
(2014) 03 DEL CK 0223

Delhi High Court

Case No: Criminal A. 163 of 2006

State NCT of Delhi

APPELLANT

Vs

Surender Kumar Jain

RESPONDENT

Date of Decision: March 10, 2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) - Section 313#Prevention of Food Adulteration Act, 1954 - Section 16 17 7

Citation: (2014) 03 DEL CK 0223

Hon'ble Judges: Indermeet Kaur, J

Bench: Single Bench

Advocate: Navin K. Jha, app, for the Appellant; Manish Makhija, for the Respondent

Final Decision: Dismissed

Judgement

Indermeet Kaur, J.

This appeal is directed against the impugned judgment dated 16.02.2005 wherein the trial Court had acquitted the

respondent of the offence u/s 16 of the Food Adulteration Act (hereinafter referred to as the "PFA"). The case of the complainant is that on

14.07.1995 at about 12:30 pm, the Food Inspector Bal Mukund (PW-1) had taken sample of ""sodium benzoate"" (a food article) from Surrender

Kumar Jain from his shop i.e. M/s. Puran Chand & Sons at 3540, Qutab Road, Delhi. The said article was being stored for sale. The respondent

was conducting business at the time when this food sample was purchased; the sample consisted of thirty originally sealed packets containing 20

gms ""sodium benzoate"" each; the sample was divided in three equal parts and each sample was correctly sealed, packet and fastened. The

panchnama (Ex. PW-1/C) was prepared at the spot. The other documents including vendor's receipt (Ex. PW-1/A), cash memo (Ex. PW-1/D)

were prepared at the spot. Efforts were made to join public witness but no public witness had joined. One counterpart has been sent to the public

analyst. The public analyst vide its report dated 24.08.1995 had reported that the sample is mis-branded because there is a violation of Rule 48-C.

Accordingly, the challan was filed.

2. The prosecution in support of its case has examined Food Inspector (PW-1) and Gopal Singh (LHA) (PW-2).

3. The statement of the accused was recorded u/s 313 of the Cr.P.C. The first and third questions and the answers thereto read herein as under:-

Q. It is in evidence against you that on 14.07.1995 FI Saniv Gupta and other staff of PFA under supervision of LHA Gopal Singh visited M/s.

Puran Chand & Sons 3540, Qutab Road, Delhi where you were found present and conducting business of said firm and had stored sodium

benzoate a food article for sale for human consumption. What do you have to say:

Ans. It was not meant for human consumption as food article.

Q. Further that sodium benzoate was in sealed pack containing 20 gms in each packet and at 12:30 PM FI Bal Mukund purchased 30 such

originally sealed packet from you for Rs. 128.40 vide vendor's receipt Ex. PW-1/A which you also signed. What do you have to say?

Ans. It was a mixture of sodium benzoate and salt names as sodium benzoate.

4. No evidence was led in defence.

5. As noted supra, the appellant was acquitted as the Court had noted that the documents which had been prepared at the spot i.e. panchnama,

vendor's receipt all contained reference of terms ""sodium benzoate "" and what was analyzed by the CFSL was also ""sodium benzoate "" but the

consent for prosecution (Ex. PW-2/A) had been obtained for ""sodium benzoate"". This was held to be a glaring discrepancy in the documentary

evidence relied upon by the prosecution which remained unexplained; the benefit of this has been given to the respondent and the respondent stood

acquitted.

6. On behalf of the appellant, arguments had been addressed in length. It is pointed out that the judgment of the trial Court is an illegality; it is liable

to be set aside; it is pointed out that there was a clear misbranding as there is no food article by the term of ""sodium benzoate""; it was only a typing

error which had occurred in the documents and even otherwise irregularities or lapse in investigation must not accrue in favour of the accused. It is

submitted that what has been analyzed by the CFSL is in fact ""sodium benzoate"" and this is clear from the conclusion of the analyst in his report

wherein he has clearly noted that there has been a misbranding because of violation of Rule 48-C; misbranding being that ISI certificate was not

obtained on the aforementioned food article.

