

Ram Ratan vs State Of U.P. And Another on 5 May, 2023

HIGH COURT OF JUDICATURE AT ALLAHABAD

Court No. 50.

A.F.R.

Reserved on: 24.04.2023

Delivered on: 05.05.2023

Case:- CRIMINAL REVISION No.- 16 of 2023

Revisionist:- Ram Ratan

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

Counsel for Revisionist:- Vijay Bhadur Shivhare, Ram Lalit Chaudhary, Vijay Kumar Singh

Counsel for Opposite Party:- G.A.

Hon'ble Ram Manohar Narayan Mishra, J.

1. Instant criminal revision under Section 397/401 Cr.P.C. has been filed against judgment and order dated 20.12.2022 passed by Addl. Sessions Judge Court No. 8, Kanpur Nagar, in Criminal Appeal No. 106/2019 (Ram Ratan Vs. Vivek Kumar and Another), whereby the conviction and sentence passed by learned Metropolitan Magistrate on 28.06.2019 in Case No. 3872 of 2010 against accused appellant Ram Ratan for charge under Section 7/16 Prevention of Food Adulteration Act has been affirmed. The judgment and order of trial court dated 28.06.2019 has also been challenged.

2. The brief facts of the case relevant from present criminal appeal are that on 05.03.2010, the complainant Food Inspector working on orders of local Health Officer intercepted a milk vendor at 09:15 hours near Police Station- Bhidnu, Gathmpur road, District- Kanpur Nagar, who was taking milk in his bicycle in 4 containers each having around 20 ltrs of milk, therefore he was carrying a total of 80 lts of mixed milk of cow and buffalo. The Food Inspector purchased 1500 ml milk for Rs. 36 as sample and received an acknowledgement from the vendor/ present accused. The complainant tried to enjoin local witnesses but they neither disclosed their name nor agreed to be a witness. The sample were kept in 3 dry and empty small bottles in equal amount and was duly sealed, labelled and tagged and signature of the vendor was taken on each bottle of the sample. The copies of Form 7

were prepared and one set of sample was sent for examination to Public Analyst, Lucknow through speed post. The report of Public Analyst was received in the office of Local Health Officer, Kanpur on 04.06.2010 as Test Report No. 3518 dated 17.04.2010, wherein the sample of milk was found adulterated. The complainant Food Inspector, Vivek Kumar received sanction for prosecution from the D.M., Kanpur Nagar, Sri Mukesh Meshram and filed the present complaint. In report of Public Analyst, the sample was found short of 13 percent milk fat and the sample was not found up to prescribed standard and thus, held to be adulterated. The learned Magistrate took cognizance of the offence after filing of a complaint by Food Inspector, the statement of the accused was recorded and substance of accusation was explained to him which he denied and claimed to be tried. In prosecution evidence, P.W.-1 Shri Vivek Kumar, the complainant (Food Inspector), P.W.- 2 Om Ji Srivastava, Food Clerk were examined and 8 documents were accepted during evidence. The accused had not adduced any oral evidence during trial. Learned Magistrate after considering submissions of learned counsel for the parties and on appreciation of evidence on record, observed that in present case, the sample was filled up on 05.03.2010 and cognizance of the case was taken by the Court on 17.08.2010 which is within 3 years from the date of commencement of the Act, as provided under Section 97 (4) of Food Safety and Standards Act. Therefore, in the opinion of learned Trial Court, the court was well within its jurisdiction to take cognizance of the offence under Prevention of Food Adulteration Act, 2006 and on facts of the case the provisions of Food Safety and Standards Act were not applicable.

3. Learned Trial Court dispelled the submission of learned counsel for the accused that the District Magistrate granted sanction for prosecution in mechanical manner and did not perused any documents submitted along with the application for grant of sanction. The learned Trial Court also observed that District Magistrate granted sanction for prosecution after perusing the relevant documents and as well as in the light of report of Public Analyst. He found no reason to disbelieve the testimony of P.W.-1, who stated in cross-examination that accused had told him that he is milk vendor and was going to sell milk. He also dispelled proposition of the accused side that the sample was not taken in accordance with rules and there was no occasion to disbelieve the testimony of the complainant, Food Inspector only on ground that no public witness was enjoined in inspection and process of sampling on this part. The accused was served notice under Section 13(2) P.F. Act within 3 days of filing of complaint dated 17.08.2010 and notice is found lawful. There is nothing to be held that notice was sent to the accused on wrong address. Learned Trial Court, after considering evidence of P.W.1, Food Inspector and P.W.-2 Om Ji Srivastava, Food Clerk, on issuing of notice and placing reliance on documentary evidence submitted as an proof during trial, held that prosecution has been successful to prove the charge levelled against the accused beyond reasonable doubt and recorded conviction of the accused for charge under Section 7/16 P.F. Act, and sentenced him 6 months simple imprisonment and Rs. 5,000/- fine with default stipulation.

