

Court No. - 69

Case :- CRIMINAL REVISION No. - 687 of 2016

Revisionist :- Chandresh Pathak

Opposite Party :- State of U.P.

Counsel for Revisionist :- Krishna Kumar Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal,J.

(Order on Revision)

1. List revised.

2. Heard Sri Shive Datta Yadav, learned counsel for revisionist and Sri Bade Lal Bind, learned counsel for the State and perused the records.

3. This criminal revision is preferred against the judgment and order dated 26.02.2016 passed by Additional Session Judge, Court No. 12, Bareilly, dismissing the Criminal Appeal No. 143 of 2014 arising out of judgment and order dated 25.07.2014 passed by Additional Chief Judicial Magistrate Ist Bareilly in Case No. 727 of 2009 (State Versus Chandresh Pathak), convicting the revisionist under Section 7/16 of Prevention of Food Adulteration Act for six months rigorous imprisonment along with fine Rs. 1,000/- and in default of payment of fine, further one month additional imprisonment.

4. It is argued by learned counsel for the revisionist that the sample in the present matter was taken on 10.10.2008 which was sent to the Public Analyst for analysis who sent his report dated 22.11.2008 to the Food Inspector. Subsequently, a notice under section 13(2) of the Prevention of Food Adulteration Act is said to be sent to the revisionist on 19.03.2009. It is further argued that the complaint in the present matter although is dated 04.03.2009 but the same has been filed on 20.03.2009 as would appear from the records on which the concerned trial court directed it to be registered on the said date. It is argued that there is delay in sending of the notice under section 13(2) of the Act inasmuch as section 13(2) of the Act prescribes the notice under it to be sent to the accused within 10 days of the receipt of the report of the Public Analyst but in the present case the report of the Public Analyst is

dated 22.11.2008 which as per P.W.-2 Rajeew Kamal the food clerk and annexure ka-9 the postal receipt was sent to the revisionist on 19.03.2009 which is after about 4 months of the date of the report of the Public Analyst. It is further argued that even further there is no finding recorded by the trial court and even the appellate court that the said notice has been served upon the revisionist-accused. The service of notice is necessary for the accused-revisionist to exercise his option for getting the sample retested by the Central Food Laboratory. It is argued that even the trial court has not gone into the aspect by considering the records as to whether any evidence has been led by the prosecution regarding the service of notice under section 13(2) of the Act upon the revisionist.

5. Learned counsel for the revisionist has relied upon the judgment of the Apex Court in the case of **Vijendra Vs. State of Uttar Pradesh: (2020) 15 SCC 763 (para-14 and 15)** and **Narayan Prasad Sahu Vs. The State of Madhya Pradesh: (2022) 1 SCC 87 (para-5, 6, 8 and 9)** to buttress his argument.

6. Per contra, learned A.G.A. has opposed the revision.

7. After having heard the learned counsel for the parties and perusing the record of the revision and also trial court, it is evident that the sample of khowa allegedly taken on 10.10.2008 was sent to the Public Analyst for examination who after examination sent report dated 22.11.2008 to the concerned authority. A complaint dated 04.03.2009 was filed before the court concerned on 20.03.2009 before which on 19.03.2009 it is alleged that notice under section 13(2) of the Act was sent to the revisionist. The sending of notice is delayed by about four months which defeats the right of the accused for getting the sample tested in the Central Food Laboratory. The said right is a valuable right to the revisionist and by not sending the notice in time and also the fact that there is no credible evidence that the notice has been served upon the revisionist, the revisionist would not get the fair chance.

8. In view of the same the revision is allowed. The judgment and orders dated 26.02.2016 passed by Additional Session Judge, Court No. 12, Bareilly and judgment and order dated 25.07.2014 passed by Additional Chief Judicial Magistrate Ist Bareilly, are set aside and quashed.

(Order on Criminal Misc. Recall Application No. 1 of 2023)

1. The revisionist is stated to be in jail in compliance of the order dated 27.10.2023 of this Court by which non-bailable warrants

were issued against him.

2. There is a recall application dated 30.11.2023 with the prayer to recall the order dated 27.10.2023 issuing non-bailable warrant against the revisionist. Since there is no representation on his behalf, the order dated 27.10.2023 is recalled.

3. The recall application is allowed.

Order Date :- 14.12.2023

K.K. Maurya

(Samit Gopal,J.)