

A DELHI ADMINISTRATION

v.

VIDYA GUPTA

(Criminal Appeal No. 625 of 2018)

B APRIL 24, 2018

[S. A. BOBDE AND L. NAGESWARA RAO, JJ.]

C *Prevention of Food Adulteration Act, 1954 – s.7 – Sample taken from the Ghee that was stored for the purpose of making jalebis – Allegation that the sample of Ghee did not conform to the standards of Ghee as per the Act – Conviction under ss.2(ia), (a), (c) and (m) punishable under s.16(1)(a) r.w. s.7 of the Act – Acquittal by first appellate court – High Court declined to set aside acquittal on the ground that sample of Ghee was not meant for sale but it was meant to be used merely as an ingredients in the preparation of*
D *sweets which in turn were meant for sale – On appeal, held: s.7 prohibits the storing of adulterated food notwithstanding the fact that such adulterated food is itself not offered for sale, but is used in making some food which is offered for sale – Thus, whether the adulterated food is stored for sale, or such food is stored for making some other food which is sold, such storing is an offence – Acquittal*
E *of the respondent is set aside – However, sentence is confined to the period already undergone since the accused is now about 70 years old and the proceedings commenced in 2004 and the business has closed down since.*

F *Prevention of Food Adulteration Act, 1954 – s.13 – Variance between the reports of Public Analyst and the Director, CFL – Evidentiary value of certificate from the Director – Held: The law accords greater importance to the report from the Director that it prohibits the Court from continuing with the prosecution until the receipt of the certificate from the Director – Sub-section 3 of s.13*
G *clearly attributes a higher evidentiary value to the certificate from the Director when compared to the report given by the PA – The proviso to sub-Section 5 provides that the certificate from the Director shall be final and conclusive evidence of the facts stated therein – Thus, the report of the PA loses any significance in the*
H *proceedings as a piece of evidence.*

Allowing the appeal, the Court

A

HELD: 1. The explanation to Section 7 clearly lays down that if a person stores any adulterated food for the purpose of manufacturing from it any article of food for sale, he shall be deemed to store adulterated food. The purpose of this provision is clear, it prohibits the storing of adulterated food notwithstanding the fact that such adulterated food is itself not offered for sale, but is used in making some food which is offered for sale. It is clearly to prevent the adulteration of food and its sale to the public even when it is meant to be used for preparing some other food which is offered for sale. Thus, either way, whether the adulterated food is stored for sale, or if such food is stored for making some other food which is sold, such storing is an offence. Parliament has rightly assumed that no one, who offers food for sale, would store food which is not meant to be used in some food meant for sale. [Para 6][321-G-H; 322-A-C]

B

C

2. The law accords such great importance to the report from the Director that it prohibits the Court from continuing with the prosecution until the receipt of the certificate from the Director. Sub-section 3 of Section 13 clearly attributes a higher evidentiary value to the certificate from the Director when compared to the report given by the PA. The proviso to sub-Section 5 provides that the certificate from the Director shall be final and conclusive evidence of the facts stated therein. Thus, the report of the PA loses any significance in the proceedings as a piece of evidence. Therefore, there is no reason for the Court to refer to the contents of the report of the PA. Where there is no reason to refer to its contents of the report of the PA, there is even less reason to refer to the variation between the report of the PA and the Director. The Court is enjoined by law to consider the contents of the certificate of the Director only. [Paras 9, 10][325-A-B, E-H]

D

E

F

3. The finding of the High Court that the variation between the two reports was 0.76% and therefore more than 0.3% as permitted in *Ram Singh's* case is completely unsustainable and liable to be set aside. It is thus clear that the accused was not entitled to the acquittal and the acquittal is liable to be set aside. However, the proceedings commenced in the year 2004, the business has closed down since and the accused is now about 70

G

H

A **years old. In these circumstances, the sentence is confined to the period already undergone. [Para 12][326-E, G; 327-A]**

Calcutta Municipal Corporation v. Pawan Kumar Saraf and Another (1999) 2 SCC 400 : [1999] 1 SCR 74 – relied on.