4. Feeling aggrieved by the verdict of guilt and sentencing awarded by learned Trial Court, the accused revisionist preferred criminal appeal before the Court of Sessions which was decided by Addl. Sessions Judge, Court No. 8 Kanpur Nagar by impugned judgment dated 20.12.2022 who examined the record and in the light of evidence on record and addressed legal submissions raised by learned counsel for the appellant, expressed his concurrence with finding and judgment of learned Trial Court and affirmed the impugned judgment and order passed by learned Trial Court.

Present revision has been preferred by the accused against concurrent judgments of Courts below.

5. Heard learned counsel for the revisionist, learned A.G.A. for the State and perused the material on record.

6. Learned counsel for the revisionist submitted that the accused is held in jail custody since passing of impugned judgment dated 20.12.2022 by Appellate/ Sessions Court, thereby he is held in jail custody for more than 4 months as a convict in the case from which present revision has arisen. The judgment and orders passed by learned Courts below are against the provisions of law and strength of evidence on record.

7. The prosecution failed to prove its case beyond reasonable doubt on basis of evidence adduced during trial, as no offence is made out against the revisionist under Section 16 of Prevention of Food Adulteration Act. Both the learned Court's below misappreciated the evidence on record while recording the verdict of guilt against accused revisionist and their findings are not sustainable as after commencement of Food Safety Standards Act, 2006, the Prevention of Food Adulteration Act was repealed and in present case cognizance under Section 7/16 Food Adulteration Act, was itself barred under law. Therefore, the revision is liable to be allowed and impugned orders passed by Courts deserve to be set aside.

8. Per contra, learned A.G.A. appearing for the State opposite party No. 1, submitted that there is nothing on record which may want interference in present criminal revision against concurrent findings of both the Courts below in which verdict of guilt has been recorded against accused appellant. The learned Trial Court has awarded minimum punishment of imprisonment pursuant under law against accused, therefore, neither the conviction nor sentence are liable to be interfered in present criminal revision.

9. Learned counsel for the revisionist cited and placed reliance of judgment Avinash Chandra Bajpai and Another Vs. State of U.P. 2019 (1) FAC 497 which is related to cognizance/ summoning order for charge under Section 7/16 P.F.A. Act, 1954 in that case sample of Chole/ Chana Masala (Bhola Indis) is alleged to have taken from the shop of the revisionist on 09.02.2011 on basis of which a complaint under Section 7/16 P.F. Act was filed against him and the learned Magistrate took cognizance of the offence on the criminal complaint filed by the Food Inspector. This Court held in that case that prevention of Food Adulteration Act, 1954 has been repealed with effect from 29.07.2010 while notification in Extraordinary Gazette of India copy at Annexure No. 2; that the Food Safety and Standards Act, 2006 has come into force with effect from 29 July, 2010 and after repeal of old Act, i.e. Prevention of Food Adulteration Act, 1954, the complaint under Section 07/16 Act of Prevention of Food and Adulteration Act was not maintainable and no cognizance could have been taken by the Magistrate under the old and already repealed Act. This Court held that Magistrate has passed impugned order of cognizance without due application of mind to the facts and has acted wrongly issued process against the revisionist for an offence under non-existing Act. After enforcement of Food Safety and Standards Act, 2006; the procedure under the new Act has to be adopted against the revisionist and no cognizance of offence under the old and already repealed Act may be taken. The impugned order of cognizance was wrong and illegal and must be allowed to

stand.

10. With regard to legal plea raised by the accused side consistently from Court of first instance to present revisional Court, the provisions of repeal clause of Food Safety and Standards Act are liable to be examined. The object and reason of Food Safety and Standards Act, 2006 states as "an Act to consolidate the laws relating to food and to establish the Food Safety and Standards Authority of India for laying down science based standards for articles of food and to regulate the manufacture, storage, distribution, sell and import, to ensure availability of safe and wholesome food for human consumption and for matters connected therewith or incidental thereto.

