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Neutral Citation No. - 2025:AHC:133383

**AFR**

**Judgment Reserved on 29.07.2025**

**Judgment Delivered on 07.08.2025**

**Court No. - 64**

**Case :- CRIMINAL REVISION No. - 2081 of 2018**

**Revisionist :- Pancham Singh Chauhan**

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

**Counsel for Revisionist :- Sudarshan Singh**

**Counsel for Opposite Party :- G.A.**

**Hon'ble Samit Gopal, J.**

1. List revised.

2. Heard Sri Anurag Pandey holding brief of Sri Sudarshan Singh, learned counsel for the revisionist, Sri Birendra Pratap Singh, learned counsel for the State and perused the material on record.

3. The present revision under Sections 397/401 Cr.P.C. has been preferred by the revisionist-Pancham Singh Chauhan against the judgement and order dated 31.05.2018 passed by Additional Sessions Judge/Special Judge, SC/ST Act, Chandauli in Criminal Appeal No.03 of 2014 (Pancham Singh Chauhan Vs. State of U.P.) wherein the said appeal has been dismissed and the judgement & order of the trial court has been affirmed and further against the judgement and order dated 25.01.2014 passed by Chief Judicial Magistrate, Chandauli in Case No.460 of 2011 (State Vs. Pancham Singh Chauhan) whereby the accused-revisionist has been convicted and sentenced for offences under Sections 7/16 of Prevention of Food Adulteration Act, 1954 to six months rigorous imprisonment & fine of Rs. 1000/- and in default of payment of fine to further undergo one month additional rigorous

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imprisonment.

4. The trial court records have been received which have also been perused.

5. The facts arising out of the matter are as under:-

(i). On 20.11.2010, form-6 was prepared and paneer was taken from the revisionist (Exb. Ka-3).

(ii). A receipt dated 20.11.2010 was given by Pancham Singh Chauhan for the rate being Rs.100/- per kg. of paneer in which the sale was of 750 gram for Rs.75/- (Exb. Ka-4).

(iii). Memo was prepared by sending the sample to the Public Analyst, Government of U.P., Lucknow on 20.11.2010 (Exb. Ka-5).

(iv). The said sample was sent by a registered post to the public analyst on 20.11.2010 (Exb. Ka-6).

(v). The sample was tested/analyzed on 20.12.2010 by the public analyst and a report dated 29.12.2010 for the same was prepared (Exb. Ka-7).

(vi). In the present matter we are concerned with Item No. A.-11.02.05 of Appendix B to the Prevention of Food Adulteration Rules, 1955. Rule 5 prescribes the standards and limits for certain articles of food by specifying the same in Appendix B to the Rules which lays down the following standards:-

“**A. 11.02.05 — CHHANNA OR PANEER** means the product obtained from the cow or buffalo milk or a combination thereof by precipitation with sour milk, lactic acid or citric acid. It shall not contain more than 70.0 per cent moisture, and the milk fat content shall not be less than 50.0 per cent of the dry matter.

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Provided that paneer or chhana when solid as low fat paneer or chhana, it shall conform to the following requirements :-

- (i) Moisture - Not more than 70.0 percent
- (ii) Milk Fat - Not more than 15.0 percent of dry matter

Milk solids may also be used in preparation of this product.”

(vii). The report of the public analyst reads as under:-

*“1-Butyrefractometer reading of the extracted fat at 40°C-40.5 A-11.02.05*

2-Moisture	ISI	40.48%
3- Milk fat (on dry weight basis)	ISI	35.8%
4-Test for Sugar	SOPM	Negative
5-Test for Starch	SOPM	Negative
6-Test for urea & CO <sup>3</sup>	SOPM	Negative
7-Test for Casein	I.S.I.	Positive

*Opinion: The Milk fat content is less than the prescribed minimum limit of 50% for Paneer. The sample is adulterated.”*

(viii). Sanction was applied to the District Magistrate concerned vide letter dated 5.2.2011 by the Food Inspector (Exb. Ka-8).

(ix). Sanction was granted by the District Magistrate vide letter dated 25.2.2011 (Exb. Ka-9).

(x). A complaint dated 28.2.2011 was filed by the Food Inspector before the court concerned against the revisionist for violation of offences under Sections 7(1) read with Section 2(1-a)(a) punishable under Section 16(1)(a)(1) of the Prevention of Food Adulteration Act, 1954 (Exb. Ka-10).

(xi). A notice under Section 13(2) of the Act was sent on 4.3.2011 (Paper No.133/2).

(xii). The statement under Section 244 Cr.P.C. was recorded of P.W.1 P.K. Rai, the Food Inspector.