B *Kanshi Nath v. State 2005 (2) FAC 219 ; State v. Mahender Kumar & Ors. 2008 (1) FAC 177 – not good law.*

C *Municipal Corporation of Delhi v. Laxmi Narain Tandon (1976) 1 SCC 546 : [1976] 2 SCR 1050 – held inapplicable.*

State (Delhi Administration) v. Ram Singh and Another (2009) 1 FAC 371 ; Municipal Corporation of Delhi v. Kacheroo Mal (1976) 1 SCC 412 : [1976] 2 SCR 1 – referred to.

D

Case Law Reference

	(2009) 1 FAC 371	referred to	Para 2
	[1976] 2 SCR 1	referred to	Para 4
E	[1976] 2 SCR 1050	held inapplicable	Para 7
	[1999] 1 SCR 74	relied on	Para 11
	2005 (2) FAC 219	not good law	Para 12
	2008 (1) FAC 177	not good law	Para 12

F

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 625 of 2018.

From the Judgment and Order dated 20.12.2013 of the High Court of Delhi at New Delhi in CrI. L. P. No. 764 of 2013.

G

Aman Lekhi, ASG, Aman Sinha, K. L. Janjani, Bharat Singh, B. V. Balaram Das, Advs. for the Appellant.

Tripurari Rai, Vikrant Yadav (for M. C. Dhingra), Advs. for the Respondent.

H

The Judgment of the Court was delivered by

A

S. A. BOBDE, J. 1. Leave granted.

2. The accused, a vendor of M/s New Bikaner Sweet Center was in charge of the day to day business of the shop¹. On 08.04.2004 at about 7.00 PM, Food Inspector Shri S.K. Sharma purchased a sample of Ghee, a food article for analysis from the shop of the accused where the said food article was stored for sale.

B

The sample consisted of approximately 600 gms of Ghee taken from an open tin bearing no label or declaration, after proper mixing with the help of a clean and dry long spoon. The sample was divided into three equal parts and stored separately as per the requirements in three separate clean and dry glass bottles under the supervision and direction of Shri B.M. Jain, SDM/LHA. The vendor's signature was obtained on the LHA slip and the wrapper of the sample bottles and the Panchnama was prepared on the spot.

C

One counterpart of the sample² was sent to the Public Analyst, Delhi (hereinafter referred to as "PA"), and the other two counterparts were deposited with the LHA. The PA opined that the sample exceeds the maximum Butyro Refractometer (hereinafter referred to as "BR") reading limit of 43 and has a Reichert value of less than 28. The sample also tested positive for Baudouin Test, which should be negative in case of Ghee. And thus, does not conform to the standard.

D

E

Upon summoning, the accused opted to get the second counterpart³ of the sample analyzed by the Director, Central Food Laboratory (hereinafter referred to as "the Director") under Section 13 (2) of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as "the Act"). The report⁴ opined that the sample did not conform to the standards of Ghee as per the Act and the charges were framed. The ACMM-II held the accused guilty of the violation of the provisions of Section 2 (ia) (a) (c) & (m) of the Act, punishable under Section 16 (1) (a), read with Section 7 of the Act and convicted him⁵. The Sessions Judge set aside the order of the ACMM-II,

F

G

¹ Located at M/s New Bikaner Sweet Center, Sl.No. A-9, Tilak Market, Ramesh Nagar, New Delhi- 110015

² Bearing LHA Code No. 93/LHA/7757

³ Bearing No. 93/LHA/7757

⁴ Certificate No.CFL/679/743/2004 dated 20.10.2004

⁵ Vide order dated 15.04.2011

H

A vide order dated 15.04.2011 and acquitted the accused. Against the order of acquittal, the prosecution applied for leave to appeal under Section 378(1) of the Code of Criminal Procedure. The High Court declined to grant relief ⁶, and hence the present appeal is before us.

B 3. There are two reasons why the High Court had declined to grant leave to appeal against the judgment of acquittal of the Sessions Court.

C (1) First, the sample of Ghee that was taken was itself not meant for sale but it was meant to be used merely as an ingredient in the preparation of sweets which in turn were meant for sale, and therefore no offence is made out under the provisions of Section 2 (ia) (c) & (m) and Section 16 (1) (a) read with Section 7 of the Act.

D (2) Secondly, there was a discrepancy between the report of PA and that of the Director with respect to the BR reading. The PA had recorded the BR reading as 52.7, whereas the Director had recorded the BR reading as 53.1. This variation was 0.76% i.e. more than 0.3%, and therefore the sample cannot be considered as representative in nature as held in *State (Delhi Administration) v. Ram Singh and Another*⁷.

