

27/L

OFFICE OF THE ADJUDICATING OFFICERS/  
ADDITIONAL DISTRICT MAGISTRATE (EAST)  
L M BANDH, SHASTRI NAGAR, DELHI-110031

No. PFA/ADM(E)/01/2012/1165-1168

Date:- 30/7/2012

Food Safety Officer,  
Department of Food Safety,  
Govt. of NCT of Delhi  
A-20, Lawrence Road Industrial Area,  
Delhi-110035

....State

Versus

Shri Sumit Tiwari, S/o Shri Abhey Kant Tiwari,  
M/s Tiwari Sweets, Shop No.27/37,  
Vishwas Nagar, Shahdara,  
Delhi-110032

....Respondent

ORDER

This order shall disposed off the complaint filed by Sh. Som Pal Singh, Food Safety Officer, Department of Food Safety, GNCT of Delhi on 26.06.2012 in on behalf of the Designated Officer, Department of Food Safety, GNCT of Delhi, stating that a sample of Khoya was lifted by him on 24.10.2011 from the possession Sh. Sumit Tiwari S/o Sh. Abhey Kant Tiwari, Prop. M/s Tiwari Sweets, Shop No:-27/37, Vishwas Nagar, Shahdara, Delhi-110032. The said sample of Khoya was found to be substandard as per the norms specified under the Food Safety and standards Act, 2006 and Rules 2011 and Regulations 2011.

Taking the cognizance, the summons were issued to the vendor/respondent/Food Business Operator for his appearance in the office 07.07.2012. The case was subsequently listed for hearing on 13.07.2012, 20.07.2012 and finally on 24.07.2012. On all the occasions the vendor/Food Business Operator/Respondent was present but the Food Safety Officer remained present only on 07.07.2012 and 24.07.2012. The brief facts of the case are as under :-

Sh. Som Pal, the Food Safety Officer has lifted a sample by purchase of "Khoya" on 24.10.2011 at about 3:00 pm, from the possession of Sh. Sumit Tiwari S/o Sh. Abhey Kant Tiwari, Prop. M/s Tiwari Sweets, Shop No:-27/37, Vishwas Nagar, Shahdara, Delhi-110032 on making payment of Rs. 240/- for one Kg. Sh. Sumit Tiwari was found storing the said food article of sale of "Khoya" for human consumption at the time of taking the sample. Sh. Sumit Tiwai S/o Sh. Abhey Kanti Tiwari was found vending the article of food at the time of taking the sample. Sh. Balwant Shah, Field Assistant joined as a witness to the sample proceedings since no one was from ready to join the sample proceedings. The sample was lifted after completion of all formalities and with due process as maintained in the Food Safety and Standard Act, 2006.

One counterpart of the sample of "Khoya" was sent to Food Laboratory GNCT of Delhi on 25.10.2011 for Analysis. The remaining two counterpart of the sample in a sealed packet as well as fourth counterpart in a separate sealed packet were deposited with the Designated Officer on 25.10.2011. The Food Analyst vide his report number PFA/Enf/767/2011 dated 04.11.2011 has reported that the sample is found to be **substandard because milk fat of dried matter is less than the prescribed minimum limit of 30.0%**.

7

24/11

Thereafter, the Designated Officer concerned sent a letter along with a copy of the Food Analyst report to the Food Business Operator on 23.11.2011 for giving him an opportunity to file an appeal against the report of the Food Analyst as required under section 46(4) of the FSS Act, 2006 within 30 days of receipt of the Food Analyst report for sending one part of the sample to the Referral Lab, if so desired by the Food Business Operator. The Food Business Operator Sh. Sumit Tiwari did not respond to the said letter dated 23.11.2011 and as such, he did not prefer any appeal against the report of Food Analyst.

In his deposition, the respondent/vendor/FBO confirmed to the effect of lifting of sample of "Khoya" on 24.10.2011. He also accepted the receipt of Food Analyst Report dated 04.11.2011. In the said report the Food Analyst as opined that the **sample is substandard because milk fat of dried matter is less than the prescribed minimum limit of 30.0%**. He further stated that he is the owner of the Business premises and operating a sweets shop in the name and style of M/s Tiwari Sweet situated at Shop No:-27/37, Vishwas Nagar, Shahdara, Delhi-110032. He is doing the business of sale of all kind of sweets including Khoya made from milk and milk products for human consumption. He further stated that he has prepared "Khoya" from the milk purchase by him from the local milkman. In his deposition he could not define the name of adulterant present in the "Khoya" which was mainly responsible for giving of negative report.

