

Court No. - 69

Case :- CRIMINAL REVISION No. - 824 of 2016

Revisionist :- Mahtab

Opposite Party :- State of U.P. and Another

Counsel for Revisionist :- Ramesh Kumar Pandey, Ajay Kumar Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal, J.

1. List revised.
2. Heard Sri Ajay Kumar Pandey, learned counsel for the revisionist, Sri Sai Girdhar, learned counsel for the State and perused the records.
3. The present revision under Sections 397/401 Cr.P.C. has been preferred by the revisionist Mahtab against the judgement and order dated 16.3.2016 passed by the Additional Sessions Judge, Court No. 10, Ghaziabad in Criminal Appeal No. 52 of 2014, whereby the said appeal has been dismissed which was preferred against the judgement and order dated 10.3.2014 passed by Civil Judge(J.D.)/Judicial Magistrate, Garhmukteshwar in Criminal Case No. 312 of 1999, whereby the revisionist was convicted and sentenced for offences under Sections 16(1A)(II) of Prevention of Food Adulteration Act, 1954 for 06 months rigorous imprisonment and a fine of Rs.1,000/- and in default of payment of fine to 01 month additional imprisonment.
4. The present revision was admitted vide order dated 04.04.2016 and the revisionist was directed to be released on bail.
5. The facts of the case are that Food Inspector collected sample of milk from dairy of the accused/revisionist Mahtab on 24.5.1999 at about 08:45 p.m., at Haroda crossing, Police Station Simbhawali, District Ghaziabad by giving Rs.9/- and purchased 750 ml of milk. He prepared Form-6 and gave a notice of it to the accused/revisionist. The said milk was then distributed in three equal parts and filled in three glass bottles and one part of it was sent for analysis to public analyst. Public analyst has found the same to be adulterated by opining that milk solid non-fat was found less and further that the sample was found to be containing urea in it. The report of public

analyst is Ex. Ka-7 to the records. The revisionist exercised his right under Section 13(2) of Prevention of Food Adulteration Act, 1954 and the sample was sent to Central Food Laboratory for analysis which although found it to be deficient in the prescribed amount of milk fat but did not find it to be containing urea. The complaint was filed after which charges were framed against the accused/revisionist vide order dated 27.06.2001 for the offences under Section 7(1)(16)(1)(A) of Food Adulteration Act, 1954.

6. Learned counsel for the revisionist argued that collection of sample by the complainant/Food Inspector was a defective procedure inasmuch as he had collected a total 750 ml of milk by purchase whereas as per Rules 22 of The Prevention of Food Adulteration Rules, 1955, approximate quantity of material to be supplied to the public analyst for analysis of milk has to be 500 ml. It is argued that Food Inspector, as per his own case, had purchased 750 ml of milk from the accused/revisionist which was then sealed in equal quantity in three bottles and thus the same was less than 500 ml in each bottle out of which one bottle was sent to the public analyst for analysis which was less than the prescribed quantity of milk to be sent for analysis. It is argued that Food Inspector had sent one bottle through parcel to the public analyst for analysis of which the photocopy of receipt has been proved by him as Ex. Ka-5 to the records. It is argued that thus the proceedings against the revisionist are totally illegal and not as per rules prescribed.

7. Learned counsel for the State has opposed the revision and argued that there is no illegality, irregularity or perversity in the impugned judgement and orders which may call for any interference by this Court.

8. After having heard learned counsels for the parties and perusing the records, it is evident that 750 ml of milk was purchased by the complainant/Food Inspector from the revisionist which was then packed in three bottles equally, out of which one bottle was sent to the public analyst for analysis. As per Rules 22 of The Prevention of Food Adulteration Rules, 1955 milk having quantity of 500 ml has to be sent to the public analyst for testing. Since milk as sent to the public analyst for analysis is less than the prescribed amount, the prosecution thus fails.

9. The present revision is allowed. The impugned judgement and orders dated 16.3.2016 passed by the Additional Sessions Judge, Court No. 10, Ghaziabad in Criminal Appeal No. 52 of 2014 and the judgement and order dated 10.3.2014 passed by Civil Judge(J.D.)/Judicial Magistrate, Garhmukteshwar in

Criminal Case No. 312 of 1999 are hereby set aside.

10. The revisionist- Mahtab is acquitted of the charges 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 courts forthwith for its compliance and necessary action.

12. The file be consigned to records.

(Samit Gopal,J.)

Order Date :- 27.10.2023

Naresh