

**Court No. - 69**

**Case :-** CRIMINAL REVISION No. - 1773 of 2016

**Revisionist :-** Vinod

**Opposite Party :-** State Of U.P. And Anr.

**Counsel for Revisionist :-** Sanjay Kumar,S.K. Dubey

**Counsel for Opposite Party :-** G.A.

**Hon'ble Samit Gopal,J.**

1. List revised.

2. Heard Sri Sunil Kumar Dubey, Advocate, holding brief of Sri Sanjay Kumar Dubey, learned counsel for the revisionist, Sri Ajay Singh,learned A.G.A.-I for the State and perused the records.

5. The present revision under Sections 397/401 Cr.P.C. has been filed by the revisionist Vinod against the judgement and order dated 04.6.2016 passed by Additional Sessions Judge, Court No.9, Aligarh in Criminal Appeal No. 186 of 2011, Vinod vs. State, by which the said appeal has been dismissed and the judgement and order dated 12.10.2011 passed by the trial court has been affirmed, and, further against the judgement and order dated 12.10.2011 passed by Additional Chief Judicial Magistrate, Court No. 1, Aligarh in Complaint Case No. 1428 of 2006, State vs. Vinod, under Section 7/16 Prevention of Food Adulteration Act, P.S. Tappal, District Aligarh, whereby the revisionist has been sentenced for 06 months rigorous imprisonment and a fine of Rs.1000/- and in default of payment of fine to further additional simple imprisonment of 02 month by recording conviction under Section 7/16 of Prevention of Food Adulteration Act, 1954.

6. The present revision was admitted vide order dated 20.6.2016 and the revisionist was released on bail vide order dated 20.6.2016. The amount of fine was not stayed.

7. The facts of the case are that on 16.2.2006 at about 08.30 a.m. the complainant Neeraj Pandey, Food Inspector, Lodha region, reached at the dairy of the revisionist and disclosed his identity and inspected the milk. On asking about it, the revisionist told him it to be kept for the purpose of public sale and it is mixed milk both cow and buffalo. On being asked for license the revisionist unable to show it. On suspicion of it being adulterated, for examination of sample a notice paper no. 6 and then purchased 750 ml milk by giving Rs.10/-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 public analysis who vide his report being report no. 239 dated 28.3.2006 reported it to be adulterated as it contained 7 per cent less milk solid not 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 Neeraj Pandey, Food Inspector, was examined as P.W.-1 and Yogesh Kumar Pundir, 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 and denied to led any

defense evidence. 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.

8. Learned counsel for the revisionist argued that in so far as valuable right of the revisionist under Section 13(2) of Prevention of Food Adulteration Act, 1954 for getting the sample of the alleged item retested by the Central Food Laboratory after receipt of a notice under the said section and then applying for getting sample retested, is totally vague inasmuch as Yogesh Kumar Pundir/P.W.-2 who was posted as clerk in the office of City Magistrate concerned although states on the basis of Register that notice under Section 13(2) of Prevention of Food Adulteration Act, 1954 has been sent to the accused/revisionist but neither the files extract of the register nor any document to show as to when the said notice has been sent to the accused/revisionist. It is argued that even while filing of the complaint, no such document showing dispatch of notice under Section 13(2) of Prevention of Food Adulteration Act, 1954 has been filed to even demonstrate the date and to show with authenticity that notice has been served to the revisionist. Further it is argued that the trial court has also failed to consider this aspect and also to consider the fact as to whether any notice has been served upon the accused/revisionist under Section 13(2) of Prevention of Food Adulteration Act, 1954 or not, but in its para-9 of the judgement has only referred to the fact that the said witness has stated the dispatch of notice and from the same, it is evident that there has been compliance of Section 13(2) of Prevention of Food Adulteration Act, 1954. The judgement of the Apex Court in the case of ***Vijendra vs. State of Uttar Pradesh: (2020) 15 SCC 763 and Narayan Prasad Sahu vs. The State of Madhya Pradesh: (2022) 1 SCC 87*** have been placed to buttress the said arguments. It is argued that the present revision thus deserved to be allowed.

9. Per contra, learned A.G.A. opposed the prayer and the present revision. It is argued that since the report, as per Section 13(2) of Prevention of Food Adulteration Act, 1954, was sent to the revisionist by a registered post, there was a presumption of it being delivered, more so there is nothing on record to show that the same was not delivered to him. He submits that the material was found to be adulterated and as such looking to the said fact, the present revision be dismissed.

10. After having heard learned counsels for the parties and perusing the records, it is evident that the milk purchased from the dairy of the revisionist was found to be adulterated by the public analyst. The complaint was filed after which trial proceeded and then the revisionist was convicted. Against which an appeal preferred which was dismissed and hence the present revision has been filed before this Court. The report of public analyst is dated 28.3.2006. It is argued that section 13(2) of Prevention of Food Adulteration Act, 1954 provides sending of the notice within ten days of its receipt. There is nothing on record to show that the same has been received or delivered to the accused/revisionist. Even the trial court has failed to take note of any evidence or material on record regarding delivery or receipt of notice at the end of the revisionist. Thus the very purpose of furnishing the said report and the valuable right of a person gets benefited under Section 13(2) of the Act, defeated. The same thus goes to show that the safeguard provided to the accused under Section 13(2) of Prevention of Food Adulteration Act, 1954 for exercising his

valuable right of getting the sample re-tested at the Central Food Laboratory gets defeated. Extending the benefit of doubt, the revision deserves to be allowed.

11. The present revision is allowed. The impugned judgement and orders dated 04.6.2016 and 12.10.2011 passed in the aforesaid case are hereby set aside.

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

13. 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.

14. The file be consigned to records.

(Samit Gopal,J.)

**Order Date :- 13.12.2023**

Naresh