

Court No. - 69

Case :- CRIMINAL REVISION No. - 894 of 2010

Revisionist :- Uma Shankar Maurya

Opposite Party :- State of U.P.

Counsel for Revisionist :- Ali Hasan, Virendra Kumar Maurya

Counsel for Opposite Party :- Govt. Advocate

Hon'ble Samit Gopal,J.

1. List revised.

2. Heard Sri Virendra Kumar Maurya, learned counsel for the revisionist, Sri Ajay Singh, learned AGA-I for the State of U.P. and perused the records.

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

"It is, therefore, Most respectfully prayed that this Hon'ble Court may graciously be pleased to allow the revision and set aside the judgment and order dated 16.2.2010 passed by Learned Sessions Judge, Bhadohi- Gyanpur in Criminal Appeal No.97 of 1998 (Uma Shankar Vs. State of U.P.) and judgment and order dated 26.6.1997 passed by Learned Additional Chief Judicial Magistrate, Bhadohi in Criminal Case No.848 of 1997 (State Vs. Uma Shankar Maurya), under section 7/16 Prevention of Food Adulteration Act, Police Station Aurai, District Bhadohi, after summoning the record of the courts below.

It is further prayed that the revisionist may be released on bail during the pendency of the revision before this Hon'ble Court.

It is also prayed that the realisation of the fine against the revisionist may be stayed during the pendency of the revision before this Hon'ble Court."

4. The present revision was admitted vide order dated 09.03.2010 and the revisionist was directed to be released on bail.

5. The facts of the case are that on 29.12.1991 at about 02:30 p.m. Food Inspector Raj Narayan Singh went to the shop of the revisionist for inspection wherein on suspicion he purchased 450

gm carom seed from the revisionist. The said material was sent for analysis to the Food Analyst on 29.12.1991. Food analyst vide his report dated 29.02.1992 opined that the material was found to be having 2-3 % excess from the prescribed limit which was injurious to the public health. 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 05.10.1993 framed the charges against the accused/revisionist for offences under Sections 7(i) read with Section 2(ia)(a)(i) and Section 16(1)(a)(i) of Prevention of Food Adulteration Act, 1954. The trial in the matter started in which Raj Narayan was examined as P.W.-1 and Ashok Kumar Srivastava food clerk was examined as P.W.-2. The accused denied the prosecution case in his statement under Section 313 Cr.P.C. Bhola was examined as D.W.-1 and Uma Shankar was examined as DW-2 from the side of the revisionist in defense. 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 one year rigorous imprisonment and fine of Rs.1,000/- and in default of payment of fine, one month additional simple imprisonment vide the judgement and order dated 26.06.1998. An appeal preferred against the said judgement and order which stood dismissed by the appellate court vide judgement and order dated 16.02.2010. The present revision has thus been filed before this Court against both the impugned judgements and orders.

6. Learned counsel for the revisionist has argued that the notice under Section 13(2) of Prevention of Food Adulteration Act, 1954 has not been sent to the revisionist. It is argued that there is nothing on record to show that the same has been sent by the Food Inspector or 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 not been sent 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 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.

7. Per contra, learned A.G.A. opposed the prayer and the present revision. It is argued that in the shop of the revisionist carom seed purchased by the Food Inspector which was found to be having 2-3% excess from the prescribed limit. 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. He submits that the material was found to be adulterated and as such looking to the said fact, the present revision be dismissed.

8. 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 notice under Section 13(2) of Prevention of Food Adulteration Act, 1954 was not sent to the revisionist, 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.

9. The present revision is **allowed**. The impugned judgment and order dated 16.2.2010 passed by Learned Sessions Judge, Bhadohi- Gyanpur in Criminal Appeal No.97 of 1998 (Uma Shankar Vs. State of U.P.) and judgment and order dated 26.6.1997 passed by learned Additional Chief Judicial Magistrate, Bhadohi in Criminal Case No.848 of 1997 (State Vs. Uma Shankar Maurya), under Section 7/16 Prevention of Food Adulteration Act are hereby set aside.

10. The revisionist- Uma Shankar Maurya is acquitted of the charge levelled against him. The revisionist is on bail. His bail bond is cancelled and sureties discharged.

11. 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.

12. The file be consigned to records.

Order Date :- 8.12.2023

M. ARIF

(Samit Gopal, J.)