

Court No. - 69

Case :- CRIMINAL REVISION No. - 945 of 2022

Revisionist :- Ashok Kumar

Opposite Party :- State of U.P. and Another

Counsel for Revisionist :- Rajiv Kumar Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal,J.

1. List revised.
2. Heard Sri Rajiv Kumar Tripathi, learned counsel for the revisionist and Sri Shashikant Pandey, learned counsel for the State and perused the material on record.
3. The present revision under Sections 397/401 Cr.P.C. has been preferred by the revisionist- **Ashok Kumar** against the judgement and order dated 15.12.2021 passed by Additional Sessions Judge / F.T.C. (Crime Against Women) / Jalaun at Orai in Criminal Appeal No. 11 of 2018 by which the said appeal has been dismissed which was preferred against the judgement and order dated 31.01.2018 passed by the Chief Judicial Magistrate, Jalaun at Orai in Case No. 2400 of 1994 (State of U.P. vs. Ashok Kumar), Police Station Kotwali Orai, District Jalaun whereby the revisionist-accused was convicted and sentenced under Section 7/16 of the Prevention of Food Adulteration Act for 01 year rigorous imprisonment & fine of Rs. 2000/- and in default of payment of fine to further undergo 03 months additional imprisonment.
4. The facts of the case are that the Food Inspector collected the sample of mixed milk on 08.09.1993 at 7.00 a.m. after purchasing it from the revisionist. The same was then filled in three bottles and sent them for analysis before the Public Analyst found milk fat to be 11% whereas milk solid not fat to be 4%. As per the standard prescribed under the provisions of Food Adulteration Act for the mixed milk, the minimum percentage of milk food as stated to be 4.5% whereas milk solid not fat is stated to be 8.5%.
5. In the present case the Food Analyst has reported that the mixed milk is deficient by 11% of milk solid not fat which is an incorrect report since milk solid not fat was found to be 4 %

whereas the standard prescribed as per the rules is 8.5%. The revisionist was charged vide order dated 31.01.2018 by the Chief Judicial Magistrate, Jalaun at Orai for offence under Section 7/16 of Prevention of Food Adulteration Act for breach of rule. The trial concluded and the revisionist was convicted.

6. In the trial Food Inspector was examined as P.W.1 under Section 246 Cr.P.C. after which no witness was examined and Mahebdra Pratap Singh and Zahid Ali were examined as P.W.2 and 3 respectively under Section 246 Cr.P.C.

7. The accused while giving his statement under Section 313 Cr.P.C. denied the charges levelled against him. No defence evidence was led. A complaint was filed by the Food Inspector against the revisionist for offences under Section 7/16 of the Prevention of Food Adulteration Act, 1954 before the court concerned on which cognizance was taken and the applicant was tried.

8. The argument of learned counsel for the revisionist is that the entire prosecution story against the revisionist is bad in the eyes of law since the material is alleged to have been taken from one Ram Kumar son of Mantole Chaudhary and the entire papers being Form-6, sanction for prosecution and the other relevant documents have been prepared in the said name but subsequently the complaint has been filed against Ashok Kumar son of Kali Charan Ahirwar and then it is stated that it has come to be known later on that the name of the applicant is Ashok Kumar son of Kali Charan Ahirwar. It is argued that even notice u/s 13 (2) of the Prevention of Food Adulteration Act was sent in the name of Ram Kumar son of Mantole Chaudhary and as such there is a complete non compliance of the said section. It is argued that the prosecution story is totally false and based on a totally misreading of evidence and on misidentity. It is argued that as such the prosecution against the applicant is illegal and judgement & orders deserves to be quashed.

9. Learned counsel for the State opposed the prayer for bail.

10. After having heard learned counsel for the parties and perusing the record, it is evident that although notice u/s 13 (2) of the Prevention of Food Adulteration Act was sent to Ashok Kumar son of Kali Charan Ahirwar but the Form-6 and the sanction of prosecution was against Ram Kumar son of Mantole Chaudhary. The complaint has been filed against Ashok Kumar son of Kali Charan Ahirwar on which the revisionist was prosecuted. There is noting concrete to show as to how the said difference has surfaced.

11. In view of the same, the revisionist deserves to be extended the benefit of doubt.

12. The present revision is **allowed**. The impugned judgement and order dated 15.12.2021 passed by Additional Sessions Judge / F.T.C. (Crime Against Women) / Jalaun at Orai, in Criminal Appeal No. 11 of 2018 and the impugned judgement and order dated 31.01.2018 passed by the Chief Judicial Magistrate, Jalaun at Orai in Case No. 2400 of 1994 are hereby set aside.

13. The revisionist- **Ashok Kumar** is acquitted of the charge levelled against him. The revisionist is on bail. His bail bond is cancelled and sureties discharged.

14. 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.

15. The file be consigned to records.

Order Date :- 11.12.2023

AS Rathore

(Samit Gopal,J.)