

Court No. - 69

Case :- CRIMINAL REVISION No. - 2871 of 2021

Revisionist :- Ramkishun

Opposite Party :- State of U.P.

Counsel for Revisionist :- Ram Kishor Gupta, Dinesh Kumar Gupta

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal, J.

1. List revised.

2. Heard Sri Ram Kishor Gupta, learned counsel for the applicant, Sri Sanjay Kumar Singh, learned Additional Government Advocate for the State of U.P. and perused the records.

3. The present revision has been filed by the revisionist Ramkishun with the following prayers:-

"It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased to summon the record, allow the revision and set aside the judgment and order dated 12.10.2021 passed by Additional Sessions Judge/ Special Judge (S.C/S.T.) Act Hamirpur in Criminal Appeal No. 05 of 2011 Ramkishun Versus Food Inspector and another and judgment and order dated 19.1.2011 passed by Additional Chief Judicial Magistrate Hamirpur in complaint case no. 468 of 2006 Food Inspector Versus Ramkishun under section 7/16 The Prevention of Food Adulteration Act 1954 Police Station Binwar District Hamirpur and acquit the revisionist.

It is further prayed that the revisionist may be released on bail during pendency of revision before this Hon'ble Court in complaint case no. 468 of 2006 Food Inspector Versus Ramkishun under section 7/16 The Prevention of Food Adulteration Act 1954 Police Station Binwar District Hamirpur during pendency of above noted revision before this Hon'ble Court.

And/or pass such other order which this Hon'ble Court may deem fit and proper under the circumstances of the case."

5. The present revision was admitted vide order dated 15.11.2021 and the revisionist was directed to be released on bail. The amount of fine was not stayed which was directed to be paid by the revisionist within 30 days of his release.

6. The facts of the case are that on 13.12.1986 at about 01:30 p.m. Food Inspector K.V. L. Srivastava went to the shop of the revisionist wherein various food items were sold and asked for license to sell which could not be produced before him. He then inspected almirah kept in the shop and found packets of 'kampat' kept in polythene which was open. He prepared Form-6 and then gave Rs.08.40/- and purchased 600gm of the said material and kept in three bottles in equal quantity and sealed it as per norms. The said material was sent for analysis to the Food Analyst on 15.12.1986. Food analyst vide his report dated 23.1.1987 opined that the

material was found to be having prohibited coal tar colour, rhodamine B, aramine and malachite green. The sample was thus found to be adulterated. Sanction from the C.M.O. concerned was sought after which the complaint was filed. The trial court vide order dated 14.2.2008 framed the charges against the accused/revisionist for offences under Sections 7(i) (iii) read with Section 2(ia)(a)(l) and violation of Rule 50(i) of the Rules which is punishable under Section 16(1)(a)(i)(ii) of Prevention of Food Adulteration Act, 1954. The trial in the matter started in which K.V.L. Srivastava, retired Food Inspector, was examined as P.W.-1 and K.G. Khare Food Inspector was examined as P.W.-2 and Ramdaras Singh Yadav food clerk was examined as P.W.-3. The accused denied the prosecution case in his statement under Section 313 Cr.P.C. Ashok Kumar was examined as D.W.-1 from the side of the revisionist in defense. It is stated that after sanction to file complaint, a copy of the complaint along with the report of food analyst was sent to the revisionist/accused on 23.11.1987 as per Section 13(2) of Prevention of Food Adulteration Act, 1954. The trial concluded and the revisionist was convicted and sentenced for the offence under Section 7/16 of Prevention of Food Adulteration Act, 1954 to 06 months rigorous imprisonment and fine of Rs.1,000/- and in default of payment of fine, 01 month additional simple imprisonment vide the judgement and order dated 19.1.2011. An appeal was preferred against the said judgement and order which stood dismissed by the appellate court vide judgement and order dated 12.10.2021. The present revision has thus been filed before this Court against both the impugned judgements and orders.

