

HON'BLE SMT JUSTICE ANIS

CRIMINAL REVISION CASE No.1639 of 2006

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ORDER:

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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 24.08.2006, passed by the learned Sessions Judge, Vizianagaram, in Criminal Appeal No.71 of 2003, whereunder and whereby the conviction passed against the revision petitioner herein for the offence punishable under Section 8(e) read with Section 7-A of the Andhra Pradesh Prohibition Act (for short, 'the Act') vide the judgment dated 10.06.2003 in C.C.No.322 of 2001 by the Judicial Magistrate of First Class, Cheepurupalli, was confirmed.

2. The revision petitioner herein is the accused, whereas respondent is the complainant in C.C.No.322 of 2001 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 case of prosecution is that on 02.03.2000 at about 06.30 PM, during the patrolling conducted by the Prohibition and Excise Inspector, Cheepurupalli along with his staff, the accused was found carrying two black plastic cans at a distance of 2 kms East of Bheemavaram Village. On verification, they found that the said cans contain 5 liters of arrack each. The contraband was sealed and samples were taken and the accused was arrested under the cover of an occurrence report. The samples were sent to the Chemical Examiner, Visakhapatnam and after analysis; a report was received stating that the samples contained illicitly distilled liquor. After registering the case in crime No.243 of 1999-2000, the investigating officer conducted the investigation and filed the charge sheet against the petitioner/accused for the offence under Section 34-A of A.P. Excise Act read with Section 7-A of A.P. Prohibition Act.

4. Before the trial Court, the learned Judicial Magistrate of First Class, Cheepurupalli, took cognizance of the case, framed a charge for the offence punishable under Section 34(a) of the Act against the accused.

5. When the accused was examined under Section 239 Cr.P.C, he admitted that he committed the offence. Construing his admission voluntarily, the trial Court convicted and sentenced him to undergo rigorous imprisonment for a period of one year for the offence punishable under Section 8(e) read with Section 7-A of A.P. Prohibition Act.

6. Aggrieved by the conviction and sentence passed by the trial Court, the petitioner/accused preferred Criminal Appeal No.71 of 2003 before the learned Sessions Judge, Vizianagaram, where the appellate Court dismissed the appeal and confirmed the judgment of the trial Court.

7. Aggrieved by the judgment of the appellate Court, the present revision is filed by the accused.

8. The learned counsel appearing for the revision petitioner/accused argued that the accused admitted the offence at the instance of the police and basing on his admission, the trial Court convicted him. It is further argued that in view of the concurrent findings of both the Courts, a lenient view may be taken in reducing the sentence.

9. On the other hand, the learned Public Prosecutor appearing for the State of Andhra Pradesh argued that as the petitioner caught red-handed while carrying illicit distilled liquor, further as per the opinion given by the Chemical Examiner, the samples contained illicit distilled liquor, therefore, the trial Court upon the voluntary confession made by the accused convicted him, which was confirmed by the appellate Court. Therefore, findings of both the Courts needs no interference and prayed to dismiss the revision.

10. Now, the point for determination is --

Whether the revision petitioner herein is entitled to set aside the judgment passed by the appellate Court as prayed for or not?

11. POINT: A perusal of the record shows that on 02.03.2000 at about 06.30 PM, during the patrolling conducted by the Prohibition and Excise Inspector, Cheepurupalli along with his staff, the accused was found carrying two black plastic cans at a distance of 2 kms East of Bheemavarm Village. On verification, they found that it contain 5 liters of arrack each. Immediately, the said contraband was sealed and samples were taken and the accused was arrested on the cover of an occurrence report. When the samples were sent for Chemical Examiner, a report

was received stating that the samples contained illicit distilled liquor. When the petitioner was examined under Section 239 Cr.P.C., he pleaded voluntarily about commission of offence. In view of his voluntary confession, the trial Court convicted and sentenced to undergo rigorous imprisonment for a period of one year.

12. The learned counsel for petitioner/accused argued that the petitioner is more than 55 years and he is not in a position to maintain his family and he is a very poor person and eking his livelihood by doing coolie work.

13. Considering the fact that the case is of the year 2000, 15 years lapsed. In view of the facts and circumstances of the case, a lenient view is taken and further the conviction is confirmed and sentence is reduced from one year to six months.

14. The conviction recorded against the revision petitioner/accused by the Judicial Magistrate of First Class, Cheepurupalli, in C.C.No.322 of 2001 for the offence punishable under Section 8(e) read with Section 7-A of the Act as confirmed by the Sessions Judge, Vizianagaram, in CrI.A.No.71 of 2003, is hereby confirmed. But, the sentence of rigorous imprisonment of one year imposed by the Courts below is hereby modified and reduced to six months. The period of imprisonment already suffered by the revision petitioner/accused is directed to be given set off.

15. Accordingly, the Criminal Revision Case is disposed of.

16. Miscellaneous petitions pending, if any, in this Criminal Revision Case shall stand closed.

ANIS, J

Date: 31.03.2015

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