Court No. - 69

Case :- CRIMINAL REVISION No. - 278 of 2016

Revisionist :- Mansoor Ali
Opposite Party :- State of U.P.
Counsel for Revisionist :- Vijay Kumar,Vijay Shantam
Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal,J.

1. Heard Sri Vijay Shantam, learned counsel for the revisionist and Sri Ajay Singh, learned A.G.A.-I, learned counsel for the State and perused the material on record.

2. The present revision under Sections 397/401 Cr.P.C. has been preferred by the revisionist- **Mansoor Ali** against the judgement and order dated 19.01.2016 passed by Additional Sessions Judge, Court No. 11, District Aligarh in Criminal Appeal No. 126 of 2011 (Mansoor Ali vs. State of U.P.) by which the said appeal has been dismissed which was preferred against the judgement and order dated 08.07.2011 passed by the A.C.J.M.-Court No.1, District Aligarh in Criminal Case No. 720 of 2000, Police Station G.R.P. Aligarh, District Aligarh whereby the revisionist-accused was convicted and sentenced under Section 7/16 of the Prevention of Food Adulteration Act for 06 months rigorous imprisonment & fine of Rs. 1000/- and in default of payment of fine to further undergo 02 months additional simple imprisonment.

3. The prosecution case is that on 20.10.1999 at about 7.30 a.m. the complainant / Food Inspector went to an illegal vendor Mansoor Ali having his shop near the Parcel Office Road at the Railway Station and found 20 litres of milk stored for preparing tea. He showed his intention to the illegal vendor to collect sample of it and prepared Form-6 by introducing himself. The vendor and his witnesses signed on it. He then took 750 milliliter milk kept in a vessel at the shop and paid Rs. 7.50 for it for being sent for analysis. He gave a receipt for the said purchase which was signed by the vendor and his witnesses. The purchased milk was then kept in three bottles equally in which the required formalin was added and they were sealed. The required formalities thereafter were done and one of the bottles was then sent to the public analyst, Lucknow for analysis who vide his report dated 17.11.1999 opined that milk fat was deficient by about 71 percent and milk solids non fat was deficient by about 11 percent. The sample was thus found

to be adulterated. The report of the public analyst is Exb:Ka-9 to the records. A complaint was filed after obtaining sanction of the necessary formalities. The accused denied the prosecution case. The trial court convicted the revisionist as stated above.

4. Learned counsel for the revisionist raised two submissions which are as follows:-

(i) Admittedly, the sample of milk was taken was from a tea shop of the revisionist which as per the complainant himself was kept for preparation of tea. The same was not displayed for sale and the revisionist was not selling it.

(ii) The complainant took 750 ml of milk for analysis which is against the Prevention of Food Adulteration Rules, 1955 as in Rule 22 of the Rules, 1955 it is provided that 500 ml of milk has to be sent to public analyst for analysis but in the present matter only 750 ml of milk was purchased by the Food Inspector which was distributed and sealed in three bottles equally and one of the bottles was sent for analysis and thus only 250 ml of milk was sent for analysis which is in gross violation of Rule 22 of the Rules, 1955. The prosecution case thus fails on this count also.

5. The trial court records and the judgement impugned have been perused and learned A.G.A. has also been heard.

6. The records show that admittedly the sample of milk was taken from an alleged illegal tea shop which was kept for preparation of tea. The article was not displayed for sale. The law on the subject is crisp and trite as has been held in the cases of ***Jagdish Singh and another vs. State of U.P.: 1998 (36) ACC 591*** and ***B.K. Chaudhary and others vs. State of U.P. & others: Crl. Misc. (482) Application No. 5601 of 2009*** decided on 15.07.2010.

7. Since the material was not kept for sale, a prosecution could not have been filed for the same. In so far as the other argument regarding the non following of Rule 22 of the Rules, 1955 is concerned, the case is also clear that only 750 ml of milk was purchased by the complainant and was distributed equally in three bottles and sealed out of which one bottle was sent for Food Analyst and his report dated 17.11.1999 was sent which was the basis of lodging of the present complaint, conviction and thereupon appeal and then a revision before this Court. The quantity of milk sent to the Food Analyst was much less than that prescribed in Rule 22 of the Rules, 1955. The prosecution thus fails on the said count also.

8. The present revision is **allowed**. The impugned judgement & order dated 19.01.2016 passed by Additional Sessions Judge, Court No. 11, District Aligarh in Criminal Appeal No. 126 of 2011 (Mansoor Ali vs. State of U.P.) and the judgement & order dated 08.07.2011 passed by the A.C.J.M.- Court No.1, District Aligarh are hereby set aside.

9. The revisionist- **Mansoor Ali** is acquitted of the charge levelled against him. The revisionist is on bail. His bail bond is cancelled and sureties discharged.

10. 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.

11. The file be consigned to records.

Order Date :- 27.10.2023
AS Rathore

(Samit Gopal,J.)

Digitally signed by :-
ABHISHEK SINGH RATHOR
High Court of Judicature at Allahabad