

Court No. - 69

Case :- CRIMINAL REVISION No. - 2448 of 2010

Revisionist :- Ram Kishan

Opposite Party :- State of U.P.

Counsel for Revisionist :- Umesh Chandra Mishra, Sushil Kumar Dubey

Counsel for Opposite Party :- Govt. Advocate

Hon'ble Samit Gopal, J.

1. List revised.
2. Heard Sri Sushil Kumar Dubey, learned counsel for the revisionist, Sri Devendra Nath Mishra, learned A.G.A. for the State and perused the material on record.
3. The trial court records have been received which have also been perused.
4. The present revision under Sections 397/401 Cr.P.C. has been preferred by the revisionist- Ram Kishan against the judgement and order dated 19.6.2010, passed by the Additional Session Judge, Court No.4, Etawah in Criminal Appeal No. 64 of 2008 (Ram Kishan Vs. State of U.P.), whereby the judgement and order dated 5.7.2008, passed by Addl. Chief Judicial Magistrate, Court No.1, Etawah in Crl. Case No. 484 of 1999 (State Vs. Ram Kishan) under Section 7(I)/16(I)(A)(I) of Prevention of Food Adulteration Act has been upheld by which revisionist has been convicted with one year rigorous imprisonment and fine of Rs.2,000/-, under Section 7(I)/16(I)(A)(I) of Prevention of Food Adulteration Act.
5. The facts of the case are that the complainant Deshraj Srivas, Chief Food Inspector stopped the revisionist on 5.6.1998 at about 10.15 a.m. at while he was carrying milk in three containers which was intended for sale. On suspicion of it being adulterated, he disclosed his identity to the accused and asked license for sale to which he denied. The complainant purchased 660 ml goat milk of one container by giving Rs.6.75/- for sample and then kept in three bottles in equal quantity in which 18 drops of formalin each was added for preserving it which was then sent to the public analyst for chemical analysis who vide his report being report no.VA=201 dated 20.7.1998 reported it to be adulterated as it contained 57 per cent less milk fat and 8 percent less milk solid non-fat in it. The complainant then took sanction from the C.M.O. concerned and

filed a complaint against the revisionist/accused. In the trial court the complainant Deshraj Srivas, Chief Food Inspector, was examined as P.W.-1 and Kush Kumar Gupta, Food Clerk, was examined as P.W.-2. The accused/revisionist in his statement under Section 313 Cr.P.C. denied the prosecution case and stated of false implication. The trial court convicted and sentenced the accused/revisionist as stated above. The appeal was preferred against the same which came to be dismissed after which the present revision has been filed against both the impugned judgement and orders.

6. Learned counsel for the revisionist argued that Deshraj Srivas, Chief Food Inspector, was examined as PW-1. He states of taking sample of goat milk from container allegedly belonging to the revisionist. P.W.2, the Food Clerk in the office of C.M.O concerned states that notice under Section 13(2) of the Act was sent to accused Ram Kishan, S/o Achchey Lal, R/o Bauthi, Post Bauthi, District Etawah. The documents of the case go to show that the revisionist is Ram Kishan S/o Achchey Lal and except for the said stage, prior to it the case had proceeded against him. It is argued that Kush Kumar Gupta, P.W.2, the Food Clerk in the office of C.M.O, Etawah while being examined as P.W.2 before the trial court has stated that he has sent the notice under Section 13(2) of the Food Adulteration Act, 1954 to accused Ram Kishan, S/o Achchey Lal and has filed the said receipt as Exb.-10/2 before the trial court but the perusal of the same would go to show that the said postal receipt states of registered post being sent to Ram Kishan S/o Chotey Lal. It is submitted that as such the notice has been sent to a wrong person having a different parentage as the revisionist is Ram Kishan, S/o Achchey Lal Chak. It is submitted that since the said notice has been sent on a wrong person having a different parentage, the same was not expected to have been received to the revisionist. It is argued that since there is nothing credible to show regarding service of notice on the revisionist and further there is nothing to show that the said notice has been served on the revisionist which is mandatory. The revisionist would be seriously prejudiced as he did not get a chance to get the sample retested in the Central Food Laboratory, as such his valuable right under Section 13(2) of the Act was defeated. On the said count itself the prosecution of the revisionist is bad in the eyes of law which deserves to be set-aside.

7. Learned counsel for the State opposed the prayer and arguments and argued that the trial court has given cogent reasons for convicting the revisionist. The appellate court has also considered

the matter in its true prospective and has come to a conclusion that the appeal deserves to be dismissed.

8. After having heard learned counsel for the parties and perusing the records, it is evident that in the present case notice was sent to revisionist Ram Kishan S/o Chotey Lal but the revisionist is Ram Kishan, S/o Achchey Lal Chak, as such the notice has been sent to a wrong person having a different parentage as that of the revisionist and the said notice was not served upon the revisionist. The purpose of Section under Section 13(2) of the Act, 1954 is defeated. On the said count the prosecution of the revisionist is bad in the eyes of law which deserves to be set-aside.

9. The present revision is **allowed**. The impugned judgement and order dated 19.6.2010, passed by the Additional Session Judge, Court No.4, Etawah and the impugned judgement and order dated 5.7.2008, passed by Addl. Chief Judicial Magistrate, Court No.1, Etawah in the aforesaid case are hereby set aside.

10. The revisionist-**Ram Kishan** is on bail, he need not surrender. His bail bonds are cancelled and sureties are discharged.

11. Office is directed to transmit the copy of this judgement along with the trial court records to the concerned trial court forthwith for its compliance and necessary action.

12. The file be consigned to records.

(Samit Gopal, J.)

Order Date :- 11.12.2023

Gaurav Kuls