11. The different sections of the Act were brought in force on different dates. Section 97 of the Act was brought into force on 29.07.2010 vide S.O. 1855 (E dated 29.07.2010) issued by Central Government. Section 97 provides as under

97. Repeal and savings.-

(1) With effect from such date as the Central Government may appoint in this behalf, the enactment and orders specified in the Second Schedule shall stand repealed: Provided that such repeal shall not affect:-

(i) the previous operations of the enactment and orders under repeal or anything duly done or suffered thereunder; or

(iii) any penalty, forfeiture or punishment incurred in respect of any offences committed against the enactment and Orders under repeal; or

(iv) any investigation or remedy in respect of any such penalty, forfeiture or punishment, and any such investigation, legal proceedings or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed, as if this Act had not been passed:

(2) If there is any other law for the time being in force in any State, corresponding to this Act, the same shall upon the commencement of this Act, stand repealed and in such case, the provisions of section 6 of the General Clauses Act, 1897 (10 of 1897) shall apply as if such provisions of the State law had been repealed.

(3) Notwithstanding the repeal of the aforesaid enactment and Orders, the licences issued under any such enactment or Order, which are in force on the date of commencement of this Act, shall continue to be in force till the date of their expiry for all purposes, as if they had been issued under the provisions of this Act or the rules or regulations made thereunder.

(4) Notwithstanding anything contained in any other law for the time being in force, no court shall take cognizance of an offence under the repealed Act or Orders after

the expiry of a period of three years from the date of the commencement of this Act.

12. In *Rupesh Kumar and Another Vs. State of U.P.* 2011 (2) FAC 33, applicants premises were raided on 25.04.2011 and on that date the Food Safety and Standard Act, 2006 stood enforced and as such the applicant could not be prosecuted only under the provisions of The Food Safety and Standard Act, 2006. The complaint was filed on 27.06.2011 in the P.F. Act, 1954 and summoning order was issued on 27.06.2011. This Court quashed the summoning order dated 27.06.2011 as all the proceedings in the matter were taken after enforcement of Act of 2006. This Court observed that after enforcement of Act of 2006, the applicant could be prosecuted only under the provisions of Act, 2006. While this Court quashing the summoning order passed against the accused by Trial Court granted liberty to the respondents to proceed against the revisionist under the provisions of the Act of 2006.

13. The mandate of Section 6 of the General Clauses Act is simply to leave the pending proceedings unaffected which commence under the unrepealed provisions, unless contrary intention is expressed. "*Ambalal Sarabhai Enterprises Lt. Vs. Amrit Lal and Company* (2001) 8 SCC 397 in *Gurcharan Singh Baldev Singh Vs. Yashwant Singh A.I.R.* 1992 SC 1186, Honb'le Apex Court while considering scope of Section 6 General Clauses Act 1897, which deals with effect of repeal of a Central Act or regulation held that the objective of Section 6(c) of the General Clauses Act is to ensure protection of any right or privilege acquired under the repealed Act. The only exception to it is legislative intention to the contrary. That is, the repealing Act may expressly provide or it may impliedly provide against continuance of such right, obligation or liability.

14. In the present case, P.W.1 Vivek Kumar, the complainant has proved factual aspects of the case by his evidence as P.W.1, during trial of complaint case before Court below. P.W.2, Om Ji Srivastava the Food Clerk has stated in his evidence that on 16.09.2013, Local Health Authority sent sample No. KN-2010/362/VS-7 along with report of Public Analyst to the accused, he proved receipt of registry as exhibit K-4 and LHA Form No. 13 (2) as exhibit K-9. Thus, it cannot be held in present case that the provisions of Section 13(2) of Prevention of Food Adulteration Act, 1954 were not complied with. Section 13 provides as under:

13. Report of public analyst.--

(1) The public analyst shall deliver, in such form as may be prescribed, a report to the Local (Health) Authority of the result of the analysis of any article of food submitted to him for analysis. --3[(1) The public analyst shall deliver, in such form as may be prescribed, a report to the Local (Health) Authority of the result of the analysis of any article of food submitted to him for analysis."

(2) On receipt of the report of the result of the analysis under sub-section (1) to the effect that the article of food is adulterated, the Local (Health) Authority shall, after the institution of prosecution against the persons from whom the sample of the article of food was taken and the person, if any, whose name, address and other particulars have been disclosed under section 14A, forward, in such manner as may

be prescribed, a copy of the report of the result of the analysis to such person or persons, as the case may be, informing such person or persons that if it is so desired, either or both of them may make an application to the court within a period of ten days from the date of receipt of the copy of the report to get the sample of the article of food kept by the Local (Health) Authority analysed by the Central Food Laboratory.

