

Court No. - 69

Case :- CRIMINAL REVISION No. - 3436 of 2010

Revisionist :- Gurmail Singh

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

Counsel for Revisionist :- Pankaj Kumar Srivastava

Counsel for Opposite Party :- Govt.Advocate

Hon'ble Samit Gopal,J.

1. List revised.

2. Heard Sri Anand Priya Singh, learned counsel for the revisionist, 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- Gurmail Singh against the judgement and order dated 12.8.2010, passed by the Additional District and Session Judge, Pilibhit in Appeal No.08 of 2008 (Gurmail Singh Vs. State of U.P. and another) as well as order dated 7.4.2008 passed by Additional Chief Judicial Magistrate, Court No.3/Special Judicial Magistrate, Economic Offence, Pilibhit passed in Crl. Case No.5384 of 2005 whereby the Sessions Judge dismissed the appeal filed by the revisionist and confirmed the judgement and order dated 7.4.2008, passed by the Additional Chief Judicial Magistrate, Court No.3/Special Judicial Magistrate, Economic Offence, Pilibhit whereby revisionist has been convicted with three months simple imprisonment and fine of Rs.100/-, under Section 16(1)(A)(2) r/w 50 of Prevention of Food Adulteration Act and one year simple imprisonment and fine of Rs.400/-, under Section 16(1)(A)(1) Prevention of Food Adulteration Act and in default of payment of fine, further seven days and six months simple imprisonment respectively.

5. This revision is decided without any assistance of learned counsel for the revisionist since he is unable to argue it and as such the same is being decided with the assistance of learned counsel for the State since the appellant is in jail since 25.10.2023 in compliance of the order dated 10.10.2023 of this Court issuing NBW against him.

6. The case as of the prosecution is of taking sample of milk from one of the cans allegedly being carried by the revisionist containing mixed milk of cow and buffalo which is said to have been sent for analysis and the public analyst opined milk fat and milk fat non solid to be deficient. The sample is said to have been taken on 27.7.1996 which was tested by the public analyst and a report dated 6.9.1996 was sent. Subsequently as per the prosecution after completing formalities and obtaining the sanction to launch prosecution, a complaint was filed on 6.9.1997. Notice under Section 13(2) of the Prevention of Food Adulteration Act, 1954 is also stated to have been sent on 6.7.1997 which is the date of filing of the complaint as has been stated by Rajiv Kumar Sinha, P.W.2, the Food Clerk. The food Inspector Mohd. Haneef was examined as P.W.1.

7. The revisionist-accused denied the prosecution case in the trial.

8. The records of the trial court were summoned which have been received. The Court has perused the records of the revision and also the trial court records. Perusal of the same goes to show that the material as has been taken as sample allegedly from the can being carried by the accused-revisionist was not stirred and homogenized. While dealing with the issue it was observed by the court that since the same was being carried on a bicycle, there was no need for the same as the material already gets stirred and homogenized in its normal course of nature. In so far as notice under Section 13(2) of the Act of 1954 is concerned, the same is said to have been dispatched on 6.3.1997 through registered post as per the statement of Rajiv Kumar Sinha, P.W.2 and the trial court while addressing the said issue particularly with regards to an objection regarding the delay in sending of the said report to the accused-revisionist has addressed the issue by stating that since the incident and the matter is of grave nature and is a social offence as such the prosecution on such petty issues cannot be dropped. In so far as the milk is concerned, the sample has to be taken after stirring and homogenizing it as the solid particles in normal course settles in bottom. In the present case there is no evidence of any such act being done. In so far as the notice under Section 13(2) of the Act of 1954 is concerned, the same is a mandatory provision and non following of the same infringes the valuable right of the accused of defending himself. Since by sending notice under the said provision, the accused is called upon to take a call whether he wants to get the sample as is remaining with the concerned authority be retested at the Central Food Laboratory or not. The report of the Central Food Laboratory overrides the report of the

public analyst. In the present case the sample was taken on 27.6.1996, the report of the public analyst is dated 6.9.1996 after which the complaint was filed on 6.3.1997 and notice under Section 13(2) of the Act, 1954 was sent on 6.3.1997. Section 13(2) of the Act, 1954 states of sending of notice under the said Act within ten days of receipt of report of public analyst. In the present case the notice under Section 13(2) of the Act has been sent after six months of the receipt of the report of the public analyst. Even the trial court has failed to take and consider and observe as to whether any notice under Section 13(2) of the Act has been received by the accused-revisionist or not.

9. Be that as it may, even if presuming the notice could have been received but the delay in sending of the notice to the accused-revisionist, is against the said provision and his right defeats for getting the sample retested by the Central Food Laboratory.

10. Looking to the grave irregularity and illegalities, the judgements and orders of conviction and that of appellate court can not sustain.

11. The present revision is **allowed**. The impugned judgement and order dated 12.8.2010, passed by the Additional District and Session Judge, Pilibhit and the impugned judgement and order dated dated 7.4.2008 passed by Additional Chief Judicial Magistrate, Court No.3/Special Judicial Magistrate, Economic Offence, Pilibhit passed in the aforesaid case are hereby set aside.

12. The revisionist is in jail, he shall be released forthwith from the jail unless warranted in any other case whatsoever.

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.

(Smit Gopal, J.)

Order Date :- 13.12.2023
Gaurav Kuls