E We have carefully considered the provisions of the Act and find no merit in either reason.

Whether the Food was illegally stored

F 4. Section 7 of the Act prohibits storing of any adulterated food, it is as follows:-

G “7. *Prohibitions of manufacture, sale, etc., of certain articles of food.—No person shall himself or by any person on his behalf manufacture for sale, or store, sell or distribute—*

(i) *any adulterated food;*

(ii) *any misbranded food;*

(iii) *any article of food for the sale of which a licence is prescribed, except in accordance with the conditions of the licence;*

⁶ Vide order 20.12.2013 (CRL. M.A. 19502/2013)

H ⁷ (2009) 1 FAC 371

(iv) any article of food the sale of which is for the time being prohibited by the Food (Health) Authority [in the interest of public health;] A

(v) any article of food in contravention of any other provision of this Act or of any rule made thereunder; [or]

[(vi) any adulterant.] B

[Explanation.—For the purposes of this section, a person shall be deemed to store any adulterated food or misbranded food or any article of food referred to in clause (iii) or clause (iv) or clause (v) if he stores such food for the manufacture therefrom of any article of food for sale.]” C

This section must be construed according to the rule of interpretation enunciated in *Municipal Corporation of Delhi v. Kacheroo Mal*⁸, which also arose under this Act. This Court enunciated the Rule as follows: D

“5. The Act has been enacted to curb and remedy the widespread evil of food adulteration, and to ensure the sale of wholesome food to the people. It is well-settled that wherever possible, without unreasonable stretching or straining, the language of such a statute should be construed in a manner which would suppress the mischief, advance the remedy, promote its object, prevent its subtle evasion and foil its artful circumvention.....” E

5. This case turns on the above explanation to the section. According to the accused, since the Ghee which was found to be adulterated was not itself meant for sale, but was meant to be used as an ingredient in the sweets that were in turn meant for sale, no offence is made out. The contention in other words is that it was legal to store adulterated Ghee, if the Ghee itself was not meant for sale. F

6. The explanation to the section does not support this contention. It clearly lays down that if a person stores any adulterated food for the purpose of manufacturing from it any article of food for sale, he shall be G

⁸ (1976) 1 SCC 412

A deemed to store adulterated food. The purpose of this provision is clear, it prohibits the storing of adulterated food notwithstanding the fact that such adulterated food is itself not offered for sale, but is used in making some food which is offered for sale. It is clearly to prevent the adulteration of food and its sale to the public even when it is meant to be used for preparing some other food which is offered for sale. Thus,

B either way, whether the adulterated food is stored for sale, or if such food is stored for making some other food which is sold, such storing is an offence. Parliament has rightly assumed that no one, who offers food for sale, would store food which is not meant to be used in some food meant for sale.

C

7. The learned counsel for the accused relied on the judgement of this court in *Municipal Corporation of Delhi v. Laxmi Narain Tandon*⁹. In that case, this Court upheld the decision of a full bench of the Delhi High Court which held that the expression “store” in Section 7 means “storing for sale” and consequently the storing of an adulterated article

D of food not meant for sale would not constitute an offence under Section 16 1(a). According to the learned counsel, therefore, the High Court was right in maintaining the acquittal of the respondent since the Ghee was found to have been stored not for sale, but for a purpose other than that of sale i.e. for the purpose of preparation of sweets. Though valid

E when rendered, the decision relied on can no longer govern the point decided. When this Court decided *Tandon’s* case (supra), the section did not explicitly prohibit the storing of adulterated food which was not meant for sale. This Court, therefore, held that storing of adulterated food which was not meant for sale was not an offence. *Tandon’s* case (supra) was decided on 17.12.1975; the amendment which introduced the deeming fiction that a person shall be deemed to store any adulterated

F food, even if he stores such food for manufacturing from it any article for sale was introduced by Act 34 of 1976 w.e.f. 01.04.1976. *Tandon’s* case (supra) therefore has no application to the present case.

G In the present case, the sample of Ghee that was taken was from the Ghee that was stored for the purpose of making jalebis. On the accused’s own admission, the offence is clearly made out under Section 7 of the Act.

