

State Nct Of Delhi vs Sandeep Dhingra & Ors on 28 March, 2025

Author: Neena Bansal Krishna

Bench: Neena Bansal Krishna

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 28th March

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CRL.L.P. 395/2017

STATE NCT OF DELHI

.....Petitioner

Through: Mr. Utkarsh, Ld. APP for the State.

Versus

SANDEEP DHINGRA & ORS.

.....Respondents

Through: Mr. Kunal Sinha, Advocate.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (Oral)

CRL.M.A. 11367/2017 (under Section 482 Cr.P.C read with Section 5 of the Limitation Act for Condonation of Delay in filing the Appeal)

1. An Application has been filed on behalf of the Appellant for condonation of delay of 161 days in filing the Leave to Appeal.
2. For the reasons stated in the Application, the delay is condoned.
3. The Application stands disposed of.
4. A Petition under Section 378 (4) Cr.P.C, 1973 has been filed on behalf of the Appellant for grant of Special Leave to Appeal against the Judgment dated 26.07.2016.
5. For the reasons stated in the Petition, the same is allowed. Crl. Appeal No._____/2025 (To be numbered by the Registry)
6. A Criminal Appeal under Section 378 Cr.P.C., 1973 has been filed on behalf of the Appellant/State against the Judgement dated 26.07.2016 of learned ACMM, New Delhi, acquitting the Accused/Respondents under Section 16(1) (a) read with Section 7 of the Prevention of Food Adulteration Act, 1954.
7. Brief facts of the case are that on 11.07.2005 at about 06:26 P.M Food Inspector/Gian Chand purchased a sample of Pizza Mc. Puff (approx. 1500 gms.) for analysis from Respondent No.1/Shri Sandeep Dhingra from M/s Connaught Plaza Restaurants Pvt. Ltd., Shop No.UB-33-34, Jawahar Nagar, Delhi, where the food article was lying stored/exposed and being sold for sale for human consumption. The food article was wrapped in paper bag having identical label declaration and were

stated to be of same lot as mentioned on Form VI. The sample of 15 such bags were lifted as per procedure prescribed under the PFA Act and Rules. Each sample was separately packed, fastened, marked and sealed and requisite documents were prepared. The price of the sample was paid to the vendor.

8. One counterpart of the sample was sent to the Public Analyst (PA) in intact condition, while the other two counterparts were deposited with SDM/LHA. The PA found the sample to be conforming to the standards as per its Report dated 27.07.2005. The Food Inspector opined that the sample was misbranded due to violation of Rule 32 of PFA Rules on account of the contents mentioned on the label of the paper bags.

9. The SDM/LHA ordered investigation which was carried out by Food Inspector. After obtaining Sanction under Section 20 of the PFA, the Director, PFA filed a Complaint for violation of Section 2(ix)(k) PFA Act read with Rule 32 (b), (c), (d), (e), (f) and (i) of the PFA Rules, 1955 was filed before the learned M.M.

10. The evidence was recorded and the learned ACMM observed that the present case was not of adulteration and only of misbranding on account of violation of Rule 32. It was observed that in view of the applicable Policy No. F6(228)/85/ENF/P.F.A., the Respondents cannot be prosecuted as no prior Notice in writing had been served, implying that the offence was committed for the first time. Hence, the Respondents were acquitted vide the Impugned Order dated 26.07.2016.

11. Aggrieved by the acquittal, the present Appeal has been preferred, wherein the grounds essentially taken are that the learned ACMM has given an acquittal without considering the factual matrix and without correct appreciation of evidence. The learned ACMM erred in acquitting on the ground that no written warning was given to the Respondent prior to taking action as per PFA Act and the question of law has not been appreciated in the right perspective.

12. Therefore, it is prayed that the Impugned Order dated 26.07.2016, be set aside.

13. Submissions heard and record perused.

14. The allegations in the present case pertain to contravention of Rule 32

(b), (c), (d), (e), (f) and (i) as it is a case of misbranding/violation of labelling criteria and not of adulteration of the food article and also the application of Department Policy No. F6(228)/85/ENF/P.F.A.

15. Rule 32 of the PFA Rules, 1955 framed under PFA Act, 1954 falls under Part VII pertaining to Packing and Labelling of Foods. Rule 32 provides that every prepackage of food to carry a label and shall not be described or presented on any label or in any labelling manner that is false, misleading or deceptive or is likely to create an erroneous impression regarding its character in any respect. It further stipulates manner in which the manufacturing date is to be mentioned and packaging and labeling of the goods is to be done. It states that every label should have the name, trade name or

description of the ingredients used in the product in descending order of their composition by weight or volume, as the case may be. It further details which preservatives are to be represented in which manner. It also specifies the size of the display, panel and such other details.

16. Hence, Rule 32 stipulates detailed, transparent, and strict labelling requirements for ensuring consumer awareness by preventing misleading food labels. It provides detailed guidelines for disclosure of the mandatory information such as name, ingredients, as net weight, etc; nutritional labelling such as Energy, Protein, Carbs, Fats; Food additive information; thresholds of trans and saturated fats; clear date marking etc.

17. At this juncture it becomes apposite to understand the Policy No. F6(228)/85/ENF/P.F.A dated 23.09.1985, of the Department of Prevention of Food Adulteration, Government of NCT of Delhi. As per the said Policy, since cases of breach of Rule 32, pertain to the particulars of the labelling on the container or packet which were technical offences, the party affected was to be given a written warning drawing its attention to the violation of Rule 32. It was only if the violation was repeated after a written warning, the party committing the offence second time, could be prosecuted.

18. The consequence of this Department policy was considered by the Coordinate Bench of this Court in the case of S.S. Gokul Krishnan & Ors. Vs. State through Food Inspector Government of NCT of Delhi, decided on 06.02.2009, wherein it was held that since labelling violations was technical offense, the Department Policy mandated first-time violations be given a written warning Notice rather than immediate prosecution. The Department cannot deviate from its Policy by directly initiating prosecution without providing the petitioners an opportunity to rectify the labelling issue.

19. The judgment of S.S. Gokul (Supra) was relied upon in the case of Pradeep Kumar Mantri & Ors. Vs. State through Food Inspector (PFA), decided on 16.01.2017, by another Co-ordinate bench of this Court wherein on similar facts, it was held that in the case of first offence of misbranding, the accused cannot be prosecuted in view of the aforesaid Policy.

20. Similar view has been taken in the cases of Hindustan Unilever Ltd. Vs. State (2011) 1 FAC 183; Jaykal Exports Vs. NCT Of Delhi (2011) 122 DRJ 432; Pepsi Food Pvt. Ltd. Vs. State (2012) 194 DLT 468 and Gupta Tea Traders Vs. State 2012 (2) FAC 415.

21. In the present case, admittedly the food sample was collected on 11.07.2005, when the Department Policy No. F6(228)/85/ENF/P.F.A dated 23.09.1985, was in existence. Though the Policy was modified/withdrawn vide Office Order no. 5/07 dated 14.09.2007, but the same cannot be of any assistance to the Appellants as the existence of the Policy on the date of the offence, has not been disputed.

22. Thus, the learned Metropolitan Magistrate has rightly relied upon the Policy and the above cited Judgments, to hold that since the accused had committed the offence of misbranding for the first time but no previous warning Notice had been issued to the Respondents.

23. In light of the above, there is no infirmity in the Impugned Judgment date 26.07.2016 and same warrants no interference.

24. The present Appeal is hereby dismissed, along with pending Application(s), if any.

(NEENA BANSAL KRISHNA) JUDGE MARCH 28, 2025/va/r