

IN THE SUPREME COURT OF INDIA
 CRIMINAL APPELLATE JURISDICTION
 CRIMINAL APPEAL NO. 1032 OF 2011
 (Arising out of SLP(Crl) No. 8360 of 2008)

STATE DELHI ADMINISTRATION

Appellant(s)

VERSUS

MAHENDER KUMAR & ANR.

Respondent(s)

O R D E R

1. Leave granted.

2. This appeal is directed against the judgment and order passed by the Delhi High Court affirming the order of acquittal of the respondents passed by the Additional Sessions Judge, Delhi.

3. A case under Section 7(1) read with Section 16 of the Prevention of Food and Adulteration Act, 1954 (hereinafter referred to as the "Act") was registered against the respondents with the allegation that the turmeric powder sold by the respondents was adulterated. Samples of the turmeric powder collected were sent to Public Analyst who gave a report that the sample was adulterated.

2

4. Subsequently, at the request of the accused, another sample was sent to the Central Food Laboratory, which also gave a report stating that the sample was adulterated. During the trial, the prosecution examined three witnesses. The defence also adduced its own evidence. The statement of the respondents under Section 313 of Code of Criminal Procedure was also recorded.

5. The Metropolitan Magistrate, after examining the evidence

placed on record, came to the conclusion that the prosecution has been able to prove the charges levelled against the respondents and held the respondents guilty of the offence both under Section 7 read with Section 16 of the Act. The Magistrate sentenced him to undergo imprisonment for one year and also to pay fine.

6. Being aggrieved by the aforesaid order of conviction and sentence, the respondents filed an appeal before the appellate authority, namely, the learned Additional Sessions Judge (ASJ). The only issue that was considered by the learned ASJ was as to whether or not the sanction accorded by the Appropriate Authority was valid or vitiated. After hearing the contentions, the learned ASJ held that the aforesaid sanction granted is invalid and vitiated and on that ground alone, the appeal was allowed and the respondent was acquitted of the offence punishable under Section 7 read with Section 16 of the Act and the conviction was set aside.

3

7. The State Delhi Administration, being aggrieved by the aforesaid order of acquittal, filed an appeal in the High Court. The High Court, however, by the impugned judgment and order held that the samples sent to the test laboratories were not representative and, therefore, said samples being unrepresentative, the order of acquittal is to be upheld. Consequently the appeal was dismissed.

8. The State Delhi Administration, being aggrieved by the aforesaid order passed by the High Court, has filed the present appeal on which we have heard the learned counsel appearing for the parties. We have also perused the records and on perusal of the same and upon hearing the counsel appearing for the parties, we are satisfied that the impugned judgment and order as also the order passed by the appellate court are required to be set

aside and quashed, as according to us, so far the order with regard to the grant of sanction is concerned, the same cannot be said to be vitiated in any manner and, therefore, the aforesaid order granting sanction is upheld. The High Court so far the two reports are concerned held that the samples sent were unrepresentative. But the fact remains that the said issue was

not at all raised and also considered by the appellate court nor

4

it was raised before the trial court. It is also settled law that if there is any variation between the two reports, there would be primacy in the report submitted by the Director, Central Food Laboratory (CFL), which is clearly laid down under Section 13(3) of the Food Adulteration Act.

9. Having considered the aforesaid aspect, we feel and order that the order of the High Court along with the order of appellate court have to be set aside, which we hereby do.

The matter is remitted back to the appellate court for fresh consideration and disposal. It is needless to state that except for the aforesaid issue, namely, grant of sanction, all other issues are kept open to be argued before the appellate court.

Since the said issues relate to the facts, it would be necessary for the appellate court to decide all the issues and the appellate court would not leave any issue, which is urged, undecided as has happened in the present case. As there is

already a long delay, we request the appellate court to hear the matter and dispose of as expeditiously as possible. It is also made clear that except for deciding the issue with regard to validity of the sanction, we have not expressed any opinion or views in respect of any other issues involved in this matter. The views expressed by the High Court in the impugned order and

also by the appellate authority are set aside in entirety and the appellate court shall not decide the matter being in any

5

manner uninfluenced by the view expressed in the said orders.

10. The parties shall now appear before the District and Sessions Judge, Saket on May 9, 2011, who upon appearance of the parties, shall allot the matter to an appropriate court.

11. The criminal appeal is disposed of in terms of the aforesaid observations.

.....J
[Dr. Mukundakam Sharma]

.....J
[Anil R. Dave]

New Delhi,
April 26, 2011.

6

ITEM NO.4 COURT NO.11 SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl) No(s).8360/2008

(From the judgment and order dated 24/01/2008 in CRLA No.
54/1990 of The HIGH COURT OF DELHI AT N. DELHI)

STATE DELHI ADMINISTRATION Petitioner(s)

VERSUS

MAHENDER KUMAR & ANR. Respondent(s)

(With office report)

Date: 26/04/2011 This Petition was called on for hearing today.

CORAM : HON'BLE DR. JUSTICE MUKUNDKAM SHARMA
HON'BLE MR. JUSTICE ANIL R. DAVE

For Petitioner(s) Mr. P.P. Malhotra, ASG
Mr. Naresh Kaushik, Adv.
Ms. Priyanka Mathur Sardana, Adv.
Ms. Anil Katyar, Adv.
Mr. D.S. Mahra, Adv.

For Respondent(s) Mr. S.K. Agarwal, Sr. Adv.
Mr. Ashok K. Mahajan, Adv.
Mr. Rahul Mangla, Adv.

UPON hearing counsel the Court made the following
O R D E R

Leave granted.

The appeal is disposed of in terms of the signed order.

(NAVEEN KUMAR)
COURT MASTER

(RENU DIWAN)
COURT MASTER

(Signed order is placed on the file)