

THE HON'BLE MR JUSTICE M.S.K. JAISWAL
CRIMINAL REVISION CASE NO.1178 of 2008

ORDER:

This Criminal Revision Case is filed by the petitioner/accused under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C') challenging the judgment dated 20.07.2008, passed by the

I Additional District and Sessions Judge, West Godavari District at Eluru, in CrI.Appeal.No.215 of 2006 confirming the order passed by the learned Judicial Magistrate of First Class, Jangareddygudem, West Godavari District, dated 23.10.2006 in C.C.No.111 of 2006 whereunder the petitioner/accused was found guilty of the offence punishable under Section 34(a) of the A.P. Excise Act, 1968 (for short 'the Act') and was sentenced to undergo simple imprisonment for one year three months and to pay a fine of Rs.10,000/- in default to suffer simple imprisonment for four months.

The facts in brief are that on 10.03.2002, the Inspector of Prohibition & Excise, Jangareddygudem, during the raids conducted by him along with the officials, arrested the accused near primary school of Kamavaram in Buttaigudem Mandal, beside the road leading to Gubbla Mangamma Temple, and seized two gunny bags containing six pints and 47 nips of various brands of Indian made liquor bottles, and 83 pints and 47 quarters of beer bottles, under a special report drafted on the spot and filed a case in Crime No.636 of 2001-2002. Thereafter, the Excise Officials have drawn 15 samples from the seized stock and sent them to a Government Chemical Examiner, Kakinada, for examination, and after obtaining report dated 29.05.2002 from the Chemical Examiner opining that the seized stock was Indian made liquor and beer, filed a charge sheet for the offence punishable under Section 34(a) Act before the Sub-Divisional Magistrate, Jangareddygudem.

The learned Sub-Divisional Magistrate took cognizance of the

offence in C.C.No.90 of 2003 and made over to the II Additional Judicial Magistrate of I Class, Kovvuru, who in turn framed a charge against the petitioner and examined him with reference to the said charge for which he denied the commission of offence, and thereafter, transferred the same to the Judicial Magistrate of I Class, Jangareddygudem.

During the course of trial, the prosecution examined PWs.1 to 3 and marked Exs.P.1 to P.4 besides Mos.1 to 15. None was examined on behalf of the accused and no documents were marked.

The trial Court, after perusing the material and after appreciating the evidence on record, found the accused guilty of the charge framed against him and convicted and sentenced him as stated supra. The accused was unsuccessful in the appeal also. Therefore, the accused filed the present revision case.

Learned counsel appearing for the revision petitioner submits that the Excise Officials have not secured the presence of any independent panch witnesses and in the absence of there being any independent corroborative evidence, the conviction recorded against the petitioner cannot be sustained and that both the Courts below erred in coming to a conclusion that the petitioner is guilty of the charge framed against him, and therefore, the judgments rendered by both the Courts below warrant interference of this Court. In support of his contention, the learned counsel relied on a judgment of this Court in **Karolla Chinnaiah and another v. State of Andhra Pradesh**^[1].

On the other hand, learned Additional Public Prosecutor submits that the Excise Officials have made efforts to secure the presence of independent witnesses but since none was available on the spot, proceedings were conducted. It is further submitted that the petitioner was found sitting in the afternoon in an open place, and as it was not possible to secure the presence of independent witnesses, the contraband was seized under a special report drafted on the spot, and

therefore, the evidence of the Excise Officials, who are responsible officers, and who have no grudge against the petitioner, cannot be discarded simply because they are investigating officers. Since it is not shown that the evidence of PWs.1 to 3 was tainted with any extraneous circumstances the contention of the petitioner that their evidence should be disbelieved, is not sustainable and the said evidence cannot be discarded merely because they are Excise Officials. In support of his contention the learned Additional Public Prosecutor relied on a judgment of the Supreme Court in **Ram Kumar v. State (NCT) of Delhi**^[2], wherein the Supreme Court had noticed that when the police officials came across the accused and the injured by chance and as the incident had taken place outside the village, it was not possible to associate any independent person to witness the search and seizure. In those circumstances, non-examination of independent witness cannot be taken as a ground for acquitting the accused or for discarding the evidence of the police officers when it is found to be reliable.

Before accepting or discarding the testimony of PWs.1 to 3, who are Excise Officials, it is required to be seen as to whether the corroborated testimony of police officers is cogent and inspire confidence of the Court. Unless the said testimony suffers from any infirmities, their evidence cannot be discarded merely because they are investigating officers. The evidence of the police/excise officials needs to be scrutinized with utmost care and caution.

In the instant case, PW.1 is Prohibition Excise Inspector. He was accompanied by PWs.2 and 3 and all of them found the petitioner with two gunny bags, which contained contraband. All the Excise Officials i.e., PWs.1 to 3 testified that they tried to secure mediators at that time but none came forward and hence they drafted Ex.P.1 special report on the spot. They have been cross-examined but nothing has been elicited to disbelieve their evidence or for holding that their evidence is not convincing.

Both the Courts below accepted the testimony of PWs.1 to 3 and I see no circumstances to reappraise the said evidence or to take any different view other than that has already been taken by both the Courts below.

At this juncture, the learned counsel for the petitioner submits that the incident took place in March, 2002 and the petitioner has already undergone imprisonment for a period of 80 days and paid the entire fine amount. At present, the petitioner-accused is suffering from H.I.V. Therefore, the learned counsel prays to take a lenient view in the matter.

Taking into consideration the totality of the facts, and considering the submissions made on behalf of the petitioner/accused, I feel that the ends of justice would be met if the sentence of imprisonment is modified while confirming the conviction.

Accordingly, the Criminal Revision Case is dismissed confirming the conviction recorded against the petitioner. However, the sentence of imprisonment imposed against the petitioner/accused is modified to the one the period already undergone by him, while sustaining the fine amount

JUSTICE M.S.K. JAISWAL.

21st December, 2015
Js.

[\[1\]](#) 2014 (2) ALD (Cr.) 641

[\[2\]](#) (1999) 9 SCC 149