

Cr Cases/7164/2019 on 3 February, 2022

IN THE COURT OF SH. AKASH JAIN
ADDITIONAL CHIEF METROPOLITAN MAGISTRATE-01
NEW DELHI DISTRICT, PATIALA HOUSE COURTS: NEW DELHI

In the matter of :
CC No. :- 7164/19

Food Safety Officer
Department of Food Safety
Govt of NCT of Delhi
8th Floor, Mayur Bhawan
Connaught Place, New Delhi

....Complainant

v.

Tulsi Ram Aggarwal
S/o Late Sh. Gulkandi Ram Aggarwal
M/s Aggarwal Sweets & Restaurants
(Kanhya Lal Gulkandi Ram)
3/4/5 Shyam Singh Building, Gopinath Bazar
Delhi Cantonment, Delhi-10

Also at:-
R/o 3/5/15, Gopinath Bazar
Delhi Cantonment, Delhi-10

.... FBO-cum-Proprietor/Accused

JUDGMENT

| | |
|---------------------------------------|------------------|
| (a) Serial number of the case | : 7164/2019 |
| (b) Date of commission of the offence | : 15.03.2019 |
| (c) Name of the complainant (if, any) | : Chittra Bamola |

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(d) Name of the accused person(s),

Food Safety Officer
: Tulsi Ram Aggarwal

their parentage and residence

S/o Late Sh. Gulkand
Ram Aggarwal
M/s Aggarwal Sweets
Restaurants (Kanhiya
Gulkandi Ram) 3/4/5
Shyam Singh Building
Gopinath Bazar
Delhi Cantonment
Delhi-10
Also at:-
R/o 3/5/15, Gopinath
Bazar Delhi Cantonme
Delhi-10

(e) Offences complained of

: Section 26/59 of Foo
Safety and Standards

(f) Plea of the accused

: Not guilty

(g) Date of final arguments

: 02.12.2021

(h) Date of Decision

: 03.02.2022

(i) Decision

: Accused convicted

BRIEF STATEMENT OF REASONS FOR SUCH DECISION

1. This is a complaint under Section 26/59 of Food Safety and Standards Act, 2006 (hereinafter referred to as 'FSS Act') to the effect that on 15.03.2019 at about 05:15 PM, the complainant Chittra Bamola, Food Safety Officer (hereinafter referred to as 'FSO') had taken, by purchasing, a sample of "Laddu" (an article of food) for analysis from Sh. Tulsi Ram Aggarwal i.e. Food Business Operator-Cum-Proprietor (hereinafter referred to as 'FBO') of M/s Aggarwal Sweets and Restaurant (Kanhiya Lal Gulkandi Ram) 3/4/5, Shyam Singh Building, Gopinath Bazar, Delhi CC No:- 7164/2019 Food Safety Officer v. Tulsi Ram Aggarwal Page No. 2 of 11 AKASH Date:

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Cantonment, Delhi-10, where the said food article was stored for sale for human consumption at the time of taking sample. The "Laddu" was available in open tray having no label declaration and after disclosing her identity, FSO showed her intention of taking the sample of abovesaid food article for analysis. At about 05:15 pm, FSO purchased the sample of "Laddu" weighing 2 kgs from open tray bearing no label declaration and price of Rs.400/- was paid through cash to FBO vide bill no. 6365 dated 15.03.2019.

2. The sample was taken under the directions of Designated Officer after breaking it into smallest possible pieces with the help of a clean and dry spoon in a clean and dry tray and mixed properly with same spoon. The sample was thereafter, divided in four equal parts, put into four clean and dry glass bottles and 40 drops of Formalin were added in each sample bottle with the help of clean dry

Code, 1973 (hereinafter referred to as 'Cr.P.C') on 12.03.2020 for offences punishable under Section 26(1), 26(2)(i) r/w Section 3(1)(zz)(vii) of FSS Act and Section 59 (i) of FSS Act, to which he pleaded not guilty and claimed trial.

5. At the trial, prosecution examined two witnesses in support of its case. PW-1 is Ms. Chittra Bamola, FSO who deposed on the lines of the complaint and exhibited the following documents i.e. FBO receipt Ex. PW1/A, Form VA Ex. PW1/B, Panchnama Ex. PW 1/C, Raid report Ex. PW 1/D, sample sent to Food Analyst vide receipt Ex. PW 1/E, receipt of sample to the DO Ex. PW 1/F, Food analyst report Ex. PW 1/G, letter sent to FBO Ex. PW 1/H, Postal receipt PW 1/H-1, RFL Report as Ex. PW 1/I letter sent to VAT officer Ex. PW 1/J, reply from Assistant Commissioner Ex. PW 1/J-1, letter sent to FBO Ex. PW 1/K and its reply Ex. PW 1/K-1, sanction letter Ex. PW 1L and the present complaint Ex. PW 1/M.