⁹(1976) 1 SCC 546

H

Variation between the reports of Public Analyst and the Director, Central Food Laboratory A

8. Section 13¹⁰ lays down the procedure by which the report of the PA that an article of food is adulterated is dealt with. In brief the procedure is as follows:-

B

¹⁰ 13. Report of public analyst.— [(1) The public analyst shall deliver, in such form as may be prescribed, a report to the Local (Health) Authority of the result of the analysis of any article of food submitted to him for analysis.

(2) On receipt of the report of the result of the analysis under sub-section (1) to the effect that the article of food is adulterated, the Local (Health) Authority shall, after the institution of prosecution against the persons from whom the sample of the article of food was taken and the person, if any, whose name, address and other particulars have been disclosed under section 14A, forward, in such manner as may be prescribed, a copy of the report of the result of the analysis to such person or persons, as the case may be, informing such person or persons that if it is so desired, either or both of them may make an application to the court within a period of ten days from the date of receipt of the copy of the report to get the sample of the article of food kept by the Local (Health) Authority analysed by the Central Food Laboratory.

C

D

(2A) When an application is made to the court under sub-section (2), the court shall require the Local (Health) Authority to forward the part or parts of the sample kept by the said Authority and upon such requisition being made, the said Authority shall forward the part or parts of the sample to the court within a period of five days from the date of receipt of such requisition.

(2B) On receipt of the part or parts of the sample from the Local (Health) Authority under sub-section (2A), the court shall first ascertain that the mark and seal or fastening as provided in clause (b) of sub-section (1) of section 11 are intact and the signature or thumb impression, as the case may be, is not tampered with, and dispatch the part or, as the case may be, one of the parts of the sample under its own seal to the Director of the Central Food Laboratory who shall thereupon send a certificate to the court in the prescribed form within one month from the date of receipt of the part of the sample specifying the result of the analysis.

E

F

(2C) Where two parts of the sample have been sent to the court and only one part of the sample has been sent by the court to the Director of the Central Food Laboratory under sub-section (2B), the court shall, as soon as practicable, return the remaining part to the Local (Health) Authority and that Authority shall destroy that part after the certificate from the Director of the Central Food Laboratory has been received by the court: Provided that where the part of the sample sent by the court to the Director of the Central Food Laboratory is lost or damaged, the court shall require the Local (Health) Authority to forward the part of the sample, if any, retained by it to the court and on receipt thereof, the court shall proceed in the manner provided in sub-section (2B).

G

(2D) Until the receipt of the certificate of the result of the analysis from the Director of the Central Food Laboratory, the court shall not continue with the proceedings pending before it in relation to the prosecution.

H

- A When a report, that the article of food is adulterated, is received and a prosecution is instituted, the local health authority is enjoined to forward a copy of the report of such analysis to such person or persons who may have applied for having such food analyzed vide Section 12. Such persons may, if desired, make an application to the Court to have the sample of the article of food analysed by the Director, and the Court
- B may then dispatch a part of the sample received to the Director. The Director shall send a certificate specifying the result of the analysis. Where two parts of the sample have been sent to the Court and one part has been sent by the Court to the Director, the Court is bound to send the remaining part to the local health authority who is bound to destroy it
- C after a certificate is received from the Director vide sub-section (2C) of Section 13.

-
- (2E) If, after considering the report, if any, of the food inspector or otherwise, the Local (Health) Authority is of the opinion that the report delivered by the public analyst under sub-section (1) is erroneous, the said Authority shall forward one of the parts of the sample kept by it to any other public analyst for analysis and if the report of the result of the analysis of that part of the sample by that other public analyst is to the effect that the article of food is adulterated, the provisions of sub-sections (2) to (2D) shall, so far as may be, apply.]
- D

- (3) The certificate issued by the Director of the Central Food Laboratory [under sub-section (2B)] shall supersede the report given by the public analyst under sub-section (1).
- E

- (4) Where a certificate obtained from the Director of the Central Food Laboratory [under sub-section (2B)] is produced in any proceeding under this Act, or under sections 272 to 276 of the Indian Penal Code (45 of 1860), it shall not be necessary in such proceeding to produce any part of the sample of food taken for analysis.

