

Neutral Citation No. - 2023:AHC-LKO:46100
A.F.R.

Order Reserved on 22.05.2023

Order Delivered on 14.07.2023

Case :- CRIMINAL REVISION No. - 484 of 2007

Revisionist :- Amar Bahadur Singh

Opposite Party :- State Of U.P.And Another

Counsel for Revisionist :- Sushil Kumar Singh

Counsel for Opposite Party :- G.A

Hon'ble Manjive Shukla,J.

1. Heard learned counsel for the revisionist, learned Additional Government Advocate for the State and perused the record.

2. Revisionist has filed this revision challenging therein judgment and order dated 27.05.2005 passed by Additional Chief Judicial Magistrate, Sultanpur in Criminal Case No. 4423 of 2003 (State Vs. Amar Bahadur Singh) whereby revisionist has been convicted for an offence punishable under Section 7/16 of The Prevention of Food Adulteration Act, 1954 and has been sentenced for rigorous imprisonment of six months with a fine of Rs. 1,000/- and judgment and order dated 22.08.2007 passed by Additional Sessions Judge, Court No. 2, Sultanpur whereby Criminal Appeal No. 49 of 2005 (Amar Bahadur Singh Vs. State of U.P.) has been dismissed.

3. A complaint case was filed against revisionist in the Court of Additional Chief Judicial Magistrate, Sultanpur which was registered as Criminal Case No. 4423 of 2003 under Section 7/16 of The Prevention of Food Adulteration Act, 1954.

4. Complainant, Smt. Kiran Yadav in the complaint has stated that she is Food Inspector and found revisionist, Amar Bahadur Singh carrying 30 litres milk for sale on 09.08.2003 at 11:00 a.m. near Police Station Lambhua, District Sultanpur. She, on being suspicious of adulteration in milk, gave her introduction to revisionist, Amar Bahadul Singh and by paying Rs. 9/-, purchased 750 ml. milk. In the complaint, it has been further stated that the aforesaid milk was distributed in three equal parts and was put in three clean bottles and in each bottle, 20-20 drops of 40% formalin was added and thereafter caps were put on each bottle and all the three samples were properly sealed. One sample was deposited in the office of Chief Medical Officer, Sultanpur for sending it to Public Analyst at Lucknow. It was further stated in the complaint that later on Public Analyst, Government of U.P. after examining the aforesaid sample, has forwarded his report vide letter dated 26.08.2003 and in the said report it is mentioned that fat in the milk has been found 14% less than the standard of fat prescribed for cow milk.

5. Learned Additional Chief Judicial Magistrate took cognizance over the aforesaid complaint thereafter complainant, Food Inspector, Smt. Kiran Yadav got herself examined under Section 244 Cr.P.C. and she was also cross-examined.

6. On the aforesaid basis, learned Trial Court framed charges against the revisionist under Section 7/16 of The Prevention of Food Adulteration Act, 1954 on 03.12.2004. Revisionist pleaded not guilty and therefore, learned Trial Court started trial.

7. Statement of revisionist was also recorded under Section 313 Cr.P.C.

8. Learned Trial Court has considered the testimony of Food Inspector, Smt. Kiran Yadav and found her version absolutely correct. Further Trial Court recorded a finding that Public Analyst, Govt. of U.P., after

examination of the sample of the milk collected by Smt. Kiran Yadav, has given its report that fat in the sample of milk was found 14% less than standard of fat fixed for the cow milk, therefore, revisionist is liable to be convicted for offence punishable under Section 7/16 of The Prevention of Food Adulteration Act, 1954 and thereby has sentenced him for rigorous imprisonment of six months with fine of Rs. 1,000/-.

9. Revisionist challenged the aforesaid judgment and order dated 27.05.2005 passed by learned Trial Court in Criminal Case No. 4423 of 2003 by filing Criminal Appeal No. 49 of 2005 (Amar Bahadur Singh Vs. State) before Court of Additional Sessions Judge, Court No.2, Sultanpur.

10. Learned Appellate Court has considered the evidence appreciated by the trial court and, thereafter has passed order on 22.08.2007 wherein it has been concluded that the prosecution has proved its case against the accused under Section 16(1)(a)(i) of The Prevention of Food Adulteration Act, 1954 and therefore, conviction and sentence given vide judgment and order dated 27.05.2005 passed by the learned Trial Court does not suffer from any illegality.

11. I find that the prosecution during trial has based its case on the report of the Public Analyst, Govt. of U.P. wherein it has been said that in the sample milk, fat was found 14% less than the standard of fat fixed for cow milk but prosecution did not lead any evidence before the trial court that the revisionist has done some adulteration in the milk and thereby the percentage of fat in the sample milk has become less than the standard of fat fixed for cow milk.

