



2025:AHC:166170

**HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL REVISION No. - 2448 of 2009**

Kadir Khan

.....Revisionist(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Revisionist(s)
Counsel for Opposite Party(s)

: Mukhtar Alam
: Govt. Advocate

**Reserved on: 24.07.2025
Delivered on: 17.09.2025**

Court No. - 64

HON'BLE SAMIT GOPAL, J.

1. List revised.

2. Heard Sri Yawar Mukhtar, Advocate holding brief of Sri Mukhtar Alam and Sri Mukhtar Alam, learned counsel for the revisionist and Sri Birendra Pratap Singh, learned counsel for the State and perused the records.

3. This criminal revision is preferred against the judgment and order dated 12.06.2009 passed by Additional District & Sessions Judge, Court No.3, District Bulandshahr in Criminal Appeal No. 19 of 2008 (Kadir Khan vs. State of U.P. and others) and the judgment and order dated 16.04.2008 passed by Judicial Magistrate-Ist Class/Additional Chief Judicial Magistrate, Court No.1, Bulandshahr in Criminal Case No. 3460 of 1995 (State vs. Kadir & others), Police Station Gulawati, District Bulandshahr, convicting and sentencing the revisionist under Section 7(1)/16(1) of the Prevention of Food Adulteration Act for 01 year simple imprisonment & fine of Rs. 1000/- and in default of payment of fine to further undergo 01 month additional imprisonment.

4. The facts of the case are that on 26.03.1976 at about 12.15 pm R.K. Saxena Food Inspector, State Squad, Lucknow saw the revisionist Kadir going through Gandhiganj Gulawati, Police Station Gulawati, District Bulandshahr carrying can filled with milk on which he was stopped and asked about it who informed him that the milk is

mixed milk of cow and buffalo. He then purchases 660 ml of the said milk by paying the required money for it. Form no.VI was prepared and a receipt regarding the said purchase was also prepared. The said material was then packed in three bottles as per rules and memorandum in Form VII was prepared and one of the said samples was sent to the Public Analyst, Government of U.P., Lucknow for analysis. The Public Analyst analyzed the said sample and gave his report dated 05.04.1976 stating therein that the milk fat is found to be 7.2% and non-fat solid is found to be 7.9% and thus the non-fat solid was found to be less by 10% as per the standards. The material was thus considered to be adulterated after which sanction for prosecution was sought from the C.M.O. concerned.

5. A complaint was then filed before the court concerned and then a notice under Section 13(2) of the Act was sent to the accused to which there was no response.

6. O.P. Kapur was examined under Section 244 Cr.P.C., R.K. Saxena the Food Inspector, State Squad was examined as P.W.-1 and Arun Kumar Singh, the Food Clerk was examined as P.W.-2.

7. Vide order dated 25.01.1983 passed by the Chief Judicial Magistrate concerned charge under Section 7/16 of the Food Adulteration Act was framed against the revisionist who was read over the same who denied it and claimed to be tried.

8. The accused in his statement under Section 313 Cr.P.C. denied the prosecution case and submitted that he was a servant at the place of Iqbal contractor.

9. Kalim Ahmad was examined as D.W.-1 who has stated that the revisionist was a servant at the place of Iqbal Ahmad and used to measure the milk and deliver it at the place.

10. Ikramuddin was examined as D.W.-2 who also reiterated the same as that of D.W.-1.

11. Under Section 246 Cr.P.C. O.P. Kapur, Food Inspector, R.K. Saxena the Food Inspector and Arun Kumar Singh the Food Clerk were examined. The Food Inspector R.K. Saxena in Court reiterated the prosecution version and stated that the milk taken by him was

sent to the Public Analyst who then found it to be less in non-fat solid. Thus the sample was adulterated. He states of filing of the complaint.

12. P.W.-2 R.K. Saxena states of preparation of documents and sending the sample for analysis and also of the report of the Public Analyst. He further states that the report of the Public Analyst was sent by registered post to the accused.

13. O.P. Kapur, the Food Inspector stated that sample was taken by R.K. Saxena and he was authorized to file complaint which was done by him on 21.07.1976. The complaint is Exb:Ka-1. He states that sanction was given by the C.M.O. Dr. B.P. Malik, which is Exb:Ka-2.

