

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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Criminal Revision Case No.384 of 2008

ORDER:

This Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure ('the CrPC', for brevity) by the accused 1 to 3 is directed against the judgment dated 05.03.2008 in Criminal Appeal No.36 of 2006 passed by the learned X Additional Sessions Judge, Fast Track Court, Guntur at Narasaraopet .

1. **(b)** By the judgment dated 18.01.2006 passed in C.C.No.208 of 2004, the learned Judicial Magistrate of First Class, Macherla had found the accused guilty of the offence punishable under Section 34 (a) of A.P.Excise Act and sentenced them to undergo rigorous imprisonment for one year each and to pay a fine of Rs.5,000/- each and suffer simple imprisonment for six months each in default of payment of the said fine amounts. While dismissing the aforementioned appeal of the accused, the learned Additional Sessions Judge had confirmed the judgment of the trial court in all respects.

2. I have heard the submissions of the learned counsel for the petitioners/A1 to A3 and the learned Public Prosecutor appearing for the respondent-State. I have perused the material record.

3. The case of the prosecution including the gravamen of the charge, in brief, is this: 'On 24-04-2004 at about 4.15 PM, on receipt of information about transportation of cheap liquor, the Sub Inspector of Police, N.Sagar Police Station (PW2) along with the Assistant Sub Inspector of Police (PW1) and a police constable (LW1) had reached by 5 PM, the place near the main gate of Newton Engineering College, Alugurajupalli. They had found that A1 was driving an auto bearing No.AP 7 U 9710 which was proceeding from Macherla towards Koppunuru. On that, PW2 with the assistance of PW1 and the police constable had stopped the auto. In that Auto, they had found A2 and A3 who are having illegal possession of the following contraband: (i)

Gacer Gambler Fine Whisky cheap liquor in 24 cases, each case containing 48 bottles of 180 ml., i.e., total 1152 bottles; (ii) Majestic Malted Whisky cheap liquor in three cases, each case containing 48 bottles of 180 ml., i.e., total 144 bottles; and (iii) Big Hit cheap liquor in three cases, each case containing 48 bottles of 180 ml., i.e., total 144 bottles. A2 and A3 were not having any licence to have the possession of the said contraband, i.e., liquor bottles. Therefore, PW2 had arrested all the accused and had seized all the 1440 bottles and also the auto bearing No.AP 7U 9710. PW2 had further separately seized three liquor bottles each containing 180 ml., respectively from Gacer Gambler, Majestic malted and Big Hit Whisky bottles for the purpose of analysis and had prepared proceedings in that regard. Later, PW2 had brought the accused 1 to 3 to the Police Station; and a case in Crime No.63 of 2004 for the offence under Section 34(a) of A.P.Excise Act was registered by him and an FIR was issued. Copies of the same were submitted to all the concerned. During the course of further investigation, he had sent the sample bottles to an expert of the Forensic Science Laboratory for analysis and report. The expert had furnished a report opining that the three samples are found to be Indian made foreign liquor.'

4. During the course of trial, the Assistant Sub Inspector of Police and the Sub Inspector of Police were examined as PWs 1 and 2. Examination of the police constable was given up. Exhibits P1 to P4 and MOs 1 to 3 were marked. No evidence was adduced on the side of the defence.

5. Now, the points for determination are:-

Whether the prosecution had established the guilt of the accused for the offence punishable under Section 34(a) of A.P. Excise Act as required under law and beyond all reasonable doubt? And, if so, whether the conviction and sentences imposed are sustainable under facts and in law? Whether the accused had made out valid and sufficient grounds for their acquittal?