- (5) Any document purporting to be a report signed by a public analyst, unless it has been superseded under sub-section (3), or any document purporting to be a certificate signed by the Director of the Central Food Laboratory, may be used as evidence of the facts stated therein in any proceeding under this Act or under sections 272 to 276 of the Indian Penal Code (45 of 1860):

- [Provided that any document purporting to be a certificate signed by the Director of the Central Food Laboratory [not being a certificate with respect to the analysis of the part of the sample of any article of food referred to in the proviso to sub-section (1A) of section 16] shall be final and conclusive evidence of the facts stated therein.]
- G

- [Explanation.—In this section, and in clause (f) of sub-section (1) of section 16, “Director of the Central Food Laboratory” shall include the officer for the time being in charge of any Food Laboratory (by whatever designation he is known) recognised by the Central Government for the purposes of this section.]
- H

9. The law accords such great importance to the report from the Director that it prohibits the Court from continuing with the prosecution until the receipt of the certificate from the Director. A

Sub-section 3 of Section 13 clearly attributes a higher evidentiary value to the certificate from the Director when compared to the report given by the PA. It reads as follows:- B

“13. Report of public analyst-

(1)

(2)

(2A)..... C

(2B).....

(2C).....

(2D)..... D

(2E).....

(3) The certificate issued by the Director of the Central Food Laboratory [under sub-section (2B)] shall supersede the report given by the public analyst under sub-section (1).” E

The proviso to sub-Section 5 provides that the certificate from the Director shall be final and conclusive evidence of the facts stated therein.

The above scheme, particularly sub-Section 3 which provides that the certificate of the Director shall supersede the report of the PA and the proviso which makes such a certificate final and conclusive evidence, puts it beyond any shadow of doubt that the report of the PA loses any significance in the proceedings as a piece of evidence. F

10. Therefore, there is no reason for the Court to refer to the contents of the report of the PA. Where there is no reason to refer to its contents of the report of the PA, there is even less reason to refer to the variation between the report of the PA and the Director. The Court is enjoined by law to consider the contents of the certificate of the Director only. G

H

A 11. Moreover, this view is no more *res integra* in view of the judgment of this Court in *Calcutta Municipal Corporation v. Pawan Kumar Saraf and another*¹¹. This Court held as follows:-

“Per majority (Thomas and Quadri, JJ.)

B *When Section 13(3) says that the certificate of Director, CFL shall supersede the report, it means that the report would stand annulled or obliterated. The word “supersede” in law means “obliterate, set aside, annul, replace, make void or inefficacious or useless, repeal”. Once the certificate of the Director of the Central Food Laboratory reaches the court, the report of the Public Analyst stands displaced and what may remain is only a fossil of it. In the above context the proviso to sub-section (5) of Section 13 can also be looked at which deals with the evidentiary value of such certificate. If a fact is declared by a statute as final and conclusive, its impact is crucial because no party can then give evidence for the purpose of disproving that fact. This is the import of Section 4 of the Evidence Act. Thus the legal impact of a certificate of the Director of the Central Food Laboratory is threefold. 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.”*

C

D

E

F 12. The finding of the High Court that the variation between the two reports was 0.76% and therefore more than 0.3% as permitted in *Ram Singh’s* case (*supra*) is completely unsustainable and liable to be set aside. The reliance placed by the High Court on the decisions in *Kanshi Nath v. State*¹² and *State v. Mahender Kumar & Ors.*¹³, which hold that if in the comparison of the reports of the PA and the Director vast variations are found, then the samples are not representative, is improper. Those decisions do not lay down good law.

G It is thus clear that the accused was not entitled to the acquittal and the acquittal is liable to be set aside. We, therefore, set aside the acquittal of the respondent and convict him for the offence under Section 2 (ia) (a) (c) & (m) of the Act, punishable under Section 16 (1) (a), read with Section 7 of the Act.

¹¹ (1999) 2 SCC 400

¹² 2005 (2) FAC 219– Delhi High Court

H ¹³ 2008 (1) FAC 177

DELHI ADMINISTRATION v. VIDYA GUPTA
[S. A. BOBDE, J.]

327

However, the proceedings commenced in the year 2004, the business has closed down since and the accused is now about 70 years old. In these circumstances, we direct that the sentence shall be confined to the period already undergone. A

13. Appeal is allowed accordingly.

B

Devika Gujral

Appeal allowed.