Under the Act the terms of consumer, Food and substandard, primary food have been defined. Which are reproduced below:-

**Consumer** means persons and families purchasing and receiving food in order to meet their personal needs. Here the Business Operator is selling Food Articles which was for the human consumption. The consumer are buying food articles from the vendor. Therefore the relation of seller and consumer is established.

**Food** means any substance, whether processed, partially processed or unprocessed which is intended for human consumption and includes the primary food. The **primary food** has been further defined which means an article of food, being a produce of agriculture or horticulture or animal husbandry and dairying or aquaculture in the natural form resulting from the growing, raising, cultivating, picking, harvesting, collection or catching in the hands of a person other than the farmer or fisherman. Here in the instant case the FBO is buying milk from milkman and there after he processed it in the form of "Khoya" which is apparently fit for human consumption.

The definition of term of "substandard of an article of food shall be deemed to be substandard if it does not meet the specified standards but not so as to render the article of food unsafe. Here also the Food Analyst has reported that the article lifted from his possession was found to be substandard.

Further under the Food Safety and standards Act, 2006 and Rules 2011 and Regulations 2011 the term of **milk products** has been defined which is means the products obtained from milk such as cream, malai, curd, skimmed milk curd, chhanna, skimmed-milk chhanna, cheese, processed cheese, ice-cream, milk ices, condensed milk-sweetened and unsweetened, condensed skimmed milk-sweetened and unsweetened, milk powder, skimmed milk powder, partly skimmed milk powder, **Khoya**, infant milk food, table butter and desi butter. **Milk products shall not contain any substance not found in milk unless specified in the standards.**

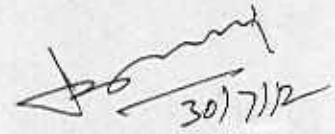
The term of "Khoya" by whatever variety of names it is sold such as Pindi, Danedar, Dhap, Mawa or Kava means the product obtained from the milk or milk solids or a combination thereof by rapid drying. The milk fat content shall not be less than 30 percent on dry weight basis of finished product. It may contain citric acid not more than 0.1 per cent by weight. It shall be free from added starch, added sugar and added colouring matter.

2

On microscopic examination of the report of Food Analyst it revealed that the report is silent about the kind of substance or solid present in the Milk Product "Khoya". And so as to also as to whether this solid substance is unsafe for human consumption or not. The yardsticks of substandard have not been further defined under the Act. The F.S.O. has also failed to defined the term substandard. Ultimately, the benefit of doubt goes to the vendor/Food Business Operator. Moreover, the BFO is also not having any licences from the department of prevention of Food adulteration under the Food Safety and standards Act, 2006 and Rules 2011 and Regulations 2011. However, the onus of purity of Khoya lies upon the vendor which he has failed to prove himself to be innocent. The vendor/BFO was selling Khoya which is milk product and was ready for human consumption and the said Khoya was found to the substandard.

In view of the above averments contentions and pleadings, the undersigned is of the considered view to impose a penalty of Rs. 50,000/- (Rupees Fifty Thousand Only.) as envisaged under section 51 of the Food Safety and standards Act, 2006 and Rules 2011 and Regulations 2011 so as to discourage the malpractices being adopted by the vendor. The vendor is directed to deposite the penalty amount within 07 days from the date of orders failing which recovery proceeding will be initiated against him.

File consigned to record.



(V P SINGH)  
 ADDITIONAL DISTRICT MAGISTRATE (EAST)/  
 ADJUDICATING OFFICERS

Shri Sumit Tiwari, S/o Shri Abhey Kant Tiwari,  
 M/s Tiwari Sweets, Shop No.27/37,  
 Vishwas Nagar, Shahdara,  
 Delhi-110032

**Copy for information to :-**

1. PA to Commissioner, Department of Food Safety, GNCTD, Delhi.  
 A-20, Lawrance Road, Industrial area, Ring Road, Delhi.
2. Sh. K. K. Mittal Designated Officer, Department of Food Safety, GNCTD,  
 Delhi.
3. Food Safety Officer, Department of Food Safety,  
 Govt. of NCT of Delhi,  
 A-20, Lawrence Road Industrial Area,  
 Delhi-110035



(Sh. Sumit)