Neutral Citation No. - 2023:AHC:232539

Court No. - 69

Case :- CRIMINAL REVISION No. - 1134 of 2009

Revisionist :- Mahipal
Opposite Party :- State of U.P. and Another
Counsel for Revisionist :- Ashish Kumar Srivastava
Counsel for Opposite Party :- Govt. Advocate

Hon'ble Samit Gopal,J.

1. List revised.

2. Heard Sri Devendra Singh, learned counsel for the revisionist, Sri Ajay Singh, learned A.G.A.-1 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- Mahipal against the judgement and order dated 06.03.2009, passed by the Additional District and Session Judge, Court No. 11, Gorakhpur in Criminal Appeal No. 101/2007 (Mahipal Vs. State of U.P.), whereby the judgement and order dated 14.06.2007, passed by the Additional Chief Judicial Magistrate, Gorakhpur in Case No. 2396 of 2004 (State Vs. Mahipal) under Section 7/16 of Prevention of Food Adulteration Act, P.S.- Tiwaripur, District- Gorakhpur, whereby revisionist has been convicted with six months rigorous imprisonment and fine of Rs. 1,000/-, under Section 16(1)(a)(1) of Prevention of Food Adulteration Act, P.S.- Tiwaripur, District- Gorakhpur.

5. The facts of the case are that the complainant Umesh Prasad Gupta, Food Inspector stopped the revisionist on 28.3.1996 at about 11.30 a.m. at Ilahibagh, Behrampur, P.S.- Tiwaripur, Gorakhpur while he was carrying milk in two 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 660ml milk by giving Rs.6/-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. 2878 dated 10.5.1996 reported it to be adulterated as it contained 42 per cent less milk fat and 29 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 Umesh Prasad Gupta, Food Inspector, was examined as P.W.-1 and Wali Mohammad, retired Office Superintendent, 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 Mr. Umesh Prasad Gupta, Food Inspector, was examined as PW-1 under Section 246 Cr.P.C. and states of taking sample of mixed milk from container allegedly belonging to the revisionist. It is argued that there is nothing on record to show that the said material was stirred and homogenized before taking sample of milk. It is further argued that in so far as the milk is concerned the sample has to be taken after stirring and homogenizing of material as the fat in the milk gets settled in bottom being heavy. It is argued that in view of the said discrepancy the revisionist cannot be stated to be carrying milk which was deficient in milk fat and milk fat not solid. It is argued that since the material was not stirred and homogenized before taking its sample and launch of the prosecution on an erroneous report of the Food Analyst, the present revision deserves to be allowed.

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, in the matter since the milk before taking of its sample was not stirred and homogenized there are good chances of the upper part being taken from the cans which would be found deficient. In view of the same, it is apparent that the milk taken by the Food Inspector in cans is not stirred and homogenized.

9. The present revision is allowed. The impugned judgement and order dated 06.03.2009, passed by the Additional District and Session Judge, Court No. 11, Gorakhpur and the impugned judgement and order dated 14.06.2007, passed by the Additional Chief Judicial Magistrate, Gorakhpur in the aforesaid case are hereby set aside.

10. The revisionist- Mahipal is in jail, he shall be released forthwith from the jail unless warranted not any other case.

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.

Order on Criminal Misc. Bail Application No. 2/2023: Dated-15.11.2023

1. Since the revision is allowed, there is no need to pass a separate order on the bail application. The bail application is disposed of in terms of the order passed in the revision.

(Samit Gopal, J.)

Order Date :- 7.12.2023
Sharad/-

Digitally signed by :-
SHARAD KUMAR SRIVASTAVA
High Court of Judicature at Allahabad