

State Of U.P.Throu.Khadya Nirikshak ... vs Sri Dinesh Kumar Jaiswal And Another on 5 April, 2023

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Court No. - 27

Case :- APPLICATION U/S 378 No. - 102 of 2013

Applicant :- State Of U.P.Throu.Khadya Nirikshak Gonda

Opposite Party :- Sri Dinesh Kumar Jaiswal And Another

Counsel for Applicant :- Govt.Advocate

Hon'ble Brij Raj Singh,J.

Heard Sri Brijendra Singh learned counsel for the State applicant.

Application has been filed for leave to appeal to challenge the judgment and order dated 15.3.2013 passed by the First Additional Chief Judicial Magistrate, Gonda in Case No.213 of 2012 (State. Vs. Dinesh Kumar Jaiswal and another) whereby the accused respondents have been acquitted of the charges levelled against them.

As per prosecution case, the complainant who is Food Inspector, on 14.10.2011 at about 12.45 p.m. made inspection of the shop in question i.e., M/s. Jaiswal Kirana Store at Paraspur in presence of the witness. It was found that Dinesh Kumar Jaiswal used to sell rice, pulse, oil, Desi beetle leaves and other articles, Ashik Brand (Gutka). On asking to show the license, he could not show the same and it was told that owner of the shop was Mahesh Kumar Jaiswal. Out of 620 packets, he took four packets for sample of Ashik Brand Gutka for which he paid Rs.140/-, and after affixing labels on the same, sealed them and sent for laboratory test after taking signature of Dinesh Kumar Jaiswal. On asking to show the purchase receipts regarding Ashik brand, the shop keeper could not produce any receipt. Munijer Singh witness also made his signature.

After preparing sample, it was sent for test to Gorakhpur through Courier vide letter dated 14.10.2011. The local analyst of Gorakhpur submitted report on 25.10.11 mentioning that said sample of Ashik brand was misbranded. Therefore, the complaint case was filed in Court against DineshKumar Jaiswal and Mahesh Kumar Jaiswal under Section 3 (1) (zz) (v), 3(1) (zf) (C) (1), 23, 26 (2) (i) (ii) (iii), 31 (1)/ 52, 59 (i) and 63 of the Food Safety and Standards Act, 2006.

The complainant was examined under Section 244 CrPC. Charges were framed against accused respondents. The accused respondents pleaded not guilty and requested for trial.

The complainant R.P. Singh himself and witness Munijer Singh got examined under Section 246 CrPC and no other witness was examined.

The accused respondents were confronted under Section 313 CrPC and they have deposed before the Court that they were falsely implicated. However, they did not produce any evidence. They have denied charges.

The trial Court after recording statement of witness and adducing evidence on record, acquitted the accused respondents by the judgment and order dated 16.3.2013. Hence appeal along with leave application has been filed.

It has come on record that PW-1 has supported the prosecution as stated by him in complaint. He was examined before the Court and he has reiterated the earlier version which was alleged by him against the accused respondents. He has stated before the Court that he took sample and same was sent for test to Gorakhpur and thereafter, he obtained report and filed complaint against accused because they were involved in committing offence under Section 3 (1) (zz) (v), 3(1) (zf) (C) (1), 23, 26 (2) (i) (ii) (iii), 31 (1)/ 52, 59 (i) and 63 of the Food Safety and Standards Act, 2006.

The independent witness Munijer Singh has been produced before the Court and he has specifically denied that any sample was taken before him and he also denied his signature and thus, he was declared hostile. In cross-examination, PW-1 has admitted that no case against the manufacturer of Ashik brand has been lodged by him and no prosecution has been initiated against the manufacturer. He admitted that the manufacturer Company's place is mentioned as K.K. Tobacco Company, Varanasi but he did not launch any prosecution against the manufacturer. He also admitted in cross-examination that name of K.K. Tobacco Company was seen when it was sealed by him but in spite of knowing the name of branded company, he did not launch any prosecution against the manufacturer.

It is admitted on record that the accused respondents are not manufacturer and they have simply purchased the material from the manufacturer. Therefore, they cannot be held responsible in committing the crime. So far as misbranding is concerned, it is also to be noted that no harmful contents are found in the sample.

After going through the record, it appears that the judgment and order passed by the trial Court is just and it does not need any interference by this Court. The application for leave to appeal is liable

to be rejected.

Accordingly, the application for leave to appeal is rejected.

(Appeal) Since, the application for leave to appeal is rejected, the appeal is also dismissed.

Order Date :- 5.4.2023 Rajneesh JR-PS)