(2A) When an application is made to the court under sub-section (2), the court shall require the Local (Health) Authority to forward the part or parts of the sample kept by the said Authority and upon such requisition being made, the said Authority shall forward the part or parts of the sample to the court within a period of five days from the date of receipt of such requisition.

(2B) On receipt of the part or parts of the sample from the Local (Health) Authority under sub-section (2A), the court shall first ascertain that the mark and seal or fastening as provided in clause (b) of sub-section (1) of section 11 are intact and the signature or thumb impression, as the case may be, is not tampered with, and despatch the part or, as the case may be, one of the parts of the sample under its own seal to the Director of the Central Food Laboratory who shall thereupon send a certificate to the court in the prescribed form within one month from the date of receipt of the part of the sample specifying the result of the analysis.

(2C) Where two parts of the sample have been sent to the court and only one part of the sample has been sent by the court to the Director of the Central Food Laboratory under sub-section (2B), the court shall, as soon as practicable, return the remaining part to the Local (Health) Authority and that Authority shall destroy that part after the certificate from the Director of the Central Food Laboratory has been received by the court: Provided that where the part of the sample sent by the court to the Director of the Central Food Laboratory is lost or damaged, the court shall require the Local (Health) Authority to forward the part of the sample, if any, retained by it to the court and on receipt thereof, the court shall proceed in the manner provided in sub-section (2B).

(2D) Until the receipt of the certificate of the result of the analysis from the Director of the Central Food Laboratory, the court shall not continue with the proceedings pending before it in relation to the prosecution.

(2E) If, after considering the report, if any, of the food inspector or otherwise, the Local (Health) Authority is of the opinion that the report delivered by the public analyst under sub-section (1) is erroneous, the said Authority shall forward one of the parts of the sample kept by it to any other public analyst for analysis and if the report of the result of the analysis of that part of the sample by that other public analyst is to the effect that the article of food is adulterated, the provisions of sub-sections (2) to (2D) shall, so far as may be, apply.] (3) The certificate issued by the Director of the

Central Food Laboratory under sub-section (2B)] shall supersede the report given by the public analyst under sub-section (1).

(4) Where a certificate obtained from the Director of the Central Food Laboratory [under sub-section (2B)] is produced in any proceeding under this Act, or under sections 272 to 276 of the Indian Penal Code (45 of 1860), it shall not be necessary in such proceeding to produce any part of the sample of food taken for analysis.

(5) Any document purporting to be a report signed by a public analyst, unless it has been superseded under sub-section (3), or any document purporting to be a certificate signed by the Director of the Central Food Laboratory, may be used as evidence of the facts stated therein in any proceeding under this Act or under sections 272 to 276 of the Indian Penal Code (45 of 1860): [Provided that any document purporting to be a certificate signed by the Director of the Central Food Laboratory [not being a certificate with respect to the analysis of the part of the sample of any article of food referred to in the proviso to sub-section (1A) of section 16] shall be final and conclusive evidence of the facts stated therein.] [Explanation.--In this section, and in clause (f) of sub-section (1) of section 16, "Director of the Central Food Laboratory" shall include the officer for the time being in charge of any Food Laboratory (by whatever designation he is known) recognised by the Central Government for the purposes of this section.]

15. Therefore, on perusal of above statutory provisions, in the light of evidence of P.W.2, it appears that the accused has been given an opportunity to get the sample of article of food kept by Local Health Authority Analysed by the Central Food Laboratory, but accused failed to avail the opportunity.

16. Section 7 of the Act provides for violations which will be punishable under Section 16 of the Act. Under Section 2 [(i) "adulterant" means any material which is or could be employed for the purposes of adulteration;] 4 [(ia)] "adulterated"--an article of food shall be deemed to be adulterated--

(a) if the article sold by a vendor is not of the nature, substance or quality demanded by the purchaser and is to his prejudice, or is not of the nature, substance or quality which it purports or is represented to be;

----- (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.

17. Thus, the present case falls within the purview of Section 2(m) of the Act, as the main charge in the present case against the accused is that the milk sample taken from him was found short of prescribed standards as the fat contents of milk were found 13 percent below the prescribed standard, and as the sample did not correspond to prescribed standard it was held as adulterated within meaning of Section 2(ia)(m).

