

(2007) 11 DEL CK 0038
In the Delhi High Court
Case No : Criminal Appeal No. 159 of 1989

State	Vs	APPELLANT
Ram Kishan		RESPONDENT

Date of Decision : 01-11-2007

Acts Referred:

Citation : (2007) 11 DEL CK 0038

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : Pawan Sharma, for the Appellant; Asha Tewari, for Anil Soni in Crl. Appeal No. 159/1989 and for Respondent No. 1 in Crl. Appeal No. 163/1989, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—The Food Inspector had lifted samples of black pepper from various premises. One sample was lifted from the premises of Ram Kishan and the other from the premises of Amarjeet Singh, the 2 accused in the captioned appeals. Thereafter, 2 separate complaints were filed.

2. In addition to the 2 complaints which are subject matter of the 2 captioned appeals other complaints were also filed. All complaints resulted in orders of acquittal.

3. The apparent reason for acquittal was the discrepancy in the report of the Public Health Analyst and the Director, Central Food Laboratory in each case.

4. Primacy was given by the Court to the report of the Director, Central Food Laboratory.

5. Order of acquittal in one of the case was subject matter of Crl. Appeal No. 135/1989. The appeal was dismissed on 2.4.2007. The decision is reported as 2007 (2) JCC 1154 State v. Dwarka Dass.

6. In paras 4 to 6 of the decision in Dwarka Dass's case (supra) it was observed

as under:

4. The report of Public Analyst stands superseded by the report of Director, CFL. Prosecution cannot fall upon the report of Public Analyst to fill up lacunae or ambiguity in the report of CFL. Since on the basis of report of CFL, which is silent about the mineral oil being food grade or non food grade, the accused has been given benefit of doubt, it would not be appropriate for this Court to take other view.

5. In Sachchey Lal Tiwari Vs. State of Uttar Pradesh, Supreme Court observed that when an appeal is filed against an order of acquittal, the appellant Court should keep in mind:

(i). Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal.

(ii). If two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favorable to the accused should be adopted.

(iii). A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent.

(iv). Where admissible evidence is ignored, a duty is cast upon the appellate Court to re-appreciate the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not.

(v). Court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so.

6. In the above case, views taken by the trial Court was based on the report of the Director, CFL. It is not a case where trial Court acted contrary to the law. There was no miscarriage of justice. It is settled law that Appellate Court should not reverse the decision of the trial Court merely because a different view is possible. I find no reason to interfere with the order passed by the trial Court. Appeal is hereby dismissed.

7. Following the decision in Dwarka Dass's case (supra) I dismiss the appeals.

8. LCR be returned.