

Court No. - 69

Case :- CRIMINAL REVISION No. - 2995 of 2018

Revisionist :- Surendra Singh

Opposite Party :- State of U.P. and Another

Counsel for Revisionist :- Vijay Prakash Singh Kushwaha

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal,J.

1. List revised.
2. Heard Sri Vijay Prakash Singh Kushwaha, learned counsel for the revisionist and Sri Ram Prakash Shukla, learned counsel for the State and perused the material on record.
2. The trial court records have been received which have also been perused.
3. The present revision under Sections 397/401 Cr.P.C. has been preferred by the revisionist- Surendra Singh against the judgement and order dated 7.8.2018, passed by the Additional District and Session Judge, Fast Track Court No. 2, Kasganj in Criminal Appeal No. 4 of 2017 (Surendra Singh Vs. State of U.P. and Others), whereby the judgement and order dated 28.1.2017, passed by the Additional Chief Judicial Magistrate, Kasganj in Complaint Case No. 596 of 2016 (State Vs. Surendra Singh) under section 7/16 Prevention of Food Adulteration Act, P.S. Soron, District Kasganj (Kanshi Ram Nagar) has been affirmed but the conviction awarded to the revisionist has been modified. Consequently, the revisionist has been sentenced to six months rigorous imprisonment along with fine of Rs. 1000/-. In default of payment of fine, the revisionist has to undergo further detention for a period of 15 days.
4. The facts of the case are that the Food Inspector collected the sample of mixed milk on 12.07.2001 at 10.15 a.m. after purchase it from the revisionist. The same was then filled in three bottles and sent them for analysis before the Public Analyst who vide his report dated 10.8.2001 found milk fat to be 7.2% whereas milk solid not fat to be 7.8%. As per the standard prescribed under the provisions of Food Adulteration Act for the mixed milk, the minimum percentage of milk food as stated to be 4.5% whereas milk solid not fat is stated to be 8.5%.
5. In the present case the Food Analyst has reported that the mixed milk is deficient by 8% of milk solid not fat which is an incorrect report since milk solid not fat was found to be 7.8 % whereas the standard prescribed as per the rules is 8.5%. The revisionist was charged vide order dated 18.12.2009

by the Additional Chief Judicial Magistrate, Kanshi Ram Nagar for offence under Section 7/16 of Prevention of Food Adulteration Act for breach of rule. The trial concluded and the revisionist was convicted.

6. In the trial Food Inspector was examined as P.W.1 under Section 244 Cr.P.C. after which no witness was examined and Kanhaiya Lal and Anil Kumar Bhardwaj were examined as P.W.2 and 3 respectively under Section 246 Cr.P.C.

7. The accused while giving his statement under Section 313 Cr.P.C. denied the charges levelled against him. No defence evidence was led. A complaint was filed by the Food Inspector against the revisionist for offences under Section 7/16 of the Prevention of Food Adulteration Act, 1954 before the court concerned on which cognizance was taken and the applicant was tried.

8. The revisionist was then convicted for offence under Section 7/16 Prevention of Food Adulteration Act for one year R.I with fine of Rs.1000/- and in default of payment of fine, 15 days additional imprisonment. He has been extended benefit of set off under Section 428 Cr.P.C. In the appeal the same was although dismissed but the conviction of the appellant was reduced to 6 months R.I. from one year R.I. The fine and default clause remained same. The present revision has thus been filed.

9. Learned counsel for the revisionist argued that the prosecution against the revisionist was drawn on an incorrect finding of the Public Analyst inasmuch as the prescribed standard of milk solid not fat is 8.5% whereas the same was found to be 7.8% but the report stated it to be deficient by 8%. There is no evidence whatsoever to show that the said milk was first stirred and then sample was taken. The fat in the milk gets settled being heavy and as such the same needs to be stirred before taking the sample. It is argued that the complainant has not stated in his statement that he did stir the milk and then took the sample of the same. Launch of the prosecution on an erroneous report of the Food Analyst and even taking of sample without stirring the milk is erroneous and as such the present revision deserves to be allowed and the conviction and sentence as awarded to the revisionist be set-aside, judgement & order of the trial court be set-aside and also the judgement & order of the appellate court be set-aside.

10. 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.

11. After having heard learned counsel for the parties and perusing the record, it is evident that the milk as stated by the Food Analyst (P.W.1) was

not stired. There is no evidence on record to show that prior to taking of sample, there was stiring of material and the further conclusion drawn by the Food Analyst regarding the deficiency is erroneous looking to the value of the collected item and that of the prescribed standard.

12. The present revision is allowed. The impugned judgement and order dated 7.8.2018, passed by the Additional District and Session Judge, Fast Track Court No. 2, Kasganj and the impugned judgement and order dated 28.1.2017, passed by the Additional Chief Judicial Magistrate, Kasganj in the aforesaid case are hereby set aside.

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

14. 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.

15. The file be consigned to records.

(Samit Gopal, J.)

Order Date :- 3.11.2023
Gaurav Kuls