18. In present case, Section 2(ia)(m) attracts which is punishable under Section 16(1) of the Act for which a minimum punishment of 6 months imprisonment, which may extend to 3 years and fine not less than Rs. 1,000/- is prescribed. In the present case, the District Magistrate has passed the sanction order for prosecution of the accused which has been proved by P.W.1. The District Magistrate has passed sanction order in discharge of his official duty and genuineness of said order is presumed.

19. So far as the argument of learned counsel that in view of repeal of Prevention of Food Adulteration Act, 1954 after enactment of Food Safety and Standards Act, 2006 and assailing the cognizance order in the present case by the appellant is concerned. Section 97(1) of the Act of 2006 provides that with effect from such date as the Central Government may appoint in this behalf, the enactment and orders specified in the second schedule shall stand repealed. The date envisaged in sub-Section 1 of Section 97 has been specified as 05.08.2011 vide notification No. F.No.P-15025/41/2011-DFQC -dated 4th August, 2011, meaning thereby the Food Adulteration Act, 1954 shall stand repealed on 05.08.2011. The provisions of Section 97 (2) were itself brought into force on 29.07.2010 which deals with repeal and savings. In the present case, the date of offence is mentioned and proved as on 05.03.2010, when accused was intercepted by P.W.1 and sub-standard milk was found in his possession and complaint was filed after investigation in the case against accused for his prosecution under Section 7/16 of P.F. Act. Thus, the proceedings, sampling and inspection under repealed Act were already initiated prior to repeal of the Act which took place on 05.08.2011. Even the cognizance in the case was taken by Court below on 17.08.2010, prior to the date when the P.F. Act, stood repealed. Therefore, this argument of revisionist side can also not be countenanced that the cognizance in the case was barred under law. Even Section 97(4) of The Food Safety and Standards Act, 2006, provides as under:

(4) Notwithstanding anything contained in any other law for the time being in force, no court shall take cognizance of an offence under the repealed Act or Orders after the expiry of a period of three years from the date of the commencement of this Act Section 97 seeks to repeal the enactment or orders specified in second schedule immediately with the effect from the date on which the Act is enacted and comes into force, provided that such repeal shall not affect

(i) the previous operations of the enactment and orders under repeal or anything duly done or suffered thereunder;

Or

(ii) any right, privilege, obligation or liability acquired, accrued or incurred under any of the enactment or Orders under repeal; or

(iii) any penalty, forfeiture or punishment incurred in respect of any offences committed against the enactment and Orders under repeal; or

(iv) any investigation or remedy in respect of any such penalty, forfeiture or punishment and any such investigation, legal proceedings or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed, as if this Act had not been passed:

(2) If there is any other law for the time being in force in any State, corresponding to this Act, the same shall upon the commencement of this Act, stand repealed and in such case, the provisions of section 6 of the General Clauses Act, 1897 (10 of 1897) shall apply as if such provisions of the State law has been repealed.

20. Thus, in view of Section 97(4) also, the cognizance in the case shall be saved as the same was taken within a period of 3 years from the date of commencement of the Act of 2006.

21. Thus, in opinion of this Court, cognizance in the case by the Court of first instance is in no manner illegal or barred under law.

22. The revision is devoid of merit and no factual or legal error or misappropriation of evidence is found on the part of learned Trial Court as well as Appellate Court while recording verdict of guilt against accused for charge levelled against him as well as in judgment of appellate court whereby the appeal was dismissed and order of Trial Court was affirmed.

23. So far as, sentence is concerned, learned counsel for the revisionist referred to the pleadings made in supplementary affidavit filed on behalf of the revisionist on 07.04.2023 and further submitted that as per report of Public Analyst, only the fat content in the sample of milk was found to be less than 13% of prescribed limit and same sample was not injurious to human health. The notice under Section 13(2) of Food Adulteration Act, was never served on revisionist/ accused, the process of sampling was not carried out in accordance with provisions of Section 7 of the Act. The revisionist is not having any prior criminal history, hence, at least his case may be treated with some leniency, so far as, sentencing is concerned, he is held in jail custody since 20.12.2022 from date of impugned judgment of Appellate Court, he may be given benefit of Section 4 of Probation of the Offenders Act, or Section 360 Cr.P.C., as the case may be. He submitted that the sentence awarded to the revisionist may be reduced to the period undergone as he has already spent substantial portion of the sentence awarded in impugned judgment.

