

HON'BLE SMT JUSTICE ANIS
CRIMINAL REVISION CASE No.262 OF 2008

O R D E R:

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 19.02.2008, passed by the I Additional District & Sessions Judge, Vizianagaram, in Criminal Appeal No.93 of 2003, whereunder and whereby the conviction passed against the revision petitioner herein for the offence punishable under Section 34(a) of the Andhra Pradesh Excise Act, 1968 (for short, 'the Act') vide the judgment dated 23.07.2003 in C.C.No.32 of 2003 by the Judicial Magistrate of First Class, Kothavalasa, was confirmed while the sentence was modified.

2. The revision petitioner herein is the accused, whereas respondent is the complainant in C.C.No.32 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 case of prosecution is that on 29.01.2000 at about 04:10 p.m, while PWs.1 & 2 were doing the route watch conducted by the Vigilance and Enforcement Unit of Srikakulam, the accused was found in possession of four card board boxes containing 5 nips of M.C.Brandy containing 180 ml each, 23 nips of CI Fine Whisky, 13 nips of Andhra Tiger Whisky, 13 nips of Puma Malt Whisky, 3 nips of MC Whisky, 2 nips of Director Special Black Whisky, 2 nips of Officers Choice Whisky, 1 nip of Doctors Crazy Whisky, 4 Haywards 5000 beer bottles, 6 Khajuraho beer bottles, 2 Haywards 200 beer bottles, 2 Haywards 2000 beer bottles, one Kalyani black label beer bottle and 6 loose bottles, without any permit or license. The said property was seized under the cover of panchanama at the scene of offence and the same was sent to Excise Laboratory for chemical

examination. Basing on the occurrence report, a case in Cr.No.233 of 1998-1999 for the offence punishable under Section 34(a) of the Act was registered and First Information Report was issued. The Investigating Officer after receiving the report from the Chemical Examiner, who opined that the samples are substandard Indian made liquor and beer, and after completing the investigation, filed the charge sheet into the Court.

4. Before the trial Court, the learned Judicial Magistrate of First Class, Kothavalasa, took cognizance of the case and framed a charge for the offence punishable under Section 34(a) of the Act against the accused. During trial, on behalf of prosecution, PWs.1 & 2 were examined and Exs.P1 to P5 and MOs.1 to 23 were got marked.

5. After closure of the prosecution evidence, accused was examined under Section 313 Cr.P.C, putting the incriminatory material deposed against him. The Accused denied the same and reported no oral or documentary evidence on his behalf. After hearing the arguments and after perusing the record, the learned Magistrate held that accused has failed to produce any permit or license for having the contraband with him and basing on the chemical examiner's report that the samples are substandard Indian made liquor and beer, the prosecution able to prove the guilt of the accused and therefore, convicted and sentenced him to undergo Rigorous Imprisonment for a period of one year and also to pay a fine of Rs.5,000/- and in default of payment, to undergo Simple Imprisonment for a period of three months for the offence punishable under Section 34(a) of the Act.

6. Aggrieved by the conviction and sentence passed by the trial Court, accused preferred Criminal Appeal No.93 of 2003 before the I Additional District & Sessions Judge, Vizianagaram, where the appellate Court after considering the oral and documentary evidence, after hearing both sides and after perusing the findings of the trial

Court, confirmed the conviction, but reduced the sentence from one year to six months.

7. Being aggrieved by the finding of the appellate Court passed in Criminal Appeal No.93 of 2003, accused preferred the present revision case.

8. The learned counsel appearing for the revision petitioner/ accused argued that there is no independent evidence produced by the prosecution; that PWs.1 & 2 are the officials and prosecution failed to prove that the MOs.1 to 23 belongs to the accused; that the evidence of PWs.1 & 2 is contradictory regarding the time of raid and drafting of Ex.P1; that the Investigating Officer failed to secure the presence of independent mediators, and therefore, the seizure of MOs.1 to 23 are not proved and the sample bottles received from the Chemical examiner does not have proper seal and prosecution not able to prove that the open hut belongs to the accused; that the procedure laid down in Section 55 of the Act is mandatory, but it was not followed by the officials and finally prayed the Court to allow the revision case by setting aside the judgment in Criminal Appeal No.93 of 2003.

