the contents of Sodium Chloride ought to be subtracted from the total content for the purpose of seeing whether the sample conforms to the standard prescribed under the PFA Rules or not. In that case, the Bombay High Court was considering 'Chilly Powder' and it permitted deduction of the percentage weight content of common salt from the total Ash content for determining whether the standard prescribed of 8% Ash by weight was complied with or not. This was so held on the ground that common salt was a class I preservative in terms of Rule 53 of the PFA Rules.

II) The next ground on which Mr Mittal assailed the judgments of the courts below was that the samples sent to the Public Analyst and the Director, CFL were not representative samples. therefore, they could not be relied upon at all. Consequently, he submitted, the conviction based on the test reports of such samples was bad and the petitioner was entitled to be acquitted. To substantiate this submission, Mr Mittal drew my attention once again to the cross-examination of the said Director. A specific query was put to the said Director in the following terms:

'If the sample is representative and is analysed by two experts, how much can be variation in Sodium Chloride content which have been determined quantitatively ?'  
The answer given by the said Director was:-

'The variation may be .3%.' This was also reiterated by him in the following words:-

'If the sample is representative and is examined by two different experts under ideal conditions the total analytical variation may be .3%.' Elaborating on this, Mr Mittal submitted that as per the evidence of the expert'Director, CFL'if the variation in the Sodium Chloride content in the two reports are examined, then it would be apparent that the variation is more than 0.3%. thereforee, the samples would have to be discarded as being non-representative. He further submitted that if the same standard of 0.3% variation was taken, then even comparing the total ash content given by the two reports would make it clear that the samples were non-representative. Accordingly, he submitted that no conviction could be founded on the basis of non-representative samples and the petitioner was liable to be acquitted. He also cited the following decisions in support of this proposition:-

i) MCD v. Bishan Sarup: 1992: 1972 FAC 273

In this case, a Full Bench of this Court held that once the Director of Central Food Laboratory issues a certificate in terms of Section 13(5) of the PFA Act, the certificate is final and conclusive evidence of the facts stated therein. But this presumption attaching to the certificate is 'only in regard to what is stated in it as to the contents of the sample actually examined by the Director and nothing more.' The Full Bench categorically held that: 'Even after this certificate, it is open to the accused to show that in the facts of a given case and on the concrete objective grounds that he may prove on the record the sample sent for analysis to the Director could not be taken to be a representative sample of the article of food from which it is taken and if this contention is found to be correct, conviction based on the certificate will not be sustainable.';

ii) Chaman Lal v. MCD and State: 1979 (II) FAC 86 ;

iii) MCD v. Lala Ram & Anr: 1980 (II) FAC 140 ;

iv) Municipal Corporation, Khandwa v. Lakhanlal: 2001 FAJ 343 .

III) The Third and final argument advanced by Mr Mittal was that the sample number of the report of the Public Analyst and that of the Director, CFL did not match and, thereforee, the identity of the samples themselves became doubtful

and it could not be said that these samples were of the item that was lifted from the petitioner and, therefore, in view of this discrepancy, the conviction based on conflicting reports having different numbers could not be sustained. He relied upon the decision of a learned Single Judge of this Court in the case of Ramesh Gupta v. State: 2001 FAJ 499. He pointed out that the sample number given in the report of the Public Analyst was:- 'SKN/680/87', whereas the sample number indicated in the certificate issued by the Director, CFL disclosed the sample number to be-'lqdqu/680/87'. According to him, this difference in the numbers was sufficient to put the conviction in doubt and entitling the petitioner to an order of acquittal.

