

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Criminal Revision Case No.3 of 2008

ORDER:

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This Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure, 1973 ('the CrPC' for brevity) by the petitioner/accused is directed against the judgment 28.12.2007 of the learned II Additional Sessions Judge (Judge, Fast Track Court) , East Godavari at Amalapuram in CrI.A.No.220 of 2006.

1. **(a)** By the judgment dated 01.09.2006 passed in CC.No.34 of 2003 the learned Additional Judicial Magistrate of First Class, Kothapeta had found the accused guilty of the offence punishable under Section 8(b)(2) of the A.P. Prohibition Act ('the Act' for short) and sentenced him to undergo rigorous imprisonment for a period of one year and pay a fine of Rs.20,000/- and suffer simple imprisonment for a period of two months in default of payment of the said fine amount. While dismissing the above said appeal of the accused, the learned Additional Sessions Judge had reduced the fine amount from Rs.20,000/- to Rs.10,000/- while maintaining the substantive sentence of imprisonment.

2. I have heard the submissions of the learned counsel for the petitioner/accused and the learned Additional Public Prosecutor appearing for the respondent/State. I have perused the material record.

3. **Now the points for determination are:**

1. Whether the prosecution could bring home the guilt of the accused, beyond all reasonable doubt, for the offence with which he was charged?
2. Whether the petitioner/accused has made out valid and sufficient grounds for his acquittal? And,

if so, whether the judgments of the courts below are liable to be set aside?

4. POINTS:

4. (a) The case of the prosecution including the gravamen of the charge is this: 'On 30.11.1996 the Prohibition and Excise Inspector, Kothapet (PW2) while on patrolling duty along with LWs3 and 4, who are Sub Inspectors of Police and on receiving credible information had picked up the village officer-PW1 from his office and proceeded to the house of the accused bearing door no.5-127 of Ravulapalem. On reaching the house of the accused, a search notice was served upon him. On a search of the house of the accused, three gunny bags containing respectively 40, 45 and 44 Bag Piper Whisky bottles of 750 ml content each were found in the Western side bedroom of the said house. The said bottles were in sealed condition with company labels. The accused had confessed that he had purchased the same from an unknown person at Peravali of West Godavari District for the purpose of resale in Ravulapalem for profit. Having informed the accused of the ingredients of the offence he had committed, PW2 had arrested him and sent him for remand. He had seized the contraband, sealed the bottles and affixed identity slips containing the signatures of all concerned. The details of the raid, search, seizure and arrest of the accused are reduced into writing in the form of a mediators report drafted at the scene of offence. On the basis of the said report, the subject crime was registered. Three bottles out of the total 129 seized bottles were sent to the chemical examiner for analysis. On analysis, the public analyst had furnished a report dated 16.07.1997 opining that the sample bottles contained Indian Made Liquor. Therefore, a charge sheet was laid opining that the accused is liable to be punished for the offences punishable under Section 8(b) of the A.P. Prohibition Act ('the Act' for

short) for illegal possession of the IML.’

4. (b) During the course of the trial, the Village officer who was said to have been present at the time of the search of the house of the accused and who had drafted exhibit P1-mediators report was examined as PW1. The Inspector who had conducted the search and laid the charge sheet and the SI who had accompanied the Inspector at the time of the search were examined as PWs2 and 3. Exhibits P1 to P4 and MOs1 to 3 were marked. No oral and documentary evidence was adduced on the side of the accused.

5. (a) The learned counsel for the petitioner/accused had contended as follows: - ‘The offence is made compoundable under Section 11(B) of the Act read with A.P. Prohibition (Compounding of Offences) Rules, 2000; and, the Rules were made applicable to the cases registered under the Act during the period from 16.01.1995 to 31.03.1997. Therefore, the compounding of the offence ought to have been permitted. The courts below had failed to see that the evidence of PWs1 to 3 is discrepant, inconsistent and self contradictory. No independent witness was involved in the alleged search. The police officer had picked up the mediators of his choice even before going to the house of the accused and had failed to involve any independent mediator, if any available, at the scene of offence. The said witnesses being amenable to the local police are interested witnesses. Therefore, the evidence of PW1/village officer is not credible. The search according to the prosecution case was conducted in a residential locality and not at a remote place; and, hence, it is not difficult to involve an independent mediator of the locality in the search proceedings; but, no mediator of the locality was involved and only the mediators of the choice of the police officer and who were picked up by him purposefully were allegedly involved in the search and only one among such witness was examined; even his evidence is not consistent with the other

