

Court No. - 69

Case :- CRIMINAL REVISION No. - 423 of 2014

Revisionist :- Pramod Kumar

Opposite Party :- State of U.P.

Counsel for Revisionist :- Rohit Tiwari

Counsel for Opposite Party :- Govt. Advocate

Hon'ble Samit Gopal,J.

1. List revised.
2. Heard Sri Virendra Kumar Gupta, learned counsel for the revisionist and Sri Ajai Singh, learned A.G.A.-I for the State.
3. Supplementary affidavit filed today by learned counsel for the revisionist is taken on record.
4. The trial court records have been received which have also been perused.
5. The present revision under Sections 397/401 Cr.P.C. has been preferred by the revisionist- Pramod Kumar against the judgement and order dated 11.12.2014 passed by Sessions Judge, Mahoba, in Criminal Appeal No. 86 of 2012 (Pramod Kumar Purwar Versus State of U.P.) affirming the judgment and order dated 04.09.2012 passed by the Chief Judicial Magistrate, Mahoba in Complaint Case No. 2121 of 2009 (Food Inspector Versus Pramod Kumar Purwar), whereby, the revisionist has been convicted and sentenced for offence under section 7(ii)(v)/16(I)(a) of the Prevention of Food Adulteration Act, 1954 for three months rigorous imprisonment with a fine of Rs. 500/- and in default of fine to further undergo 15 days simple imprisonment.
6. The prosecution case is that the Food Inspector with his team went to the shop of the revisionist on 19.06.2009 and introduced himself. The revisionist was selling Namkin, Biscuit, Kumpat, Toffee, Gutka, fruit products, spices etc. The food products of Parvez Sweets (confectionery) in 30 packets was in the shop for sale. On a suspicion of adulteration he purchased three packets being a total of 900 gram from the revisionist for testing. Form-6 was prepared and the required formalities were done. Packets were sealed in three parts and the other paper formalities were done and

then the material was sent to the Food Analyst for analysis. The Food Analyst vide his report dated 25.07.2009 opined that the material as sent was sugar boiled confectionery and according to Rule 13(2) of the PFA Rules manufacturers complete address, packing date and batch number was not declared on the packet of the sample. With regards to the other ingredients no abnormality was found. A complaint was filed by the Food Inspector after obtaining sanction for prosecution.

7. It is alleged by learned counsel for the revisionist that a notice under section 13(2) of the Prevention of Food Adulteration Act dated 12.01.2010 was sent by registered post to the accused-revisionist for testing of the sample and the Central Food Laboratory. The trial started in which the Food Inspector Suresh Kumar was examined as P.W.-1, Amrit Lal the Sanitary Supervisor was examined as P.W.-2, and Ravi Shankar Tripathi the Food Clerk was examined as P.W.-3. The accused in his statement recorded under section 313 Cr.P.C. denied the prosecution case and claimed to be tried. No defence evidence was led. The trial court finding the prosecution case to be beyond a reasonable doubt convicted the revisionist as stated above against which an appeal was filed which also stood dismissed. The present revision has thus been filed before this Court.

8. Learned counsel for the revisionist argued that insofar as the material collected by the Food Inspector is concerned, the same was not in any manner found to be unfit for human consumption or adulterated. It is argued that the material was not found to be containing the name of the manufacturer, date of manufacturing and address of the manufacturer, the packing date and the batch number but the same was not opined to be unfit for human consumption and neither was it opined to be adulterated. It is argued that admittedly the said material was not manufactured by the revisionist and as per the prosecution case itself the same was manufactured by one Parvez Sweets (confectionery) who has not been made as an accused. It is argued that there is nothing on record to show that the notice under section 13(2) of the Prevention of Food Adulteration Act has been served upon the revisionist. The only case of the prosecution is that the notice has been sent to the revisionist. It is argued that the prosecution was under duty to prove the service of the notice upon the revisionist. Learned counsel for the revisionist has argued that the sample of the material was collected on 19.06.2009, whereas, the said notice under section 13(2) of the Prevention of Food Adulteration Act was dispatched on 12.01.2010 which is after a period of about 7

months from the date of collection of the sample which is illegal. It is argued that the delay in sending of notice under section 13(2) of the Prevention of Food Adulteration Act infringes the valuable right of the revisionist for getting the sample for testing in the Central Food Laboratory. It is argued that as such conviction and sentence as awarded to the revisionist be set-aside, judgement & order of the trial court be set-aside and also the judgement & order of the appellate court be set-aside.

9. Per contra, learned counsel for the State opposed the prayer and arguments and argued that the trial court has given cogent reasons for convicting the revisionist. The appellate court has also considered the matter in its true prospective and has come to a conclusion that the appeal deserves to be dismissed.

10. After having heard learned counsel for the parties and perusing the record, it is evident that the sample was not found to be unfit for human consumption or adulterated. The notice under section 13(2) of the Prevention of Food Adulteration Act was sent after about 7 months of the date of collection of the sample. The said facts were not appreciated by the trial court and even by the appellate court.

11. The present revision is allowed. The impugned judgement and order dated 11.12.2014 passed by Sessions Judge, Mahoba and judgment and order dated 04.09.2012 passed by the Chief Judicial Magistrate, Mahoba, are hereby set aside.

12. The revisionist- Pramod Kumar is acquitted of the charge levelled against him. The revisionist is in jail. He is directed to be released forthwith from jail unless wanted in any other case on furnishing his personal bond and two sureties in the court concerned.

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 :- 22.11.2023

K.K. Maurya

(Samit Gopal,J.)