5. In response to these arguments, Mr Sunil Sharma, who appeared for the respondents, argued as under:-

1) While admitting that Sodium Chloride was a class I preservative, Mr Sharma submitted that two questions which arise for consideration are'(1) Was Sodium Chloride, in point of fact, used as a preservative in the Dhania Powder that was being sold by the petitioner? (2) Even if it was so used, did the proviso to Rule 53 itself require that after the class I preservative was added to a food article, the food article must still conform to the standards prescribed under A.05.08.01 in Appendix B to the said Rules? Mr Sharma drew my attention to para 6 of the impugned judgment and/or order of the learned Addl Sessions Judge wherein, it is noted that the petitioner in his deposition had stated that first a sample of Haldi powder was taken by the Food Inspector Rajesh Kumar with the help of a Jhaba. After the sample was taken, the Jhaba was kept in a bag containing salt. Thereafter, the Food Inspector S.K. Nagpal took the sample of Dhania powder with the same Jhaba without cleaning the same. According to the petitioner, the salt that was introduced into the sample of Dhania powder was on account of the same sticking to the Jhaba. In view of this statement of the petitioner, the learned counsel, Mr Sunil Sharma, submitted that it is clear that the common salt which was found in the sample of Dhania lifted from the petitioner's shop was not used as a class I preservative as such and, therefore, the benefit under Rule 53 cannot be attracted in the present case. Mr Sharma also submitted that the report of the Director, CFL also indicated that the common salt which was found in the sample was regarded as a 'foreign ingredient' and not as a preservative. therefore, there

was no question of deducting the salt content from the total ash as suggested by the learned counsel for the petitioner.

II) In respect of the argument with regard to the samples not being representative, Mr Sunil Sharma submitted that the variations in the reports were not very large and the cases where variations have resulted in the courts declaring them to be non representative samples are those where the differences were alarming or vast. He further submitted that section 13(3) of the PFA Act also makes it clear that once the Director's report is sought, the certificate issued by the Director shall supersede the report given by the Public Analyst. In this view of the matter, Mr Sharma contended that once the Director's certificate is placed on record, the Public Analyst's report is to be completely ignored. He cited the decision of the Supreme Court in the case of Calcutta Municipal Corporation v. Pawan Kumar Saraf and another: : 1999 CriLJ1125 . The following decisions cited by Mr Sharma are not apposite:

- i) B.M.L. Garg and Anr v. UT, Chandigarh: 1987 (I) FAC 58;
- ii) Charanji Lal v. State of Punjab: 1997 FAC 850;
- iii) Rajindra Chopra v. Delhi Admin: 1985 (I) FAC 43;
- iv) In the Matter of Ayyavoo: 1993 (1) FAC 97;
- v) Jagdish Prasad and Anr v. State of U.P.: : 1999 CriLJ602 ;
- vi) M.B. Joshi v. State of Maharashtra: 2000 (III) AD SC 418.

III) As regards the argument of the difference in the numbers of the samples, Mr Sharma submitted that this is not a difference at all and, in any event, the same is easily explainable. He submitted that the No.'SKN/680/87' appearing in the report of the Public Analyst and the No."lqdqu/680/87' appearing in the certificate issued by the Director, CFL are not different. It is only that the initials 'SKN' have been written in Hindi as 'lqdqu' which stands for the name of the Food Inspector, SK Nagpal who took the sample. therefore, according to Mr Sharma, this is no difference at all and, in any event, it is not a difference which would give rise to

any doubt as regards the sample being the very sample which was taken by the Food Inspector from the petitioner. In this manner, the learned counsel for the respondent submitted that this was a case where this court ought not to interfere with the findings or the sentence recorded by the courts below.

6. Taking the last argument with regard to the difference in numbers of the sample, it appears to me that on facts there is no substance in what is contended by Mr Mittal. The decision in the case of Ramesh Gupta (supra) which was relied upon by Mr Mittal, would not apply in the factual matrix of the present case. In that case, the number disclosed in the report of the Public Analyst was 'OSA/52-87' and the number on the sample sent to the Central Food Laboratory was 'OSA/57-87'. The court found this discrepancy substantial enough not to sustain the conviction, however, this was based upon the arguments raised by the counsel as indicated therein in para 2 thereof to the following effect:-

'No conviction, therefore, can be sustained on the report of the Central Food Laboratory or the Public Analyst, since no Explanationn has been given as to how the samples had different numbers. The identity of the samples, therefore, becomes doubtful.'

