

Court No. - 69

Case :- CRIMINAL REVISION No. - 1331 of 2010

Revisionist :- Uma Shanker

Opposite Party :- State of U.P.

Counsel for Revisionist :- B. Lal, Jeevan Jee Srivastav

Counsel for Opposite Party :- Govt. Advocate

Hon'ble Samit Gopal, J.

1. Heard Sri Jeevan Jee Srivastava, learned counsel for the revisionist, Sri Ajay Singh, learned A.G.A.-I for the State and perused the records.

2. The trial court records have also been received which have been perused.

3. This revision has been filed against the judgment and order dated 26.8.1989 passed by the Additional Chief Judicial Magistrate, Bhadohi in Criminal Case No. 663 of 1997 (State of U.P. Vs. Uma Shanker) convicting and sentencing the revisionist-accused for offence under Section 16(1)(A)(T) of the Prevention of Food Adulteration Act, 1954 for one year rigorous imprisonment with fine of Rs. 1000/- and in default of payment of fine to three months rigorous imprisonment and further against the judgment and order dated 26.3.2010 passed by the Sessions Judge, Bhadohi-Gyanpur in Criminal Appeal No. 153 of 1998 (Uma Shanker Vs. State of U.P.) by which the said appeal has been allowed in part and the conviction of the revisionist-accused has been modified to six months rigorous imprisonment with a fine of Rs. 500/- and in default of payment of fine to one month simple imprisonment.

4. The facts of the case are that on 31.8.1986 at about 4:00 P.M. in village Nawdhan, Post Unj, Police Station Koirauna, District

Bhadohi, the Food Inspector inspected the shop of the revisionist and found him selling mustard oil which was kept there and displayed for sale. On a suspicion of the same being adulterated, he purchased the same after required formalities and sent it to the public analyst for analysis. The public analyst vide his report dated 13.10.1986 opined that the sample was having excess butyro refractory index iodine and was containing 87% of Tisi oil and saponification. The sample was also containing of artificial colour which was prohibited in it. The sample was, thus, found to be adulterated. After taking sanction from the CMO concerned, the Food Inspector filed a complaint dated 25.6.1989 on which the trial in the matter started. In the trial, Samar Bahadur Yadav, the Food Inspector was examined as P.W.-1 and Rajendra Prasad, the senior clerk in the office of District Health Officer was examined as P.W.-2. The accused in his statement under Section 313 Cr.P.C. denied the prosecution case. He stated that he was not present at the place of occurrence and he does not own any such shop of general merchant but he is a farmer. Ravi Kishun was produced as D.W.-1 by the accused in his defence. The trial court after recording of the evidences convicted and sentenced the revisionist as stated above. Charge was framed against him vide order dated 7.8.1996 by the Chief Judicial Magistrate, Bhadohi for offences under Section 16(1)(A)(i) of the Prevention of Food Adulteration Act, 1954.

5. P.W.-1 Samar Bahadur Yadav, Food Inspector stated of conducting of an inspection in the shop and taking sample of mustard oil from it. He further states of sending it to the food analyst for examination. P.W.-2 Rajendra Prasad, the Food clerk states of sending the report of the public analyst and the order of sanction granted by C.M.O. along with other document to the

accused.

6. Learned counsel for the revisionist submitted that the prosecution against the revisionist is bad in the eyes of law inasmuch as the notice under Section 13(2) of the Prevention of Food Adulteration Act, 1954 has not been received by the revisionist. It is argued that as per the prosecution case the sample of mustard oil is alleged to have been taken on 31.08.1986 and the report of the Food Analyst is dated 13.10.1986 but the witness P.W.-2 who was the food clerk states of sending the same with a letter dated 05.07.1989 to the revisionist through a registered post bearing receipt no. 720 dated 05.07.1989. The said postal receipt has been filed by him and proved by him which is marked as Exhibit No. Ka-9 to the trial court's record. It is argued that the argument with regard to his report under Section 13(2) of the Act of 1954 has been sent to the revisionist after about three years of the taking of the sample. The same is in gross violation of Section 13(2) of the Food Adulteration Act which specifically states that the same has to be sent within 10 days from the date of receipt of copy of the public analyst giving an option to the accused to get the sample kept by the local authority analyzed by the Central Food Laboratory. It is further argued that even thereafter there is nothing on record to show that the said report has been received by the applicant and the statement that mere dispatch of the report to the accused is not a sufficient compliance of the requirement of Section 13(2) of the Act of 1954 as there has to be a positive evidence that the report has been served on the accused. He has placed reliance on the judgment of the Apex Court in the cases 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)**. It is argued that

as such a prosecution against the revisionist is bad that in the eyes of law. It is argued that the delay in the present matter from the side of the prosecution is enormous inasmuch as the sample of the food item was alleged to be taken by the Food Inspector on 31.08.1986 after which it was analysed and a report was given by the public analyst on 13.10.1986 but then the complaint was filed on 29.06.1989 which is after about three years of the date of taking of the sample and after which it is stated that the notice under Section 13(2) of the Act was sent on 05.07.1989 which is after about three years and one month from the date of taking of the sample. It is argued that the available right of the revisionist-accused for getting the sample re-tested from the Central Food Laboratory is totally affected. The present revision, thus, be allowed and the judgments and orders impugned be set aside.

7. Learned counsel for the State opposed the present revision.

8. Perused the records of the revision, records of the trial court and heard learned counsel for the parties.

9. The position which emerges from the record is that there is an allegation of sample being taken on 31.08.1986 of mustard oil. The same was sent to the public analyst for analysis which after being analysed was reported back vide report dated 13.10.1986. A complaint, thus, was then filed on 25.06.1989 which is after about three years of the date of taking of sample. The notice under Section 13(2) of the Act is stated to have been dispatched by registered post through Exhibit Ka-9 which is stated 05.07.1989. The dispatch of the said notice is after about three years and one month from the date of the report of public analyst. There is nothing on record to show that the said notice ever was delivered to the revisionist. More so there has been an inordinate delay in

filing of the complaint. The re-testing of the alleged mustard oil after about three years if would have been then would have served no fruitful purpose.

10. The revision is, thus, **allowed** and the judgment and order dated 26.8.1989 passed by the Additional Chief Judicial Magistrate, Bhadohi in Criminal Case No. 663 of 1997 (State of U.P. Vs. Uma Shanker) and judgment and order dated 26.3.2010 passed by the Sessions Judge, Bhadohi-Gyanpur in Criminal Appeal No. 153 of 1998 (Uma Shanker Vs. State of U.P.) are, hereby, set aside.

11. The trial court records be remitted back to the court concerned forthwith for necessary action.

Order Date :- 12.12.2023

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(Samit Gopal, J.)