14. The trial court thus finding the prosecution case true and correct, convicted the revisionist as above against which an appeal was preferred which stood dismissed. The present revision has thus been filed before this Court.

15. Learned counsel for the revisionist raised two submissions:-

(i) That the proviso of Section 2 (ia) (m) of the Food Adulteration Act has not been considered and the case would fall under it. Reliance has been placed on the judgement of the Apex Court in the case of ***M/S Bhattacharjee Mahasya & Another Vs. The State of West Bengal & Another: Criminal Appeal No. 1800 of 2022*** decided on 17.10.2022.

(ii) There is nothing on record to show that the notice under Section 13(2) of the Act has been served on the revisionist-accused and even the trial court has not considered the same. The judgement of the Apex Court in the case of ***Vijendra vs. State of Uttar Pradesh: (2020) 15 SCC 763*** has been relied upon. It is submitted that the said two illegalities are glaring in nature and the judgement & order of conviction and that of the Appellate Court deserves to be set-aside on the same. It is submitted that the trial court has not even returned a finding that the notice under Section 13(2) of the Food Adulteration Act has been served upon the revisionist-accused which was necessary to be adverted to as its failure would render the valuable right of the accused to be defeated and in the present case since no notice has been served on the revisionist his valuable right of getting

the sample retested at the Central Food Laboratory gets defeated and the prosecution thus deserves to fall.

16. *Per contra*, learned counsel for the State opposed the arguments and the present revision and submitted that the trial court has considered the matter at length and thus convicted the revisionist as aforesaid. It is submitted that the judgement & orders impugned are well reasoned and do not called for any interference.

17. After having heard learned counsels for the parties and perusing the records of the present case and also the trial court records which are tagged with the present matter, it is apparent that the Food Inspector took sample of mixed milk from a can which is alleged to be carried by the revisionist. After completing the formalities the same was sent for analysis which was found to be deficient in non-fat solid and thus the same was considered to be adulterated and a complaint was filed on which the revisionist was charged and tried.

18. The statement of O.P. Kapur the Food Inspector states of the sample was taken by R.K. Saxena the Food Inspector of the State squad Lucknow after which he had filed the complaint in the present matter.

19. R.K. Saxena was examined as P.W.-2 who states of taking of the sample from the revisionist-accused preparing the documents and then sending it to the Public Analyst for examination. Initially in his statement it is stated that before taking of the sample the said material was homogenized. He further states that no notice under Section 13(2) of the Act was sent by registered post to the accused. There is nothing on record to show that there is any evidence led when the said notice was received by the accused and even no witness of the prosecution states that the said notice was received. In the case of **Vijendra** (supra) has been held the material ha not been homogenized. The fat in milk tends to settle down in a can and thus its consistency does not remain consistent throughout unless it is homogenized.

20. The argument of learned counsel for the revisionist while relying upon **M/S Bhattacharjee Mahasya** (supra) that the proviso of Section 2 (ia) (m) of the Food Adulteration Act has not been complied

with cannot be considered and is distinguishable on facts. In the said case the material as was ceased was paneer which is prepared by processing milk. Even otherwise, the judgement would not be applicable to the present matter since the material in the present case is mixed milk which was collected and sent for testing. There is no specific specification prescribed in the Rules regarding it. Any variation from it would call for appropriate action and prosecution. Paneer is not a natural product in itself but is prepared from milk or other substances and thus the same would have a different consideration. The judgement thus as relied is not applicable to the present case. In the present case there is nothing to show that notice under Section 13(2) of the Act was received by the revisionist-accused. Further there is nothing on record to show that the material was first homogenized and then sample was taken.

21. The present revision is **allowed**. The impugned judgment and order 12.06.2009 passed by Additional District & Sessions Judge, Court No.3, District Bulandshahr and the judgment and order dated 16.04.2008 passed by Judicial Magistrate-Ist Class/Additional Chief Judicial Magistrate, Court No.1, Bulandshahr in the aforesaid case are hereby set aside.

22. The revisionist- **Kadir Khan** is already on bail. He need not surrender. His bail bond is cancelled and sureties discharged.

23. 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.

24. The file be consigned to records.

September 17, 2025
AS Rathore

(Samit Gopal,J.)