

(1987) 11 DEL CK 0031

In the Delhi High Court

Case No : Criminal Appeal No. 67 of 1980

Municipal Corporation of Delhi

APPELLANT

Vs

Ramesh Ghand

RESPONDENT

Date of Decision : 02-11-1987

Acts Referred:

Citation : (1988) 34 DLT 131

Hon'ble Judges : M.K. Chawla, J;Charanjit Talwar, J

Bench : Division Bench

Advocate : Usha Kumari and Gulshan Rai, for the Appellant;

Judgement

Charanjit Talwar, J.

(1) In this appeal filed by the Municipal Corporation of Delhi (for short, the Corporation), against the acquittal of the respondent Ramesh Chand for an offence punishable u/s 7 read with Section 16 of the Prevention of Food adulteration Act (hereinafter called "the Act"), a preliminary objection has been raised by Mr. Gulshan Rai, Counsel for the respondent. The preliminary objection is to the effect that the appeal which has been admittedly filed after 60 days of the order of acquittal is beyond limitation. The plea is that the Corporation had filed the complaint and thus the period of limitation provided for seeking special leave to appeal from the order of acquittal was not six months as has been submitted by the appellant herein. The reliance of the learned counsel is on sub-section (5) of Section 378 of the Code of Criminal Procedure, which says : "378. Appeal in case of acquittal.....(1)..... (5) No application under sub-section (4) for the special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of six months, where the complainant is a public servant, and sixty days in every other case, computed from the date of that order of acquittal."

(2) The complaint had been filed Mr. R.N. Gujral, Assistant Public Prosecutor on behalf of the Municipal Corporation of Delhi. By a resolution no. 197 passed on

4th June, 1963. the Corporation had authorized Shri R.N. Gujral to file complaints within the purview of Section 20 of the Act. After the trial, the learned Metropolitan Magistrate found the respondent guilty for the offence charged and sentenced him, vide his order dated 23rd January, 1979. to undergo rigorous imprisonment for 2 months and also to pay fine of Rs. 1000.00 . In default, he was directed to under go further R.I. for one month. The Addl. Sessions Judge, however, by the Judgment dated 28th August, 1979 set aside the conviction and the sentence. The application seeking the certified copy of the Judgment was made by the Corporation on 31st August, 1979. It was ready on 31st October, 1979 and the application seeking grant of special leave to appeal against the order of acquittal was filed in this Court on 13th of February, 1980. Ms. Kumar, learned counsel for the appellant submits that at that time the Corporation was of the view that limitation to file the the application u/s 378(5) of the Code was six months. The question, whether the Corporation could file the application for grant of special leave within six months but after the expiry of 60 days came up for consideration before this court in Municipal Corporation of Delhi v. S. K. Jain & others, 1984(11) F.A.C. 289. The plea of the Corporation that the complaints filed by it ought to be held to be complaints filed by a public servant as a public servant had been authorised to file the same was negatived. While holding that the question as to who is the complainant is a question of fact, it was observed that even if the complaint had been filed by and in the name of a person authorised in that behalf by the Corporation, it was the Corporation who was the complainant. The law laid in that case has been followed by us in a subsequent case in Criminal Appeal no. 53 of 1978, Municipal Corporation of Delhi v. Dhani Ram and another, decided on 25th September , 1987.

(3) The application seeking special leave to appeal having been filed after the expiry of 60 days, the appeal is to be held to have been filed beyond limitation. Dismissed.