6. PW-2 is Sh. A. K. Singh, Designated Officer, who was part of the team that had visited the spot for sample proceedings. He deposed on the similar lines of PW-1 and corroborated her version. Both these witnesses were cross examined on behalf of accused.

7. Statement of the accused was recorded under Section 294 CC No:- 7164/2019 Food Safety Officer v. Tulsi Ram Aggarwal Page No. 5 of 11 AKASH Date:

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Cr.P.C. where he admitted Food Analyst report Ex. PW 1/G and sanction letter of commissioner Ex. PW 1/L. Thus, formal testimonies of both these witnesses were dispensed with. PE was consequently closed on 24.03.2021. Accused was thereafter, examined under Section 313 Cr.P.C. on 02.12.2021 and he did not prefer to lead any defence evidence.

8. Case then culminated into final arguments. Both the Ld. Special Prosecutor for the Department/Complainant as well as Ld. Counsel for accused addressed oral arguments. Ld. Counsel for accused strenuously argued that the sample was not representative as there is variation between the report of public analyst and that of RFL as regards the presence of color. It is further argued that spoons and bottles in which the sample food article was collected were not clean and dry.

9. On the other hand, Ld. SPP for the complainant argued that once the report of RFL is received, no credence can be accorded to the report of public analyst in view of mandatory provision of Section 13 of FSS Act.

10. I have heard the rival submissions on behalf of both the parties and carefully perused the record.

11. It is to be understood that the notice framed against the accused persons was for violation of Section 26 (2)(i) r/w Section 3(1)(zz),

(vii) & (viii) of FSS Act, 2006 and Regulation No. 3.1.2(1) r/w 3.1.2(6) of FSS Regulations, 2011, punishable under Section 59 (i) of FSS Act, 2006 CC No:- 7164/2019 Food Safety Officer v. Tulsi Ram Aggarwal Page No. 6 of 11 Digitally signed by AKASH AKASH JAIN Date:

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which read as under:

Section 26 deals with Responsibilities of the food business operator - (1) Every food business operator shall ensure that the articles of food satisfy the requirements of this Act and the rules and regulations made thereunder at all stages of production, processing, import, distribution and sale within the businesses under his control. (2) No food business operator shall himself or by any person on his behalf manufacture, store, sell or distribute any article of food- (i) which is unsafe;

Section 3(1)(zz) defines "unsafe food" which means an article of food whose nature, substance or quality is so affected as to render it injurious to health; (v) by addition of a substance directly or as an ingredient which is not permitted; (vii) by the article being so coloured, flavoured or coated, powdered or polished, as to damage or conceal the article or to make it appear better or of greater value than it really is;

Regulation No. 3.1.2(1) provides that unauthorized addition of colouring matter prohibited-The addition of colouring matter to any article of food except as specifically permitted by these regulations is prohibited;

Regulation No. 3.1.2(6) deals with Use of permitted synthetic food colours prohibited-Use of permitted synthetic food colours in or upon any food other than those enumerated below is prohibited :-

(i) Ice-cream, milk lollies, frozen desserts, flavoured milk yoghurt, ice-cream mix powder;

(ii) Biscuits including biscuit wafer, pastries, cakes, confectionery, thread candies, sweets, savouries (dalmoth, mongia, phululab, sago papad, dal biji only);

(iii) Peas, strawberries and cherries in hermetically sealed containers, preserved or processed papaya, canned tomato juice, fruit syrup, fruit squash, fruit crushes, fruit cordial, jellies, jam, marmalade, candied crystallised or glazed fruits;

(iv) Non-alcoholic carbonated and non-carbonated ready to serve synthetic beverages including synthetic syrups, sherbats, fruit bar, fruit beverages, fruit drinks, synthetic soft-drink concentrates;

(v) Custard powder;

(vi) Jelly crystal and ice-candy;

(vii) Flavour emulsion and flavour paste for use in carbonated CC No:- 7164/2019
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or non-carbonated beverages only under label declaration as provided in regulation
2.4.5(35) of Food Safety and Standards (Packaging and Labelling) Regulations, 2011.

