Court No. - 69

Case :- CRIMINAL REVISION No. - 3233 of 2018

Revisionist :- Dinesh Paltani
Opposite Party :- State of U.P. and Another
Counsel for Revisionist :- P.H. Vashishtha,Vivek Kumar Singh
Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal,J.

1. List revised.

2. Heard Sri P.H. Vashishtha, learned counsel for the revisionist, Sri Birendra Pratap Singh, learned A.G.A. for the State and perused the material on records.

3. The present revision under Sections 397/401 Cr.P.C. has been preferred by the revisionist Dinesh Paltani against the judgement and order dated 07.8.2018 passed by Additional District and Sessions Judge/Fast Track Court, Court No. 2, Kasganj in Criminal Appeal No. 38 of 2017 (Dinesh Paltani vs. State of U.P. and others), by which the said appeal has been dismissed and the judgement and order dated 28.7.2017 passed by the trial court has been affirmed, and, further against the judgement and order dated 28.7.2017 passed by Additional Chief Judicial Magistrate- III, Kasganj in Complaint Case No. 762 of 2016(Food Inspector vs. Dinesh Paltani), under Section 7/16 Prevention of Food Adulteration Act, 1954, whereby the revisionist has been sentenced for 01 year rigorous imprisonment and a fine of Rs.1000/- and in default of payment of fine to further additional imprisonment of 15 days by recording conviction under Section 7/16(1)(A)(ii) of Prevention of Food Adulteration Act, 1954.

4. The present revision was admitted vide order dated 18.9.2018 and the revisionist was directed to be released on bail. The amount of fine was not stayed.

5. The facts of the case are that Ved Prakash, Food Inspector, Kanshiram Nagar on 21.3.2009 at about 11:00 a.m. stopped the revisionist who was going to sale ghee and collected sample being K.R.N.-64/K.S.J.-07/09 for quality testing for which the revisionist had no license. On being suspicion of it being adulterated he disclosed his identity to the accused and purchased 600gm ghee by giving Rs.132/- for sending it to chemical analyst for analysis. The complainant prepared a notice Form-6 in two sheets on which got signature of witness and gave a copy of the said notice to the accused on spot. The complaint then filled the sample of ghee in three empty bottles and sealed them on the spot and affixed code slips containing signatures of local health authority, Kanshiram Nagar on which got signature of accused/revisionist. The public analyst gave its report being report no.4075 dated 27.4.2009 and found it to be adulterated. According to the said report "*butyrorefractometer reading at 40.0 C exceeds the prescribed maximum limit of 43.0 and reichert value is less than the prescribed minimum limit of 26.0 for ghee. The sample is adulterated.*" 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/Ved Prakash was examined as P.W.-1, Chandraveer Singh 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. No defense evidence was led. 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. Argument of learned counsel for the revisionist is that the sample of ghee which was taken by P.W.-1 Food Inspector was from the place which was situated at Hari Ki Pauri, where there are many temples. The said witness has stated that the ghee which is sold at the bank of river Ganga, is used for burning diyas in temples. It is argued that the said ghee was not meant for human consumption. It is further argued that the report of public analyst goes to show that the sample was received in an ordinary plastic container. It is argued that Rule 14 of the Prevention of Food Adulteration Rules, 1955 although states that sample to be taken for analysis, shall be taken in clean dry bottles or jars or in other suitable containers which shall be closed sufficiently tight to prevent leakage, evaporation or in the case of dry substance, entrance of moisture and shall be carefully sealed. It is argued that the report of public analyst shows that the sample was in an ordinary plastic containers. It is argued that since ghee is not a dry product and whereas its consistency varies as per change of temperature, it cannot be said that ordinary plastic container was an article quite safe for keeping the material in its actual form as was collected since the quality of the same also differs and by it the quality of the material stored could have differed. It is argued that the sample as received by Food Analyst for analysis is already stated by him to be a semi-solid state and thus possibility of the ordinary plastic container also making some change its constitution, cannot be ruled out.

7. After having heard learned counsels for the parties and perusing the records, it is evident that as per the statement of complainant ghee is used for lightning of diyas in temples. A lot of people were present in and around the place from where he was taken sample. Storage of the said sample was not in a healthy container as would appear from the report of public analyst which states of it being stored in an ordinary container. The prosecution is thus unsafe for prosecuting the revisionist under the provisions of Prevention of Food Adulteration Act.

8. The present revision is allowed. The judgement and order dated 07.8.2018 passed by Additional District and Sessions Judge/Fast Track Court, Court No. 2, Kasganj in Criminal Appeal No. 38 of 2017 (Dinesh Paltani vs. State of U.P. and others) and the judgement and order dated 28.7.2017 passed by Additional Chief Judicial Magistrate- III, Kasganj in Complaint Case No. 762 of 2016(Food Inspector vs. Dinesh Paltani), under Section 7/16 Prevention of Food Adulteration Act, 1954 are hereby set aside.

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

10. 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.

11. The file be consigned to records.

(Samit Gopal,J.)

Order Date :- 3.11.2023
Naresh

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