6. **POINTS:**

6. (a) Coming to the evidence, **PW1** had testified in line with the prosecution case in his examination-in-chief. In his cross-examination, the following points were elicited: "I have not signed on the identity slips affixed to the sample bottles. We have not entered into the Newton's Engineering college in order to secure mediators. Alugurajupalli is situated at a distance of 1 ½ KM from the scene of offence and Kothapalli is at a distance of 2 KMs from there. We have not tried to secure the mediators either from the Newton's college or from Kothapalli village or from Alugurajupalli villages. Though we had received information about the transportation of liquor bottles, while going to the scene of offence, we have not taken mediators along with us from Sagar. We went to the scene of offence in a private jeep but, I cannot say the jeep number and driver's name. The driver of the jeep was also there at the time of seizing the auto and the contraband. The assembly elections were held on 26.04.2004. I do not know whether A2 and A3 are the active members of the Congress Party." When it was suggested to him that he had not apprehended the accused and had not seized the contraband from their possession and that A1 to A3 were falsely implicated at the instance of the Telugu Desam Party and that the case is filed for the purpose of statistics, he had denied the said suggestions. **PW2**, the Sub Inspector of Police had also deposed in line with the prosecution case in his examination-in-chief. In his cross-examination, the following points were elicited: 'I visited the spot on that day at about 5 PM. On that day, we went from N.Sagar P.S in a jeep. I cannot say the name of the driver of the jeep and its number. We have not tried to secure mediators either from Alugurajupalli village or Newton Engineering College premises. The distance between the scene of offence and Alugurajupalli is one KM. I have not obtained either the signatures or the thumb marks of the accused on exhibit P1 police proceedings. Exhibit P1 is not disclosing as to who has scribed it. We have not obtained the signature of the jeep driver on exhibit P1. It is true that April 26th 2004 is the election date of A.P Assembly. It is true that A3 is the owner of the auto bearing No.AP 7 U 9710. I do not know whether A2 also has got a

share in the said auto.' He denied the following suggestion: 'It is not true to suggest that A1 has got no knowledge about the transportation of liquor bottles by A2 and A3 in his auto.' When it was suggested to him that the accused were falsely implicated in the case, as the accused had refused to accept the request of the police to give the auto free of rent for use in the election duties, he had denied the said suggestion and also the further suggestion that they have not seized any liquor.

6. (b) The learned counsel for the petitioner/accused had contended as follows: The evidence of PWs 1 and 2 who are police officers is highly interested. The courts below had erred in placing reliance on the interested testimonies of PWs 1 and 2 for convicting the accused. The necessary ingredients of the penal provision of law are not made out. The evidence of PWs 1 and 2 cannot be taken into consideration to base a conviction. The prosecution had failed to examine any independent witness except the police officers. There is no seizure panchanama for the seizure of the material. Except MOs 1 to 3, which are the sample bottles, the allegedly seized contraband, which is a huge quantity, is not produced before the trial court and is not exhibited. There is no legal and credible evidence to sustain the conviction recorded by the Courts below. The accused are entitled to a clean acquittal as no case is made out against them.

6. (c) On the other hand, the learned Public Prosecutor had contended as follows: "Merely because the two witnesses who were examined are police officers, it cannot be said that their evidence is interested and not trust worthy. A huge quantity of contraband was seized in this case from the illegal possession of A2 and A3 while they were traveling in the crime auto being driven by A1. The Engineering College and the two villages are at a considerable distance from the scene of offence and therefore, there was no possibility to involve any independent witnesses as mediators. The consistent evidence of PWs 1 and 2 who are responsible public servants is sufficient to base a conviction. The courts below had rightly appreciated the oral and documentary evidence and had recorded concurrent findings of conviction against the accused. Therefore, the revision

is devoid of merit and is liable to be dismissed.”