In the present case, the difference is only in the English and Hindi versions. And, it is also explained that the initials 'SKN' in English or 'lqdqu' in Hindi stand for one and the same thing, i.e., the initials of the Food Inspector S.K. Nagpal. With this Explanationn forthcoming, I am in agreement with Mr Sharma that, in reality, there is no discrepancy in the numbers and do not agree with the submission of Mr Mittal.

7. Coming to the next controversy, i.e., with regard to the representativeness of the sample, it is clear from the Full Bench decision in MCD v. Bishan Sarup (supra) that if the samples are not representative, then any test report based on it would not indicate the true position. That being the case, a conviction cannot be founded on such a test report. Upon an examination of the cases mentioned by Mr Mittal, it also becomes clear that although in terms of Section 13(3) of the PFA Act, the Director's certificate would supersede the Public Analyst's report, the difference in the two can still be looked into by the courts for ascertaining as to

whether the samples were representative or not. Mr Sharma had placed reliance on the Supreme Court decision in Calcutta Municipal Corporation (supra) and particularly on paragraph 14 thereof which reads as under:-

'14. Thus the legal impact of a certificate of the Director of Central Food Laboratory is three-fold. It annuls or replaces the report of the Public Analyst, it gains finality regarding the quality and standard of the food article involved in the case and it becomes irrefutable so far as the facts stated therein are concerned.'

A careful reading of the Supreme Court decision reveals that the certificate of the Director, CFL supersedes the report of the Public Analyst and is conclusive as regards the quality and standards of the sample tested. There is no quarrel with this and there can be none. But, this does not enable us to detract from the ratio of the Full Bench decision of this court in the case of MCD v. Bishan Sarup (supra) that even after such a certificate is issued by the Director, CFL, it would still be open to the accused to establish, if he can do so on concrete grounds, that the sample tested was not a representative one. To this extent, the argument raised by Mr Sharma that once the certificate of the Director, CFL is obtained, then that is final and conclusive and the Public Analyst's report cannot be looked into at all for any purpose whatsoever, is not quite tenable. If the variation in the two reports is substantial enough, then the Public Analyst's report can certainly be looked into to establish this variation so as to support the contention of the petitioner that the sample was not representative. As indicated above, the Director, CFL who was examined as CW-1 in cross-examination, has clearly stated that if the content of common salt as quantified by the two experts would have a variation of more than .3%, then the samples would not be representative. This is an opinion of an expert and one has to go by it. In the facts of the present case, we find that the variation, as indicated above, is more than .3%. thereforee, on the facts of the present case, it can be said that the variation is beyond the acceptable range and would clearly imply that the samples were not representative. In view of this finding and in the background of the law which is well settled, no conviction can be sustained.

8. As regards the third controversy, i.e., with regard to the deduction of the content of Sodium Chloride from total ash, I find that in 1979, the Act was amended and a

proviso to Rule 53 was added. The decision of the Bombay High Court cited by Mr Mittal which indicated that the content of Sodium Chloride has to be deducted, being class I preservative, from the total ash content is a decision rendered in respect of offences prior to the amendment of 31.01.1979. This is a fact indicated in that decision itself. The proviso which was brought in by this amendment stipulates that addition of class I preservatives in any food is not restricted, unless otherwise provided in the rules provided that the article of food to which a class I preservative has been added conforms to the specifications laid down in Appendix B. An argument has been raised that the article of food must conform to the specifications laid down in Appendix B even after the addition of a class I preservative. Implying thereby that the content of common salt, a class I preservative, must also be included in determining whether the article of food conforms to the specifications laid down in Appendix B. This appears to be a plausible argument. However, in view of the conclusion that I have arrived at in respect of the samples not being representative, I do not think it necessary to examine this question.

9. From the aforesaid discussion, it is apparent that the samples were not representative and, therefore, conviction cannot be founded on the test reports thereof. That being the position, the petitioner is entitled to be acquitted. Accordingly, the conviction (and sentence) of the petitioner is set aside and he is acquitted of all charges. The judgment under challenge is also set aside. This revision petition stands allowed.