



2025:AHC:165207

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL REVISION No. - 2463 of 2015

Dhrup Madhoshiya

.....Revisionist(s)

Versus

State of U.P.

.....Opposite
Party(s)

Counsel for Revisionist(s)	:	Santosh Kumar Mishra, V. Singh
Counsel for Opposite Party(s)	:	Govt.Advocate

Court No. - 64

HON'BLE SAMIT GOPAL, J.

1. List revised.

2. Heard Sri Santosh Kumar Mishra, learned counsel for the revisionist and Sri Ajay Singh, learned AGA-I for the State and perused the records, the trial court records have also been received which have also been perused.

3. This criminal revision U/s 397/401 Cr.P.C. has been preferred by the revisionist **Dhrup Madhoshiya** against the judgment and order dated 28.11.2014 passed by the Chief Judicial Magistrate, Maharajganj in Criminal Case No. 133 of 2000 (State of U.P. Vs. Dhrup Madhoshiya) whereby the revisionist-accused has been convicted and sentenced under Section 7/16(1)(a) of Prevention of Food Adulteration Act, 1954 to nine months simple imprisonment, a fine of Rs. 1,500/- and in default of payment of fine to further two months additional imprisonment. The trial court has further extended the benefit of set off the period already undergone to the accused-revisionist and further against the judgment and order dated 27.06.2015 passed by the Sessions Judge, Maharajganj in Criminal Appeal No. 01 of 2015 (Dhrup Madhesiya Vs. State of U.P.) preferred against the judgment and order dated 28.11.2014 of the trial court by which the said appeal has been dismissed and the judgment and order impugned therein has been affirmed.

4. The prosecution story and the facts of the case are that on 04.07.1999 at about 02:45 pm Murari Lal Yadav the Food Inspector inspected in the shop of the revisionist which is situated at Ramwapur, P.S. Konthibhar, District Maharajganj where he found food items to be stored for sale along with boiled buffalo milk. The Food Inspector introduced himself and on a suspicion of the said milk to be adulterated purchased 600 grams of the same by paying price of it and prepared Form-VI. He gave a receipt about the same to the vendor. The said sample was then distributed in three equal parts and sealed as per rules and procedures. One of the

sample was sent to the Public Analyst for its examination. The Public Analyst vide his report dated 16.08.1999 opined that the milk fat is 2.5 percent, solids not fat is 4.9 percent and the sample tested positive for carbonate/neutralizer. He then opined that the sample is deficient by 58 percent for milk fat, 9 per cent for milk solids not fat and has tested positive for carbonate/neutralizer. The sample was thus found to be adulterated. Sanction was taken by the CMO concerned. It is alleged by the prosecution that notice under Section 13(2) of the Act was sent to the accused-revisionist. A complaint dated 07.01.2000 was filed by the Food Inspector before the Chief Judicial Magistrate, Maharajganj.

5. The Food Inspector Murari Lal Gupta was examined as PW-1 under Section 244 Cr.P.C. before the trial court. The accused denied the prosecution case. Charge was framed against the accused-revisionist vide order dated 20.07.2001 by the Chief Judicial Magistrate, Maharajganj for offence under Section 7/16 of the Act which was punishable under Section 7(1)(iii) (V)/16(1)(a)(ii) of the Act. Murari Lal Yadav was examined as PW-1 under Section 246 Cr.P.C. Abdul Majeed the Clerk in the office of the CMO concerned was examined as PW-2 under Section 246 Cr.P.C. The accused under Section 313 Cr.P.C. denied the prosecution case. He claimed to be tried. The trial court thus after trial convicted and sentenced him as above.

6. PW-1 Murari Lal Gupta states of reaching the shop of the accused-revisionist and finding other food items and boiled buffalo milk displayed for sale. He states of taking 600 ml of the same on suspicion of it being adulterated paying for it the money. He then states that he distributed the same in three equal parts and sealed them as per rules and procedures and sent it to the Public Analyst. He states about the report of the Public Analyst which is stated as above. He then states of taking sanction from the Local Health Authority for launching prosecution by filing the complaint. He under Section 246 Cr.P.C. he states that report of Public Analyst is sent to the accused-revisionist within 10 days of filing of the complaint. He states that the said report was sent to the accused. He further states that the details about the same shall be given by the Food Clerk. He states that at the time of taking of the said sample people were present there but on asking they are refused being witness. He further states that he did not inform the said persons that if they will not be witnesses then legal action be taken against them. He states that the seller measured the milk and gave it to him which was distributed and sealed by him in three bottles. The seller took out the milk from container in a small vessel and then it was given to him. The seller had homogenized milk and then given him sample of it. He states further that baking powder is used in some sweets and if by mistake baking powder fell in the milk then carbonate/neutralizer will show its presence in the sample. He states that the accused sells sweets also and it is possible that under some mistake baking powder may have fallen in the milk.