evidence on record and is not credible. Not even an attempt was made to involve a person of the locality as a witness and mediator. In a case of this nature, it is unsafe to rely upon the evidence of the police officers. Only three sample bottles were produced before the court and marked as material objects. Though a large quantity of 129 bottles was allegedly seized, the said contraband was not produced before the trial court. No explanation is forthcoming as to what had happened to the said contraband, if really the said contraband was seized from the house of the accused. The prosecution had failed to establish that the house from where the contraband was seized is either owned or lawfully possessed by the accused at the relevant time. The accused had specifically contended that the accused is not having any house at Ravulapalem. Despite such a defence taken, no evidence worth the name was produced to prove that the house from where the contraband was allegedly seized belonged to the accused. Even in the mediators report no topographic details like the street name and the nature of the house as to whether it is a tiled house or an open terraced house are not stated. The prosecution had failed to adduce evidence of necessary standard to prove the complicity of the accused beyond reasonable doubt. '

5. (b) On the other hand, the learned Additional Public Prosecutor had contended as follows: "Merely because two of the examined are police officers, it cannot be said that their evidence is interested and not trust worthy. PW1, the village officer, is an independent witness. He is not an interested witness. A huge quantity of contraband was seized in this case from the illegal possession of the accused i.e., from the house of the accused. The consistent evidence of PWs 1 to 3 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. I have carefully perused the evidence on record. **PW1** is the village officer. He had deposed that when he was in his office on 30.11.1996 at about 08:30 PM, **PW2**, the CI of police, and his staff came to his office and called him and also a member of his staff (LW2-village naukhar) and that they had all proceeded to the house bearing No.5-127 situated within Ravulapalem village, which belongs to the accused, and that at that time the accused and his wife were present there and that on that the police had issued a search proceeding and searched the premises and that in the bedroom of the house there were three gunny bags containing respectively 40, 45 and 44 bag piper whisky bottles and that each bottle contained 750 ml of whisky and that he had drafted the mediators report-exhibit P1 and that the same was attested by LW2-Musalaiah and that the police had lifted one bottle from each gunny bag as sample and that MOs1 to 3 are the sample bottles and that exhibit P2 is the search proceeding and that after the search, they had returned to the police station. In his cross examination, it is elicited that there were residential houses in and around the scene of offence and that he did not mention in the report-exhibit P1 as to whether the house of the accused is a terraced house or a tiled house and also the name of the street in which the house is situate as well as the boundaries of the house. When it was suggested to him that the accused is not having any house in Ravulapalem he had denied the said suggestion. He had admitted that the police have not prepared any rough sketch of the scene of offence. He had denied the suggestions that they have never proceeded to the scene of offence and that accused was not apprehended and that any contraband was not seized from the possession of the accused and that a false case was foisted. **PW2**-the Inspector of Police had deposed in line with the case of the prosecution about the picking up of the mediators, proceeding to the house bearing No.5-127 of the accused and

serving the search notice and detecting the contraband and drafting of the mediators report through PW1 and the seizure of the contraband and the arrest of the accused and the registration of the crime. He had also stated in his cross-examination that there are residential houses in and around the house of the accused and that they had picked up PW1 and LW2 at the bus stop of Ravulapalem and had reached the scene of offence on a jeep. He had further stated that he cannot say the boundaries of the said house and whether the house of the accused is a tiled house or a slab house. When it was suggested to him that the accused does not own a house in Ravulapalem he had denied the said suggestion. He had admitted that he did not produce the contraband before the court and stated that he had destroyed the property after obtaining orders from the Deputy Commissioner but, no such order was filed into court. **PW3** corroborated the version of PW2 in his examination in chief but had stated in his cross examination that they had picked up the mediators at about 08:30 PM at the Panchayat Office and that when they had searched the house, the accused alone was present in the house. He also had stated that he does not remember whether the house of the accused is tiled house or terraced house and that he cannot state the boundaries of the said house and that the house is situated in Chakali veedhi. When it was suggested to him that the accused is not having any house at Ravulapalem, he had denied the said suggestion.