7. Learned counsel for the revisionist has argued two submissions being that the notice under Section 13(2) of Prevention of Food Adulteration Act, 1954 has been sent after about 11 months of the report of food analyst as the said report is dated 23.1.1987 whereas the notice has been sent to the revisionist on 23.11.1987 and the second argument as has been raised is that although the prosecution states of sending the report under Section 13(2) of Prevention of Food Adulteration Act, 1954 to the revisionist but there is nothing on record to show that the same has been received by the revisionist and as such valuable right of the accused/revisionist safeguarding his interest is violated. To buttress the arguments learned counsel has placed the judgement of the Apex Court in the case of ***Vijendra vs. State of Uttar Pradesh: (2020) 15 SCC 763 (para-14 and 15) and Narayan Prasad Sahu vs. The State of Madhya Pradesh: (2022) 1 SCC 87 (para-5, 6, 8 and 9)***. While further elaborating the arguments it is argued that as per Section 13(2) of Prevention of Food Adulteration Act, 1954, report of food analyst has to be sent within a period of 10 days from the date of receipt of the same, but in the present case the said report has been sent after about 11 months which clearly frustrates the purpose and valuable rights of a person to get the sample of the same retested by the Central Food Laboratory. It is next argued that although P.W.-3 states of sending the said report along with the letter of C.M.O. concerned to the revisionist vide registered post on 23.11.1987, the postal receipt of the same is Ex. Ka-8 to the records, but there is nothing on record to show that the same has ever been received by the revisionist. It is argued that the Apex Court has, in no uncertain terms, in the judgement of ***Vijendra case (supra)*** has held that failure of the trial court to take into consideration that no evidence was brought on record to indicate that the report which has been claimed to be dispatched, was actually sent or delivered for the purpose of further reference to the Central Food Laboratory, if the accused is dis-satisfied with the said report. It is further argued that even the trial

has failed to take note of the said fact and also to record a finding that there is no evidence to show that the said report has been received at the end of the accused/revisionist. The said safeguard is provided to the accused under Section 13(2) of Prevention of Food Adulteration Act, 1954. It is argued that the present revision thus deserved to be allowed on the said two counts.

8. 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. Learned A.G.A. although fairly concedes that the report of public analyst is dated 23.1.1987 and the said report was dispatched on 23.11.1987 which is after about 11 months which is in violation of Section 13(2) of Prevention of Food Adulteration Act, 1954 which provides that the report has to be sent within 10 days from the date of receipt of the same. He submits that the material was found to be adulterated and as such looking to the said fact, the present revision be dismissed.

9. After having heard learned counsels for the parties and perusing the records, it is evident that the material purchased from the shop of the revisionist was found to be adulterated by the food 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 23.1.1987 but the notice under Section 13(2) of Prevention of Food Adulteration Act, 1954 was sent on 23.11.1987 to the revisionist, which is after about 11 months of the date of said notice. The same thus violates the provision of Section 13(2) of Prevention of Food Adulteration Act, 1954 which provides sending of the report within ten days of its receipt. Thus the very purpose of furnishing the said report and the valuable right of a person gets benefited, defeated as the same is hopelessly delayed. Further although there is evidence produced to show dispatch of the said notice under Section 13(2) of Prevention of Food Adulteration Act, 1954 but 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. 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.

10. The present revision is allowed. The impugned judgement and order dated 12.10.2021 passed by Additional Sessions Judge/ Special Judge (S.C/S.T.) Act Hamirpur in Criminal Appeal No. 05 of 2011 Ramkishun Versus Food Inspector and another and judgment and order dated 19.1.2011 passed by Additional Chief Judicial Magistrate Hamirpur in complaint case no. 468 of 2006 Food Inspector Versus Ramkishun under section 7/16 The Prevention of Food Adulteration Act 1954 Police Station Binwar District Hamirpur are hereby set aside.

11. The revisionist- Ramkishun is acquitted of the charge levelled against him. The revisionist is on bail. His bail bond is cancelled and sureties

discharged.

12. 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.

13. The file be consigned to records.

(Samit Gopal,J.)

Order Date :- 7.12.2023
Naresh