

Court No. - 69

Case :- CRIMINAL REVISION No. - 4612 of 2009

Revisionist :- Vijay Bahadur

Opposite Party :- State of U.P.

Counsel for Revisionist :- R.B. Sahai

Counsel for Opposite Party :- Govt. Advocate

Hon'ble Samit Gopal,J.

1. List revised.

2. Heard Sri Sanjay Mishra, learned counsel for the revisionist and 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- Vijay Bahadur against the judgement and order dated 27.06.2009, passed by the Additional Session Judge, Court No. 9, Fatehpur in Criminal Appeal No. 17/2008 (Vijay Bahadur Vs. State of U.P.), affirming the judgment and order dated 12.02.2008 passed by the Additional Chief Judicial Magistrate, Court No. 10, Fatehpur in Case No. 1890/1999 (State of U.P. Vs. Vijay Bahadur) convicting the applicant/revisionist under Section 2 I.A. (M)/16 P.F.A. and sentencing him to six months RI and to pay a fine of Rs. 1,000/- and in default of payment of fine, additional two months RI., P.S.- Kotwali, District-Fatehpur.

5. The facts of the case are that the complainant A. P. Shukla, Food Inspector stopped the revisionist on 30.07.1999 at about 8.30 a.m. at Ramganj, P.S.- Kotwali, Fatehpur while he was carrying milk of about 20 litres 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 600ml milk by giving Rs.7.50/-for sample and then kept in three bottles in equal quantity in which 20 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. P.A. 1980 dated 31.08.99 reported it to be adulterated as it contained 21 per cent 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 A. P. Shukla, Food Inspector, was examined as P.W.-1 and Parvej Ahmad, Clerk 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 A. P. Shukla, 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 27.06.2009, passed by the Additional Sessions Judge, Court No. 9, Fatehpur and the impugned judgement and order dated 12.02.2008, passed by the Additional Chief Judicial Magistrate, Court No. 10, Fatehpur in the aforesaid case are hereby set aside.

10. The revisionist- Vijay Bahadur 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. 3/2023: Dated-22.11.2023

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/-