

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 61 of 2005**

Harprasad S/o Santram, aged about 56 years, caste Satnami, R/o village Batadi Chowki - Uрга, District Korba, Chhattisgarh.

---- Applicant**Versus**

State of Chhattisgarh through District Magistrate, Korba, Chhattisgarh.

---- Respondent

For the Applicant : Shri Aman Kesharwani, Advocate.
For the Respondent/ State: Ms. M. Asha, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai
Order on Board

04/04/2016

1. The Applicant has filed the instant criminal revision under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (for short 'the Code') as he has been convicted vide judgment dated 3.12.2004 passed by the Chief Judicial Magistrate, Korba, Chhattisgarh in Criminal Case No. 47 of 2004 whereby and whereunder the Learned Trial Court has convicted the Applicant under Section 34 sub-section (1)(a) of the Chhattisgarh Excise Act, 1915 and sentenced to undergo rigorous imprisonment for four months and to pay fine of Rs.5,000/-, in default of payment of fine, to further undergo additional RI for one month.

2. The Applicant challenged the aforesaid judgment of conviction before the Sessions Judge, Korba, Chhattisgarh. The Sessions Judge, vide judgment dated 1.2.2005 in Criminal Appeal No.36 of 2004, affirmed the judgment of conviction and sentence of fine awarded by the Trial Court. However, the substantive jail sentence awarded to the Applicant is reduced

and instead of RI for 4 months, the Applicant is sentenced RI for 2 months.

3. Against the judgment passed by the Appellate Court, the present Applicant has preferred the instant criminal revision before this Court stating that the Trial Court as well as the Appellate Court have erred in not appreciating the evidence in its right perspective and thereby have committed illegality and impropriety. In absence of admissible and trustworthy evidence, both the Courts below have failed to appreciate the entire evidence properly and committed mistake by convicting the present Applicant. Hence, it is prayed that this revision may be allowed and the impugned judgment of conviction and sentence passed by the Trial Court and affirmed by the Appellate Court may be set aside.

4. Learned counsel for the Applicant submits that the matter is about more than 12 years and 3 months' old. The Applicant has already deposited the entire amount of fine. He was allegedly found in illegal possession of only two litres of liquor. He is the first offender and has served the substantive jail sentence from the date of judgment passed by the Appellate Court i.e. from 1st February, 2005 till the order of this Court dated 7.2.2005, whereby and whereunder the substantive jail sentence awarded by the Appellate Court was suspended and the Applicant was directed to be released on bail during the pendency of the instant criminal revision. On 11.2.2005, the Applicant furnished bail bonds and he was released on bail as the sentence was suspended. During the trial, the Applicant remained in custody for 11 days. Learned counsel prays that looking to the entire facts and circumstances and the quantum of the liquor seized from the possession of the Applicant, he may be sentenced only for the period already undergone by him.

5. Per contra, Learned Counsel for the State opposed the arguments advanced on behalf of the Applicant and submitted that looking to the offence committed by the Applicant the Appellate Court has moderately reduced the sentence to RI for two months from RI for four months which cannot be held as on the higher side. In view of the evidence adduced by the prosecution in the Trial Court, the Applicant has been rightly convicted and sentenced. Hence, the instant criminal revision may be dismissed as not maintainable.

6. In order to appreciate the arguments advanced on behalf of the parties, I have perused the entire evidence available on record and the facts of the case.

7. Upon minute examination, it appears that on the count of conviction, the trial Court has not committed any illegality or impropriety and has rightly convicted the Applicant and the Appellate Court has also not committed any error while affirming the judgment of conviction passed by the Trial Court. Hence, the judgment of the Trial Court affirmed by the Appellate Court, fine sentence awarded by the Trial Court affirmed by the Appellate Court do not require any interference by this Court.

8. So far as quantum of substantive jail sentence is concerned, the Applicant remained in jail for 11 days after the judgment passed by the Appellate Court till the bail bonds were furnished. He has deposited the entire fine amount awarded by the Trial Court and affirmed by the Appellate Court. He is the first offender and the quantity of non-duty paid liquor seized from the Applicant was two litres only. Looking to the entire facts and circumstances of the case, in the considered view of this Court, awarding sentence to the Applicant for the period already undergone by him would

serve the interest of justice.

9. Consequently, looking to the entire facts and circumstances of the case, the judgment passed by both the Courts below regarding conviction and fine sentence require no interference. So far as the quantum of substantive jail sentence is concerned, instead RI for two months as awarded by the Appellate Court, the same is reduced to the period already undergone by him i.e. from 1.2.2005 till 11.2.2005. The Applicant is on bail. His bail bonds shall continue for a further period of six months from today as per requirement of Section 437A of the Code.

10. Consequently, the revision filed on behalf of the Applicant is partly allowed.

Sd/-

Chandra Bhushan Bajpai
Judge