12. For arriving at a correct conclusion, certain provisions of The Prevention of Food Adulteration Act, 1954 are necessary to be seen, therefore, they are extracted as under:-

“7. Prohibitions of manufacture, sale, etc., of certain articles of food.— No person shall himself or by any person on his behalf manufacture for sale, or store, sell or distribute—

- (i) any adulterated food;*
- (ii) any misbranded food;*
- (iii) any article of food for the sale of which a licence is prescribed, except in accordance with the conditions of the licence;*
- (iv) any article of food the sale of which is for the time being prohibited by the Food (Health) Authority in the interest of public health;*
- (v) any article of food in contravention of any other provision of this Act or of any rule made thereunder; or*
- (vi) any adulterant.”*

“16. Penalties .— (1) *Subject to the provisions of sub-section (1A) if any person*

— (a) whether by himself or by any other person on his behalf, imports into India or manufactures for sales or stores, sells or distributes any article of food—

- (i) which is adulterated within the meaning of sub-clause (m) of clause (ia) of section 2 or misbranded within the meaning of clause (ix) of that section or the sale of which is prohibited under any provision of this Act or any rule made thereunder or by an order of the Food (Health) Authority;*
- (ii) other than an article of food referred to in sub-clause (i), in contravention of any of the provisions of this Act or of any rule made thereunder; or*

(b) whether by himself or by any other person on his behalf, imports into India or manufactures for sales or stores, sells or distributes any adulterant which is not injurious to health; or

(c) prevents a food inspector from taking a sample as authorised by this Act; or

(d) prevents a food inspector from exercising any other power conferred on him by or under this Act; or

(e) being a manufacturer of an article of food, has in his possession, or in any of the premises occupied by him, any adulterant which is not injurious to health; or

(f) uses any report or certificate of a test or analysis made by the Director of the Central Food Laboratory or by a public analyst or any extract thereof for the purpose of advertising any article of food; or

(g) whether by himself or by any other person on his behalf, gives to the vendor a false warranty in writing in respect of any article of food sold by him,

he shall, in addition to the penalty to which he may be liable under the provisions of section 6, be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years, and with fine which shall not be less than one thousand rupees:

13. Aforesaid Section 16 (1) (a) (i) provides that subject to provisions of Sub-Section (1A), if any person whether by himself or by any other person on his behalf imports into India or manufactures for sale or stores, sale or distributes any article of food which is adulterated within the meaning of Sub-Clause (m) of Clause (ia) of Section 2 shall be punished with imprisonment for a term which shall not be less than six months but which

may extend to three years and with fine which shall not be less than Rs. 100/-.

14. Now it is necessary to look into Section 2 (ia) (m) which is extracted as under:-

“(m) if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities not within the prescribed limits of variability but which does not render it injurious to health:

Provided that, where the quality or purity of the article, being primary food, has fallen below the prescribed standards or its constituents are present in quantities not within the prescribed limits of variability in either case, solely due to natural causes and beyond the control of human agency, then, such article shall not be deemed to be adulterated within the meaning of this sub-clause.”

15. From bare perusal of proviso appended to Section 2(ia)(m), it becomes patently manifest that for punishing an accused for an offence under Section 16(1)(a)(i), prosecution has to lead evidence and to prove that the quality or purity of the article being primary food has fallen below the prescribed standards or its constituents are not present in quantities within the prescribed limits of variability, in either case due to adulteration made by the accused and such fall in quality or purity is not due to natural causes.

16. Prosecution has not led any evidence in respect of the admissible variation limits (if any) regarding the standard of percentage of fat in cow milk as definitely the level of fat is bound to vary from cow to cow. Further prosecution has also not led any evidence that the shortage of fat which has been found in the sample of milk taken from the revisionist, is only due to adulteration made by him and the said shortage of fat could not have occurred due to natural causes and for any reason beyond the control of human agency. Proviso appended to Section 2(ia)(m) makes it crystal clear that for a primary food i.e. milk to be declared adulterated, it is obligatory upon the prosecution to prove that the percentage of fat which has fallen below the prescribed standards was not within the prescribed limits of variability and further the said shortfall was not due to natural causes and causes beyond the control of human agency.

17. In the present case, trial court as well as appellate court have not considered that prosecution has not led any evidence in respect of prescribed limits (if any) of variability in the standard of percentage of fat in cow milk and has also not led any evidence that for shortfall of fat in the sample in question is the result of adulteration made by the revisionist and further the said shortage of percentage of fat was not due to any natural cause or due to any cause beyond the control of human agency. In absence of any evidence, as required under proviso appended with Section 2 (ia)(m), the sample of milk taken from the revisionist cannot be said to be adulterated only for the reason that the percentage of fat in the milk was 14% less than the standard fixed.

18. In view of the aforesaid reasons, this Court is of the considered view that judgement and order dated 27.05.2005 passed by Additional Chief Judicial Magistrate, Sultanpur convicting the revisionist under Section 7/16 of The Prevention of Food Adulteration Act, 1954 and sentencing him for rigorous imprisonment of six months along with fine of Rs. 1,000/- and judgement and order dated 22.08.2007 passed by Additional Sessions Judge, Court No. 2, Sultanpur in Criminal Appeal No. 49 of 2005 are liable to be set-aside and, accordingly, they are set-aside.

19. Revision is allowed. Revisionist is, hereby, acquitted from the aforesaid charge.

20. Revisionist is already on bail. Sureties given in favour of the revisionist, stand discharged.

21. Let copy of this judgement be sent to the court concerned for necessary information and compliance.

Order Date:- 14.07.2023

A. Mandhani