

Court No. - 69

Case :- CRIMINAL REVISION No. - 5199 of 2011

Revisionist :- Bheemsen

Opposite Party :- State of U.P.

Counsel for Revisionist :- Sabha Jeet Yadav

Counsel for Opposite Party :- Govt. Advocate

Hon'ble Samit Gopal,J.

1. List revised.
2. Heard Sri Chakshuvendra Pachauri, learned counsel for the revisionist and Sri Virendra Pratap Singh, learned counsel 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- Bheemsen against the judgement and order dated 30.11.2011 passed by Additional Sessions Judge, Court No. 1, Pilibhit in Criminal Appeal No. 82 of 2011 (Bheemsen Vs. State of U.P.), under Section 7/16 PFA Act whereby learned Session Judge has dismissed the appeal of revisionist and confirmed the judgment and order dated 16.07.2011 passed by Special Judicial Magistrate Economy Crime/ACJM, Pilibhit in Case No. 3174 of 2008 (State Vs. Bheemsen) under Section 16(1) A(1) PFA Act, P.S. Gajraula, District Pilibhit in which learned Magistrate convicting and sentencing the revisionist to six months simple imprisonment along with fine of Rs. 1,000/- and in default of payment of fine, he further go to the additional imprisonment of ten days.
5. The prosecution case as per the complaint filed by the Food Inspector Vijendra Kumar is that on 11.03.2008 at about 11:05 am while doing inspection near the Railway Crossing Lichi Baag, Pilibhit he saw revisionist coming on cycle carrying two containers having around 40 liters milk and on asking him he informed him that he is taking the same for selling it in houses and it is mixed milk of cow and buffalo. He introduced himself and asked for license which could not be produced. On a suspicion of being adulterated milk, he purchased 1.5 liter mixed milk from the

revisionist by giving money. He prepared samples of the same in three bottles as per rules. The required paper formalities done and complaint was thus filed. It is alleged that after filing of the complaint, notice under Section 13(2) of the Prevention of Food Adulteration Act was sent to the applicant.

6. In the trial, Vijendra Kumar the Food Inspector was examined as PW-1 whereas Nahid Khan the Food Clerk was examined as PW-2, the accused in his statement under Section 313 Cr.P.C. denied the prosecution case. He did not plea his defence evidence.

7. The argument of learned counsel for the revisionist is that the valuable right of the revisionist under Section 13(2) of the PFA Act has defeated, inasmuch as, as per the statement of Nahid Khan the Food Clerk/PW-2 and records Exb: Ka-13 and Ka-14, notice has been sent to someone whose name does not find place in the postal receipt, the address as mentioned is Potakalan whereas as per Exb: Ka-13, the revisionist was living in village Laukaha, Post Potakalan, District Pilibhit. It is argued that as such there was no question of the revisionist receiving the said notice as it was sent to a totally different place. It is argued that since no notice under Section 13(2) of the PFA Act was sent to the revisionist, his valuable right for getting the sample retested by CFL, is violated. It is argued that the prosecution is thus liable to fail inasmuch as the valuable right to the accused of getting sample retested under Section 13(2) of the PFA Act has been defeated. It is argued that as such conviction and sentence as awarded to the revisionist be set-aside, judgement & order of the trial court be set-aside and also the judgement & order of the appellate court be set-aside.

8. Learned counsel for the State although opposed the prayer but could not dispute the arguments as raised.

9. After having heard learned counsel for the parties and perused the records as well as perusal of the statement of PW-2 Nahid Khan, the letter of the CMO concerned, Exb: Ka-13, the postal receipt and Exb: Ka-14 goes to show that in Exb: Ka-13, the address of the revisionist is mentioned as village Laukaha, Post Potakalan whereas in the postal receipt Exb: Ka-14 there is no reference of the village of the revisionist whereas the name of the post office is mentioned as Potakalan. There is no mention of the name of the accused also in the said receipt. In the cross examination PW-2 has stated that he has sent the said report at the address of Potakalan whereas he did not send it at the address of village Laukaha.

10. In view of the same, it is apparent that the report has not been sent at the correct address of the revisionist and thus his valuable right under Section 13(2) of the Food Adulteration Act has been defeated.

11. The present revision is **allowed**. The impugned judgement and order dated 30.11.2011 passed by Additional Sessions Judge, Court No. 1, Pilibhit and the judgement and order dated 16.07.2011 passed by Special Judicial Magistrate Economy Crime/ACJM, Pilibhit are hereby set aside.

12. The revisionist- Bheemsen is acquitted of the charge levelled against him. The revisionist is on bail. His bail bond is cancelled and sureties discharged.

13. 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.

Order Date :- 20.11.2023

M. ARIF

(Samit Gopal, J.)