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(xiii). The charge was framed vide order dated 16.03.2012 by the Chief Judicial Magistrate, Chandauli against the revisionist for offences punishable under Section 7/16 of the Prevention of Food Adulteration Act.

(xiv). The accused was read and explained of it to which he denied the same and claimed to be tried.

(xv). P.W.1 P.K. Rai, the Food Inspector and P.W.2 Manoj Kumar Singh, the Food Clerk were examined under Section 246 Cr.P.C in support of the prosecution.

(xvi). The accused in his statement under Section 313 Cr.P.C. recorded on 2.4.2012, denied the prosecution case in full.

(xvii). The trial court then convicted the accused/revisionist as above against which an appeal was filed which was dismissed and thus the present revision before this Court.

6. Learned counsel for the revisionist argued that the item as allegedly collected by the Food Inspector from the shop of the revisionist is paneer. It is further submitted that there is no evidence whatsoever that the said place was a factory. It is further submitted that the report of the public analyst states that milk fat contained is less than the prescribed limit of 50% of paneer and thus the sample was declared to be adulterated. Learned counsel for the revisionist has relied upon the judgement and order of the Apex Court in the case of **M/S Bhattacharjee Mahasya and another Vs. The State of West Bengal and another : Crl. Appeal No. 1800 of 2022 (arising out of S.L. P. (Crl.) No. 5272 of 2022)** and while placing para nos. 8, 9 and 10 of the same, it is submitted that if the quality and purity of an article falls below the prescribed limit, the same would be an offence under Section 2(i-a) (m) of the Act but the proviso to it gives an exception. It is submitted

that there is nothing on record to show that the case would fall under the proviso. It is submitted that the deficiency of milk fat depends on the quality of milk and this question has not been given into either in the evidence or by the trial court and the appellate court. The said paragraphs reads as under:-

*“8. An offence under Section 2(ia) (m) will be made out if the quality or purity of the article falls below the prescribe standard. However, the proviso indicates an exception. Section 2(ia) (m) reads as follows:*

*"2. **Definition.** In this Act unless the context otherwise requires.-*

*(ia) "adulterated"-an article of food shall be deemed to be adulterated-*

*(m) if the quality or purity of the article falls below the prescribed standards 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.*

*Explanation. Where two or more articles of primary food are mixed together and the resultant article of food-*

*(a) is stored, sold or distributed under a name which denotes the ingredients thereof; and*

*(b) is not injurious to health.*

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*then, such resultant article shall not be deemed to be adulterated within the meaning of this clause;"*

*9. There was no whisper in the complaint or in the evidence as to whether the case would fall under the proviso. For instance, the report of the Public Analyst says that the moisture content was 77.6% and that as per the prescribed standard, it shall not contain more than 70%. But there is no indication as to whether the moisture content was more due to natural causes. Even, the milk fat content of the dry matter may depend upon the quality of the milk and this question was also not gone into.*

*10. Therefore, we are of the view that a petty shop owner has been prosecuted by making much ado about nothing. Hence, the appeal is allowed and the impugned order of the High Court confirming the order of the Sessions Court and the order of the Magistrate are set aside. There shall be no order as to costs."*

7. As such the fact that the deficiency in milk food could have been due to natural reasons, has not been gone into throughout the records and thus the revisionist deserves benefit. He submits that the conviction and sentence of the revisionist by the trial court and the judgement and order of the appellate court deserves to be set-aside and the revisionist deserves to be acquitted of the charges levelled against him.

8. Learned counsel for the State opposed the prayer but could not dispute the arguments as aforesaid.

9. After having heard learned counsel for the parties and perusing the record, it is evident that the present case is a case in which sample of paneer was purchased from the shop of the revisionist. The same was sent for testing to the public analyst who found it deficient in milk fat contents which was less than the prescribed limit of 50% as it was found

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to be 35.8%. The sample was thus declared adulterated on which procedure was adopted and complaint was filed. The revisionist was tried and was convicted against which an appeal was filed which was also dismissed. The question regarding applicability of the proviso of Section 2(i-a)(m) of the Act has not been addressed at all at the stage of trial and at the appellate stage. The revisionist is entitled to the benefit of the same.

10. The present revision is **allowed**. The impugned judgement and order dated 31.05.2018 passed by Additional Sessions Judge/Special Judge, SC/ST Act, Chandauli and the impugned judgement and order dated 25.01.2014 passed by Chief Judicial Magistrate, Chandauli in the aforesaid case are hereby set aside.

11. The revisionist-**Pancham Singh Chauhan** is acquitted of the charges levelled against him. The revisionist is on bail, he need not surrender. His bail bond is cancelled and sureties discharged.

12. 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.)**

Dt. 07.08.2025.

Gaurav Kuls