9. On the other hand, the learned Public Prosecutor appearing for the State of Andhra Pradesh argued that on 29.01.2000 at about 4:10 p.m, PWs.1 & 2 along with other officials conducted route watch and found that accused was in possession of liquor without any permit or license; that the said property was seized under the cover of panchanama Ex.P1 and after taking samples, they were sent for analysis; and that after receiving the report from the analyst and after completing the investigation, the Investigating Officer filed the charge sheet. It is also argued that the evidence of PWs.1 & 2 is consistent and not contrary to each other and the accused was caught red handed while selling the liquor without any permit and license, as such after considering the evidence on record, the trial Court as well as the

appellate Court convicted the accused for the offence punishable under Section 34(a) of the Act, and therefore, the findings of the appellate Court needs no interference and prayed the court to dismiss the revision case.

10. Now, the point for determination is --

Whether the revision petitioner herein is entitled to set aside the conviction and sentence passed by both the appellate Court for the offence punishable under Section 34(a) of the Act, as prayed for or not?

11. **P O I N T**: PW.1 is the Sub-Inspector of Excise, Kothavalasa and PW.2 is the Excise Inspector of Srikakulam. In their evidence, they categorically stated that on 29.01.2000 at about 4:00 p.m, they noticed some mob gathered at the house of one Jami Ramu at L-Kota village, which is situated by the side of a tea stall of Jami Appalanarayana. PWs.1 & 2 found the accused sitting between the mob having possession of four card board boxes containing several bottles of Brandy, Whisky and Beer. On enquiry, the accused was unable to produce any permit or license. PWs.1 & 2 made enquiries about Village Administrative Officer and Talayari of the village, but they were not present in the village. Then, PW.1 lifted samples from each box and affixed the identification slips on them, got drafted the occurrence report under Ex.P1 and sent the samples for analysis. The evidence of PW.1 in this regard is also supported by the evidence of PW.2. Thus, there is consistency in the evidence of PWs.1 & 2 with regard to the place of offence, search and seizure of the liquor from the accused. After the search and seizure, PW.1 arrested the accused at the scene of offence and later on, the crime was registered and Ex.P2 First Information Report was issued. PWs.1 & 2 received the report of the chemical examiner under Exs.P4 & P5, who gave opinion that SI.NOs.812 to 815 are sub-standard Indian made Liquor, while SI.Nos.799 to 802 are Indian made liquor. Accused has not produced any permit or license to possess the liquor. As per the evidence of

PWs.1 & 2, they have made efforts to get the Village Administrative Officer and Talayari of the village and they were not present and the said fact was mentioned in Ex.P1. Further, the mob, who were present at that time also not signed on Ex.P1 and they ran away after seeing PWs.1 & 2. Thus, the evidence of PWs.1 & 2 clearly goes to show that they found the accused sitting with the boxes of liquor in an open hut, surrounded by several people and those boxes containing liquor were seized by the Excise officials.

12. So far as the contention of the learned counsel for petitioner/accused that the procedure laid down in Section 55 of the Excise Act is mandatory and the same was not followed by the officials, while making search and seizure is concerned, the explanation regarding this contention is already given by PWs.1 & 2 in their evidence. After seeing them, the persons who gathered there ran away and when they tried to secure the presence of the Village Administrative Officer and Talayari of the village, they were not present. Therefore, Ex.P1 was drafted at the scene of offence by the Excise officials and it is not fatal to the prosecution case. Thus, basing on the evidence of PWs.1 & 2 coupled with the documentary evidence Exs.P1 to P5, the trial court as well as the appellate Court rightly held that the accused has committed the offence punishable under Section 34(a) of the Act. It is also pertinent to note that the appellate Court after considering the plea of the accused reduced the sentence from one year to six months by taking a lenient view. Thus, I am of the view that the conviction passed by the appellate Court in Criminal Appeal No.93 of 2003 needs no interference of this Court.

13. Regarding the quantum of sentence, the learned counsel for the revision petitioner/accused requested that a lenient view may be taken as the accused is having family consisting of old aged parents to maintain. Thus, taking into consideration the facts and circumstances of the case, I am of the view that a lenient view shall be taken in favour

of the accused by reducing the sentence of imprisonment to four months from six months. Therefore, I am inclined to dispose of the revision as under.

14. The conviction recorded against the revision petitioner/accused by the Judicial Magistrate of First Class, Kothavalasa, in C.C.No.32 of 2003 for the offence punishable under Section 34(a) of the Act as confirmed by the I Additional District & Sessions Judge, Vizianagaram, in CrI.A.No.93 of 2003 is hereby confirmed. But, the sentence of imprisonment of six months imposed by the appellate Court below is hereby modified and reduced to four months. The sentence of fine is not interfered with. 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: .03.2015
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