Court No. - 69

Case :- CRIMINAL REVISION No. - 4067 of 2011

Revisionist :- Shiv Prasad
Opposite Party :- State of U.P.
Counsel for Revisionist :- Sharad Kumar Srivastava
Counsel for Opposite Party :- Govt. Advocate

Hon'ble Samit Gopal,J.

1. List revised.

2. Heard Sri Manvendra Singh, learned counsel for the revisionist and Sri Ram Prakash Shukla, learned counsel for the State and perused the material on record.

3. Vide order dated 11.10.2023 passed by this Court since there was no representation on behalf of the revisionist bailable warrants of Rs. 20,000/- were issued against him. The trial court records were also not received for which a reminder was directed to be sent by the said order. As per the office report dated 18.11.2023 the bailable warrants have been executed and the revisionist has been released on bail pursuant to his filing bail bonds and sureties before the court concerned. The trial court records are also reported to be received. The same are tagged with the present revision. The records of the revision and the trial court records have been perused.

4. The present revision under section 397/411 Cr.P.C. has been preferred by the revisionist-**Shiv Prasad** against the judgment and order dated 20.9.2011 passed by the Sessions Judge, Fatehpur, in Criminal Appeal No. 22 of 2011 (Shiv Prasad Versus State of U.P.) by which the said appeal has been rejected and the judgment and order dated 13.04.2011 passed by the Additional Chief Judicial Magistrate, Court No. 10, Fatehpur, in Complaint Case No. 1300/2001 convicting and sentencing the revisionist for offence under section 16-1(c) (d) of the Prevention of Food Adulteration Act, 1954 for six months imprisonment and a fine of Rs. 1000 and in default of payment of fine to further undergo one month's additional imprisonment has been affirmed.

5. The facts of the case are that the revisionist is a betel shop owner. The food analyst visited his shop on 07.09.2001 situated in

Village Bahrampur, Police Station Thariyao, District Fatehpur where he found the revisionist to have displayed oil, spices, namkin, supari, desi katha and desi gutka for sale. He introduced himself to him and asked for a license for sale which was shown to him. On a suspicion of adulteration, he prepared form 6 and proceeded to take the sample of desi gutka for analysis but the accused refused to give him the said product. He further refused to sign on form 6 and even return it back. In the mean time, many persons as supporters of the revisionist came there who threatened him of not taking any sample. He prepared an inspection report of spot on which also the revisionist refused to sign even the public witnesses present there refused to sign. The inspection report and the sanction for prosecution obtained from C.M.O. concerned have been annexed with the complaint and a complaint has been filed against the revisionist.

6. In the statement recorded under section 251 Cr.P.C. of the accused/revisionist he stated of false implication and further stated that there was a demand of money by the complainant which was refused and as such due to the said enmity the present complaint has been filed. No defence evidence was led. In the trial, the Food Inspector H.S. Gupta was examined as P.W.-1. The trial court finding the evidence and the document sufficient convicted the revisionist as stated above. Against the said conviction and sentence, the revisionist filed an appeal before the concerned Sessions Judge which was rejected and the judgment and order of the trial court convicting the revisionist was affirmed. The present revision is thus before this Court assailing the said judgment and orders.

7. Learned counsel for the revisionist argued that the revisionist has been falsely implicated in the present case. It is argued that the admitted case of the prosecution is of no material being collected for analysis on a suspicion of it being adulterated. It is argued that except for the Food Inspector who was examined as P.W.-1 there is no other witness produced and examined before the trial court. It is argued that there is no independent person to support the prosecution story. Learned counsel for the revisionist has argued that the accused while giving an explanation under section 251 Cr.P.C. has stated a false implication due to ulterior motive as there was some illegal demand from him by the Food Inspector/complainant. It is argued that there is no credible evidence against him. The present revision be thus allowed.

8. Per contra, learned counsel for the State has opposed the prayer and arguments in the present revision and argued that the trial

court has after considering the matter on its merit passed the impugned judgment and order without any irregularity or illegality. It is argued that the said judgment and order of the trial court has even been affirmed by the appellate court. It is argued that there is no irregularity and illegality and as such the revision be dismissed.

9. After having heard learned counsel for the parties and perusing the records of the revision and also the trial court records, it is evident that the prosecution case is that on suspicion the complainant tried to collect the sample of desi gutka for which he prepared form 6 and handed it over to the accused/revisionist for his signatures to which it was refused and the same was not returned. There were persons of the locality who had reached the place of occurrence in support of the revisionist and had extended threats to the Food Inspector due to which he could not collect the sample. Apart from the Food Inspector there was no other person produced and examined before the trial court and he was the only person examined as P.W.-1. There is nothing in his statement which would go to show that despite the refusal of accused/revisionist and the exhortation of the persons of the locality at the place of occurrence he proceeded to seek any help or assistance of any law enforcing agency. He simplicitor on threat and refusal to give the sample and non signature of the accused on form 6 returned back and proceeded to complete the paper formality and file a complaint. There is no material which has been collected for analysis. There is nothing on record to show that there was any force exerted for preventing the Food Inspector for taking any sample. Insofar as the preparation of the document is concerned in such a situation it would be highly improbable for him to remain at the place and prepare an inspection note which he states to have done which was the sheet anchor of the prosecution case.

10. Looking to the facts of the case and the version of the accused/revisionist under section 251 Cr.P.C. this Court comes to the conclusion that the prosecution cannot be said to be totally truthful.

11. The present revision is **allowed**. The impugned judgement and order dated 20.9.2011 passed by the Sessions Judge, Fatehpur and the impugned judgement and order dated 13.04.2011 passed by the Additional Chief Judicial Magistrate, Court No. 10, Fatehpur, are hereby set aside.

12. The revisionist- **Shiv Prasad** 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.

Order Date :- 20.11.2023
K.K. Maurya

(Samit Gopal,J.)

Digitally signed by :-
KAMLESH KUMAR MAURYA
High Court of Judicature at Allahabad