7. A careful perusal of the evidence would show that except the oral testimony of PW1, the Village Officer, that the house where the alleged search was conducted belonged to the accused, there is no other evidence on record to show that the accused was either the owner or lawful possessor of the said house. The specific defence of the accused is that he does not own any house at Ravulapalem. Admittedly, the contraband was not seized from the physical possession of the accused; the contraband was found in the bedroom of the house. Mere presence

of a person in a house/premises in which the contraband is found is not sufficient to come to a safe conclusion that such person is having conscious possession of the contraband. In this case, one of the witnesses stated that the wife of the accused was also found in that house at the time of search and seizure. However, she was not arraigned as an accused. Therefore, in the well considered view of this Court, the prosecution is required to establish that the accused is having conscious possession of the contraband in the house by showing that either he is the lawful owner or possessor of the house at the relevant time. In a given case, the prosecution may also produce any other credible evidence to show that the accused is having conscious possession of the contraband. In this case, the prosecution relied upon a submission that the accused is the owner of the house in which the contraband was found to link the accused with the contraband. Hence, the investigating officer ought to have collected some record from the panchayat office of the village to show that the accused is either the owner or lawful possessor of the house bearing No.5-127 of Ravulapalem in which house the contraband was allegedly found. In the absence of trustworthy evidence that the accused was either the owner or lawful possessor of the house at the time when the contraband was found in it, it cannot be said that the accused is the possessor of the contraband. Further, in this case, though the house from where the contraband was said to have been seized is in a residential locality no independent mediator was involved at the time of search. Admittedly, even before proceeding for the search, the police officer had collected the mediators namely the village officer/PW1 and a village naukhar. No reasons are forthcoming for not even making an attempt to involve independent mediators of the locality or for picking up the mediators of the choice of the police officer even before proceeding to the scene of offence. Further, PWs1 and 3 have stated that the mediators were picked up from the office of PW1 whereas PW2 had stated that he had

picked up the mediators at the Ravulapalem bus stop. Be that as it may. In the case on hand, a huge quantity of 129 bottles of whisky was allegedly seized. The said bottles were stated to have been found in three gunny bags. Except the three sample bottles, the remaining 126 bottles were not produced before the trial Court and not exhibited. Except a stray statement in the cross examination that the contraband was destroyed after obtaining orders from the Deputy Commissioner, no evidence worth the name was adduced in support of the said statement. Therefore, there is no reliable evidence that the contraband was disposed of in accordance with law. Hence, as rightly pointed out by the learned counsel for the accused, it is an important circumstance to extend a reasonable benefit of doubt to the accused. There is one more important aspect to be considered. Under the *proviso* to Section 8(b) of the Act, possession of IML of a quantity of 4.5 litres is permissible in view of the notification issued in that regard. The total quantity of the IML in the three bottles produced before the court even according to the case of the prosecution is 2.250 litres (3 x 750 each). So if the other bottles which were stated to have been found in the three gunny bags and which are not produced before the court are to be excluded from consideration, it cannot be said that the accused had either violated the provisions of the Act or that the penal provisions are attracted to the case on hand. Without proof that the bottles were destroyed after obtaining the orders of the superior officer, an inference cannot be drawn in that regard. Therefore, the non production of either the contraband before the court or an order of the Deputy Commissioner directing the destruction of the contraband namely the remaining 126 bottles is fatal to the case of the prosecution.

8. In view of the detailed discussions coupled with reasons, this court finds that the accused is entitled to be acquitted after extending a reasonable benefit of doubt. The points are accordingly

answered in favour of the accused and against the prosecution.

9. In the result, the Criminal revision Case is allowed and the judgments of the courts below are set aside. The accused is found not guilty of the offence punishable under Section 8(b) of the Act and he is acquitted of the same. The bails bonds of the accused shall stand cancelled and the fine amount, if any, paid by the accused shall be refunded to him after the further appeal/revision time is over.

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

M.SEETHARAMA MURTI, J

30th January 2015
Vjl