7. These submissions have been refuted by the learned counsel for the respondent. It is pointed out that what was sealed and was purchased by

the Food Inspector was ""sodium benzoate "" as is clear from the vendor's receipt, panchnama as also the report of the analyst. Sample sent to the

CFSL was a sample of ""sodium benzoate""; all this has been noted by the trial Court in the correct perspective. Even in answer to the queries put

to the respondent, he has categorically stated that the food article ""sodium benzoate"" was not being sold for human consumption; attention has also

been drawn to the cross-examination of PW-1 wherein the article of food i.e. the case property had been summoned in the Court and the

ingredients noted upon the sample case property had noted that it was a combination of ""sodium benzoate"" and ""sodium chloride""; submission

being that had it been a sample of ""sodium benzoate"", ""sodium chloride"" would not have been part of this packet. Learned counsel for the

respondent has placed reliance upon a judgment of the Apex Court reported as M.V. Krishnan Nambissan Vs. State of Kerala, to support his

submission that where no standard for food article has been prescribed in the PFA Act or in the PFA Rules, conviction under Sections 7 and 17 of

the PFA was held not sustainable. It is pointed out that the law on interference in orders of acquittal is also well settled. Unless and until, there is a

patent perversity in the impugned judgment, an order of acquittal should not be easily interfered with and to support this submission reliance has

been placed upon a judgment of the Apex Court reported as Chandrappa and Others Vs. State of Karnataka, On no count does the impugned

judgment call for any interference.

8. Arguments have been heard and record has been perused.

9. There is no doubt to the legal proposition that unless there is an illegality or patent perversity pointed out in the impugned judgment, order of

acquittal should not be easily interfered with. The Apex Court in Sidhartha Vashisht @ Manu Sharma Vs. State (NCT of Delhi), has held that the

appellate Court should reverse the acquittal only for substantial and compelling reasons.

10. Impugned judgment has recorded the following findings:-

The complainant has prosecuted the accused for ""Sodium Benzoate"". The accused has submitted that the sampled commodity is a mixture of

sodium benzoate and salt named sodium benzoate. In the panchnama the sampled commodity is mentioned as ""Sodium Benzoate"". The Public

Analyst mentions it as Solar Sodium Benzoate . Notice form VI and vendor's receipt mention it as ""Sodium Benzoate"". The consent for

prosecution is in respect of ""Sodium Benzoate"". The case property which was produced before the Court in the evidence of PW 1 F1 Bal

Mukund had the declaration ""Instant Sodium Benzoate , Ingredients-Sodium Benzoate & Sodium Chloride, Solar Sales, Qutab Road, Delhi, 20

Gms.

It is clear that the prosecution and the consent for prosecution are in respect of ""Sodium Benzoate"" while the sample which is taken is of ""Sodium

Benzoate"". There is an over whelming and glaring discrepancy in this regard which remains unexplained and unjustified and which cannot be

ignored or brushed aside. As the sample taken and analysed are two different articles I am of the considered opinion that the prosecution is bad

and cannot be successful.

11. The Court had also summoned the case property. In the cross-examination of PW-1, this case property had been opened and it had been

noted that the declaration on the sample case property read as

Instant sodium benzoate , ingredients-sodium benzoate & sodium chloride, solar sales, Qutab Road, Delhi, 20 gms.

12. The Public Analyst in his report dated 24.08.1995 had however noted the sample to contain 4.39% of sodium chloride. A sample of ""sodium

benzoate"" admittedly would not contain an ingredient of sodium chloride. Rule 48-C which deals with misbranding provides the list of those food

articles which have to be certified by the Indian Standard Institute Certificate Marks. The case property which was produced in Court (being the

sample purchased from the respondent) was a sample of ""sodium benzoate"" containing the ingredients of ""sodium benzoate"" and ""sodium

chloride""; thus not being a food article and not meant for human consumption, it was not required to be ISI certified. This is also the stand taken by

the respondent in his statement u/s 313 of the Cr.PC wherein on question No. 2 (which has been noted supra), the respondent had clearly stated

that what had been purchased by the Food Inspector vide vendor's receipt (Ex. PW-1/A) was a mixture of ""sodium benzoate"" and ""sodium

chloride"" (wrongly typed as ""sodium benzoate"); he had reiterated that this sample was not meant for human consumption as it was not a food

article.

13. It is a settled rule of criminal jurisprudence that if there are two views possible, the one favoring the accused must be adhered to. In this case,

the Court had correctly noted that there are glaring discrepancies in the evidence which has been relied upon by the prosecution. The glaring

discrepancy in the documentary evidence being that in almost all the documents of prosecution i.e. vendor's receipt, panchnama as also in the

CFSL report "'sodium benzoate '" has been mentioned but the consent for prosecution has been obtained for "'sodium benzoate'". At so many

places, it cannot be a typing error. These discrepancies being glaring and unanswered the benefit of this doubt must accrue in favour of the

respondent. In this background, the impugned judgment does not call for any interference. Appeal is without any merit. Dismissed.