7. PW-2 Abdul Majeed is the Food Clerk in the office of the CMO concerned. He states that he prepared the covering letter along with its report on the direction of the CMO concerned and the same was then sent to the accused at the address given by the Food Inspector through registered post. He files the covering letter to the CJM before the trial court which is Exb: Ka-10 and the receipt of the registered post which is Exb: Ka-11 to the records. The trial court then convicted the accused-revisionist against which an appeal was preferred which also did not find favour of the accused-revisionist and was dismissed and the judgment and order of the trial court was affirmed.

8. Learned counsel for the revisionist raised a solitary argument before the Court. He submitted that the notice under Section 13(2) of the Prevention of Food Adulteration Act, 1954 has not been received by the revisionist. He submits that the fact that the said notice has been sent by registered post although is mentioned by PW-2 Abdul Majeed in his statement before the trial court who has also filed the receipt of the registered post which is exhibited document but there is nothing on record to show that the said report has been received by the accused-revisionist. It is submitted that the violation of Section 13(2) of the Act is of a serious consequences, inasmuch as, the non receipt of the said notice upon the accused renders his valuable right of getting the sample retested by the Central Food Laboratory to be defeated. It is submitted that as per the settled law as has been held by the Apex Court in the case of **Vijendra Vs. State of Uttar Pradesh) : 2020 (15) SCC 763** and **Narayana Prasad Sahu Vs. State of Madhya Pradesh : 2022 (1) SCC 87** it is held that mere dispatch of report to the accused under Section 13(2) of the Act is not sufficient compliance with the requirement of Sub-section (2) of Section 13 and the report must be served on the accused which the prosecution has not proved. It is submitted that in the present case although PW-2 Abdul Majeed states of sending the report along with the report of Public Analyst to the accused-revisionist by registered post but does not state of its receipt by the accused. It is submitted that the prosecution has not proved that the said report has been received by the accused and thus the non delivery of the said report to the accused would defeat his right of sending the sample for reanalysis before the Central Food Laboratory. He submits that the said argument was also agitated before the trial court concerned but the trial court held that since PW-2 Abdul Majeed has appeared before the trial court and has stated of sending the report along with the report of the Public Analyst by registered post to the accused thus it gets proved that report has been sent and the same is sufficient and thus the said argument is without any substance. It is submitted that the said view is contrary to the view taken by the Apex Court in the case of **Vijendra (supra)** and **Narayana Prasad Sahu (supra)**. It is submitted that even the said argument was raised before the appellate court which also in like manner as that of the trial court relied upon the statement of PW-2 Abdul Majeed and stated that there is nothing in the cross examination of the said witness which

would create a suspension about his evidence. The appellate court came to a conclusion that since the report of the Public Analyst was sent by registered post to the appellant, the argument to the said effect is without any substance. It is submitted that even the view of the appellate court is contrary to the view taken by the Apex Court in the aforesaid two cases. It is submitted that looking to the facts of the case and the law as held by the Apex Court, the present revision be allowed.

9. Per contra, learned counsel for the State opposed the revision and the argument of learned counsel for the revisionist but in so far as the legal position as has emerged and has been held by the Apex Court in the aforesaid two judgments are concerned, is not disputed by learned counsel for the State. He submits that since the report has been sent by registered post, a presumption would draw that the same has been received by the accused. It is submitted that as such the revision be dismissed.

10. After having heard learned counsels for the parties and perusing the records, it is evident that the sole question in the present matter as has been agitated is regarding non receipt of report under Section 13(2) of the Food Adulteration Act. In so far as the report and the letter of the Health Authority is concerned although PW-2 Abdul Majeed states of sending the same by registered post to the accused-revisionist but there is nothing on record to show that the same has been received at the end of the accused. In the absence of their being any proof of delivery of the said report to the accused the valuable right available to the accused to seek further test of the sample by the Central Food Laboratory stands defeated. The same has been held by the Apex Court in the cases of **Vijendra (supra)** and **Narayana Prasad Sahu (supra)**.

11. The said issue was also raised before the trial court as well as appellate Court concerned but both the courts came to a conclusion that since PW-2 Abdul Majeed has stated of sending the said documents by registered post, the argument is without any substance. Perusal of both the judgments go to show that there is no finding recorded that the said report has been received by the accused-revisionist. The proof regarding receipt by the accused-revisionist is an important aspect. Since there is nothing on record to show that the report has been received by the accused-revisionist in compliance of Section 13(2) of the Act his valuable right of getting the sample retested by the Central Food Laboratory stand defeated. The prosecution has thus to fail and is thus held defeated.

12. In view of the same, the present revision is **allowed**. The judgment and order dated 28.11.2014 passed by the Chief Judicial Magistrate, Maharajganj in Criminal Case No. 133 of 2000 (State of U.P. Vs. Dhrup Madhoshiya) and judgment and order dated 27.06.2015 passed by the Sessions Judge, Maharajganj in Criminal Appeal No. 01 of 2015 (Dhrup Madhesiya Vs. State of U.P.) are hereby set aside.

13. The revisionist-Dhrup Madhoshiya is acquitted of the charge levelled against him. The revisionist is on bail. His bail bond is cancelled and sureties discharged.

14. 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.

(Samit Gopal,J.)

September 16, 2025
M. ARIF