6. (d) It is to be first seen that PW2 had prior information about the transportation of cheap liquor. Along with him, he did not take to the scene of offence any independent witnesses/persons to act as mediators. Even after reaching the scene of offence, he did not even make an attempt to involve independent persons as mediators as per his evidence. He had stated in his evidence that he did not try to secure any mediators either from Newton Engineering College or from Kothapalli or from Alugurajupalli villages. No acceptable reasons are forthcoming either for not taking along with them any independent persons to act as mediators or for not involving independent persons as mediators in the proceedings of seizure. Further, both the witnesses-PWs 1 and 2 had simply stated that they went in a jeep to the scene of offence and that they did not know the name of the driver of the jeep or the jeep number. It is a private jeep. They did not even record the details of the owner of the jeep, the jeep number and the driver's name in the proceedings under exhibit P1, which is styled as Special report. No reasons are forthcoming for not involving in the proceedings, at least, the driver of the private jeep as a witness/mediator. Even his signature was not obtained in the proceedings drafted at the scene of offence. These circumstances, as rightly urged by the learned counsel for the accused, are by themselves sufficient to carefully scrutinize the evidence of the two police officers. On such a careful scrutiny, this Court is of the considered view that the evidence of these witnesses was not credible and trust worthy. However, as rightly contended by the learned Public Prosecutor, merely because the witnesses are police officers, their evidence cannot be discarded. But, in the facts and circumstances of the case discussed supra, this Court is of the well-considered view that it is unsafe in the present case to rely upon the evidence of the police officers.

6. (e) Further, the most important aspect of the case is this: 'Admittedly 1152 bottles of Gacer Gambler Fine Whisky, 144 bottles of Majestic Malted Whisky cheap liquor and 144 bottles of Big Hit cheap liquor

were allegedly seized from the possession of A2 and A3 while they were traveling in an auto. This contraband [1440 bottles in all] was not produced before the Court and was not exhibited. No reasons are forthcoming for not producing the contraband before the trial Court. It is not the case of the police officers that after obtaining orders from the superior officers, the contraband was destroyed. Neither such proceedings of the superior officers nor any record showing destruction of the contraband seized is produced and exhibited before the court. The evidence is absolutely silent as to what had happened to the contraband seized, which is a huge quantity. Therefore, in the well-considered view of this Court, the case of the prosecution, which is beset with so many unexplained circumstances, gives rise to a serious doubt about the veracity of the prosecution case and therefore, it must be held that the evidence on record is not sufficient to base a conviction. This court is of the considered view that the courts below had failed to appreciate the evidence in proper perspective and had failed to give cogent and convincing reasons in support of the findings recorded while overruling the contentions of the accused. The indubitable legal position is that ordinarily it is not open for this Court to interfere with the concurrent findings of the Courts below specially by re-appreciating the evidence and that while exercising revisional jurisdiction this Court has to satisfy itself as to the correctness, legality or propriety of any finding recorded by the inferior Court and that this Court has to exercise the revisional power and supervisory jurisdiction so as to prevent the miscarriage of justice and to correct any irregularity. Further, even the concurrent findings of the Courts below can be interfered with when there are compelling and substantial reasons and when the findings recorded by the Courts below are clearly unreasonable. In the facts and circumstances peculiar to the case and in the light of the discussion supra, this Court finds that the Courts below have not properly appreciated the evidence on record and had failed to take note of the fact that evidence of PWs 1 and 2 is not credible and that the Courts below had also failed to note that a close scrutiny of the entire evidence brought on record would itself suggest that the evidence brought on record is inherently improbable and is unbelievable and that it is not certain from the evidence that the seizure had taken place as

alleged in the prosecution case. Viewed thus, this Court finds that there are compelling and substantial reasons for interfering with the concurrent findings of the Courts below which are clearly unreasonable. Accordingly, this Court finds that the evidence adduced on behalf of the prosecution was wholly insufficient to establish the charges levelled against the accused. The points are accordingly answered in favour of the accused and against the prosecution.

7. In the result, the Criminal Revision Case is allowed and the impugned judgment passed in Criminal Appeal No.36 of 2006 confirming the judgment of the trial court in C.C.No.208 of 2004 finding the accused guilty is set aside. The accused are acquitted of the offence punishable under Section 34(e) of A.P. Excise Act. The bail bonds of the accused shall stand cancelled and the fine amounts, if any, paid shall be refunded to the accused after the further appeal or revision time is over. It is needless to mention that the trial court shall return the auto to the eligible owner on verifying the claim, if any, over it in accordance with the procedure established by law.

Miscellaneous petitions, pending if any, in this revision shall stand closed.

M. SEETHARAMA MURTI, J

30th January 2015
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