Section 59 deals with Punishment for unsafe food: Any person who, whether by himself or by any other person on his behalf, manufactures for sale or stores or sells or distributes or imports any article of food for human consumption which is unsafe, shall be punishable- (i) where such failure or contravention does not result in injury, with imprisonment for a term which may extend to six months and also with fine which may extend to one lakh rupees;

12. The incriminating material on the basis of which the sample of "Laddu" had been failed by the Food Analyst and later on RFL, is that as per the reports, the sample was unsafe as excessive artificial food colouring matter was found in the sampled food article which is not permissible as per rules.

13. In so far as visiting of the shop of FBO by FSO and consequent lifting of sample of "Laddu" is concerned, there is no challenge on behalf of accused that the sample of "Laddu" was not lifted as per the rules and regulations prescribed under the FSS Act. Testimony of PW-1 Ms. Chittra Bamola vividly describes the manner in which sample article of "Laddu" was collected from the shop of accused/FBO. Her testimony is on the similar lines as the complaint Ex. PW1/M and there is no serious rebuttal on various exhibits pertaining to sample collection proceedings.

14. The defence has not been able to rebut or bring any credible evidence on record to show that the spoons or the bottles in which the sampled food article was collected, were not clean and dry, as has been suggested by them during the cross-examination of the witnesses. Further, CC No:- 7164/2019 Food Safety Officer v. Tulsi Ram Aggarwal Page No. 8 of 11 Digitally signed by AKASH AKASH JAIN Date:

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merely stating so during the cross-examination of witnesses without adducing evidence on record to corroborate the said suggestions is not enough to rebut the evidence brought forth by the complainant, which per se is admissible as per law.

15. Second contention raised on behalf of accused is that there is vast variation between the report of Food Analyst Ex. PW 1/G and that of RFL Ex. PW-1/I. As per the report of public analyst the sample article was found containing colors i.e. tartrazine and sunset yellow FCF to the tune of 110 ppm and 15.49 ppm respectively as against maximum prescribed limit of 100 ppm. While as per the report of RFL the sample article was found containing same colours to the tune of 137.69 ppm and 196.68 ppm respectively. It is thus, argued by Ld. Counsel for accused that one of the sample was bound to be not representative. This argument of Ld. Counsel appears to be compelling, however, the controversy in this regard has been put to rest by the judgment of Hon'ble Supreme Court in case titled as Delhi Administration v. Vidya Gupta, Criminal Appeal No. 625 of 2018, Date of Decision 24 April, 2018 the following paras of which are worth reproducing :

"... 11. 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 CC No:- 7164/2019 Food Safety Officer v. Tulsi Ram Aggarwal Page No. 9 of 11 Digitally signed by AKASH AKASH JAIN Date:

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article involved in the case and it becomes irrefutable so far as the facts stated therein are concerned.

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 and State v. Mahender Kumar and Ors 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..."

16. In light of the principle expounded in the above-mentioned judgment, there is no doubt that once FBO/accused preferred an appeal against the report of public analyst, the report filed by RFL will obliterate and supersede the report of public analyst. Whatever are the variations in the report of RFL Ex. PW 1/I from that of public analyst Ex. PW1/G, the former will have precedence over the latter. Thus, this contention of Ld. Counsel for accused that the sample of food article was not representative does not pass any muster.

17. It has been thus, conclusively proved that the sampled food article of "Laddu" contained added artificial colouring matter to the tune of total 334.36 ppm, which is beyond maximum prescribed limit of 100 ppm and is unsafe for human consumption. In view of the aforesaid facts and evidence brought on record, it is seen that the prosecution has been able to establish its case beyond reasonable doubt that the accused was selling a food article which was unsafe for human consumption.

18. The accused Tulsi Ram Aggarwal is therefore, convicted for CC No:- 7164/2019 Food Safety Officer v. Tulsi Ram Aggarwal Page No. 10 of 11 AKASH Date:

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the violation of provisions of Section 26(2)(i) r/w Section 3(1)(zz)(vii) of FSS Act 2006 r/w Regulation No. 3.1.2(6)(ii) of FSS (Food Product Standards and Food Additions) Regulations, 2011, punishable u/s/ 59(i) of FSS Act, 2006.

19. Be heard separately on the point of sentence.

ANNOUNCED IN THE OPEN COURT

DATED: 03.02.2022

AKASH
JAIN

(AKASH JAIN)
ACMM-01, NEW DELHI DISTRICT
PATIALA HOUSE COURTS, NEW DELHI

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