24. Learned counsel for revisionist cited judgment of Hon'ble Apex Court in Nemi Chand Vs. State of Rajasthan (2018) 17 SCC 448, in Criminal Appeal No. 214 of 2016.

25. I have gone through the judgment of Hon'ble Apex Court in Nemi Chand Vs. State of Rajasthan (supra) in that case, the appellant was tried and convicted for offence under Section 7/16 P.F. Act by

the Trial Court and was sentence to undergo 6 months rigorous imprisonment as well as fine of Rs. 1,000/- and in default further rigorous imprisonment for one month. This order was challenged by the appellant by filing appeal before the Sessions Judge, which was dismissed on 11.09.1996, thereby affirming the order of the Trial Court. Hon'ble Apex Court observed that it is not in dispute that the charge against the appellant was only of sub-standardization of goods. It was observed that in judgment of this Court in T. Barai vs Henry Ah Hoe And Another 1983(1) SCC 177, this Court held that since the amendment of Prevention of Food Adulteration Act, Section 16 A was added in the P.F. Act through Central Act 34 of 1976 and it was beneficial to the accused persons, it can be applied even with respect to earlier cases as well which are pending in the Court.

26. Hon'ble Apex Court in Nemi Chand case extended the benefit of newly added Section 16(A) to accused convict and modified his sentence to the extent that he was awarded fine of Rs. 50,000/- and the substantive sentence of 6 months imprisonment awarded to him by Trial court and affirmed by first Appellate court was quashed.

27. In present case also, although Trial Court adopted procedure of summons trial in the case for convicting and sentencing the accused, the provisions of Section 16(A) of Prevention of Food Adulteration Act, 1954 cannot be lost sight which provide as under:

16A. Power of court to try cases summarily --

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), all offences under sub-section (1) of section 16 shall be tried in a summary way by a Judicial Magistrate of the first class specially empowered in this behalf by the State Government or by a Metropolitan Magistrate and the provisions of sections 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trial:

Provided that in the case of any conviction in a summary trial under this section, it shall be lawful for the magistrate to pass a sentence of imprisonment for a term not exceeding one year:

Provided further that when at the commencement of, or in the course of, a summary trial under this section it appears to the magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Magistrate shall after hearing the parties, record an order to that effect and thereafter recall any witness who may have been examined and proceed to hear or rehear the case in the manner provided by the said Code

28. Present offence is also punishable under Section 16(1)(a)(i). There is neither allegation that the sample in question of beverage (milk) collected from the accused, was in any manner injurious to health of its consumer. The offence is itself of technical nature as the fat content of milk was found only 13 percent below than prescribed standard. Thus, in this case also the main charge against the accused appellant was that only of sub-standardization of the beverage (milk) which was allegedly

carried by him for selling on the date and time of inspection by P.W.1.

29. Therefore, in the light of judgment of Hon'ble Apex Court in Nemi Chand Vs. State of Rajasthan (supra), the benefit of Section 16(A) of the Act, is liable to be extended to the revisionist, in the case which provides that all the offences under sub-Section 1 of Section 16 shall be tried in a summary way and provisions of Section 262 and 265 (both inclusive) of the said Code of Civil Procedure shall as far as may be applied to such trial. Section 262 (2) provides that in summary trials, the procedure specified in this Code for the trial of summons- case shall be followed except as hereinafter mentioned and no sentence of imprisonment for a term exceeding three months shall be passed in the case of any conviction under this Chapter.

30. As the case of accused revisionist is covered under Section 16(1) of the Act of P.F. Act, in respect of fact that Court did not adopt procedure of summary trial in the case, he deserves to be extended benefit of provisions of Section 16(A) of the Act, which was existing on the date of the offence and keeping in view the provision of Section 262(2) Cr.P.C. his substantive sentence is liable to be reduced with 3 months as provided therein.

31. In view of the above, the revision is partly allowed. The conviction recorded by trial court against revision is affirmed. The sentence imposed upon the revisionist is modified and simple 3 months imprisonment is awarded to him, however, fine of Rs. 5,000/- awarded by the Court below will remain intact. As the revisionist had already undergone this modified sentence of 3 months imprisonment, he will be released from jail custody immediately in respect of present case, if he pays the fine awarded in impugned judgment or undergoes the sentence awarded in default of payment of fine, as the case may be.

32. Let a copy of this order be sent to Trial Court concerned for compliance.

Order Date:- 05.05.2023 Nitika