

THE HON'BLE SMT JUSTICE ANIS
CRIMINAL REVISION CASE No.283 of 2008

ORDER:

This Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C') is filed by the revision petitioner herein challenging the judgment dated 13-06-2006, passed by the I Additional Sessions Judge, Mahabubnagar, whereunder and whereby the conviction and sentence passed against the revision petitioner herein for the offence punishable under Section 8 (b) of A.P. Prohibition Act, 1995, vide judgment dated 21-07-2003 in C.C.No.88 of 2003 by the Spl. Judicial Magistrate of First Class, Trial of Cases under Prohibition and Excise Acts, Mahabubnagar, was confirmed.

2. The revision petitioner herein is the sole accused and respondent herein is the complainant in C.C.No.88 of 2003 before the trial Court. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the C.C. before the trial Court.

3. The brief facts of the case are that the Prohibition and Excise Sub-Inspector, Mahabubnagar-PW1 filed charge sheet against the accused alleging that on 22-06-2002 at about 11.30 A.M., he along with his staff and panchas proceeded to Karkonda village and during the route watch on the road in between Karkonda and Mahabubnagar at the outskirts at a distance of 1 K.M. from the village, found the accused coming with a plastic can. On suspicion,

stopped him and on enquiry, he revealed his identity and during the search of the can, found two (2) liters of illicitly distilled liquor carrying illegally. The said liquor was seized and drawn two samples by the officer each of 350 ml. and sealed the samples and remaining liquor as per procedure under cover of panchanama and arrested the accused by registering a case in PCO.R.No.238/02-03 and send the accused for remand and deposited the samples in the Court with a letter of advice to send one of the sample for analysis. The remaining property was deposited in the office of the Deputy Commissioner, Mahabubnagar. After receiving the report from the Chemical Examiner stating that the sample is illicitly distilled liquor unfit for potable purpose framed charge against the accused.

4. The learned Spl. Judicial Magistrate of First Class, Trial of Cases under Prohibition and Excise Acts, Mahabubnagar, took cognizance of the case and framed the charge for the offence punishable under Section 8 (b) of A.P. Prohibition Act against the accused. During trial, to prove the case of prosecution, PWs.1 to 3 were examined and got marked Exs.P1 to P5 and M.O.1.

5. After closure of the prosecution evidence, accused was examined under Section 313 Cr.P.C putting all incriminating material available against him. Accused denied the material evidence and reported no oral or documentary evidence on his behalf.

6. The trial Court, after hearing the arguments and after perusing the record, found the accused guilty of the offence punishable under Section 8 (b) of A.P. Prohibition Act, 1995 and he is convicted under Section 248 (2) of Cr.P.C. and sentenced to pay a fine of

Rs.10,000/- and in default to payment of fine, he shall undergo simple imprisonment for a period of four months.

7. Aggrieved by the conviction and sentence passed by the trial Court, accused preferred Criminal Appeal No.106 of 2003 before the I Additional Sessions Judge, Mahabubnagar, where the Appellate Court after considering the evidence on record confirmed the conviction and sentence imposed by the trial Court and dismissed the appeal.

8. Being aggrieved by the judgment of the Appellate Court passed in Criminal Appeal No.106 of 2003, accused preferred the present revision case.

9. Learned counsel appearing for the revision petitioner/ accused mainly argued that PWs.2 and 3 not supported the case of the prosecution. Basing on the evidence of PW1, the trial Court convicted the accused. Further the place of offence is not proved by the prosecution. PW1 stated that he was seized the liquor while they were conducting route watch on the road leading from Karkonda village towards Mahabubnagar, whereas PW2 stated that they were seized the said liquor from the house of the accused. Therefore, prosecution failed to prove the said fact and prays the Court to allow the revision and set aside the judgment of the trial Court as well as the Appellate Court. Finally, learned counsel for the petitioner argued that the petitioner is aged about 50 years and he is poor person, he is unable to pay such huge amount of fine and further prayed the Court to reduce the fine amount.

10. The learned Public Prosecutor argued that the evidence of PW1 and documents Exs.P1 to P5 proved the prosecution case and the findings of both the Courts below need no interference and prayed the Court to dismiss the Criminal Revision Case.

11. Now, the point for determination is --

Whether the petitioner is entitled to set aside the judgement, dated 13-06-2006 passed by the I Addl. Sessions Judge, Mahabubnagar?

12. **POINT:**

A perusal of the evidence of PW1 shows that on 22-06-2002, on information, he along with his staff proceeded to Karkonda village and also took the assistance of PWs.2 and 3. They conducted route watch on the road leading from Karkonda towards Mahabubnagar. At about 11.30 a.m., they found the accused coming with a can, on suspicion they stopped him and on search they found two liters of ID liquor and they seized the same and drawn two samples under the cover of panchanama and after returning to station they registered a case in Crime No.238/02-03 under Section 8 (e) of A.P. Prohibition Act and issued FIR. The accused was produced before the Court for judicial remand. PW1 also deposed that he deposited the sample before the Court and same was forwarded to analysis and after receiving the analysis report and after completion of investigation he filed charge sheet into the Court.

13. PWs.2 and 3 are the panch witnesses to Ex.P1 panchanama. They did not support the case of the prosecution.

14. Learned counsel for the petitioner argued that there is discrepancy regarding the place of seizure. PW1 stated that it is on the route leading from Karkonda towards Mahabubnagar, whereas PW2 stated that it is in the house of the accused.

15. PWs.2 and 3 did not support the case of the prosecution. Therefore, their evidence in this regard cannot be accepted. Considering the evidence of PW1 and Ex.P4-report of Chemical Examiner, dated 15-07-2002, the trial Court rightly convicted the accused for the offence under Section 8 (b) of A.P. Prohibition Act and further confirmed by the appellate Court. The concurrent findings of both the Courts below need no interference.

16. The contention of learned counsel for the petitioner is that the petitioner is a poor person and is earning livelihood by doing coolie work and he do not have any assets and money to pay the fine amount and prayed the Court to take lenient view.

17. Considering the facts and circumstances of the case, the punishment under Section 8 (b) of A.P. Prohibition Act is confirmed and sentence of fine amount of Rs.10,000/- (Rupees ten thousand only) is reduced to Rs.5,000/- (Rupees five thousand only) and in default of payment of fine the petitioner shall undergo simple imprisonment for two (2) months.

18. Accordingly, the Criminal Revision Case is disposed of. Miscellaneous petitions pending, if any, in this Criminal Revision Case shall stand closed.

JUSTICE ANIS

March 03, 2015

PN

-

-

THE HON'BLE SMT JUSTICE ANIS

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-
CRIMINAL REVISION CASE No.283 of 2008

March 03, 2015

PN