

HIGH COURT OF CHHATTISGARH, BILASPUR

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CRR No. 12 of 2007

Kartik Ram

Versus

State of Chhattisgarh

CAV JUDGMENT

Post for 08 /11/2016

Sd/-
Rajendra Chandra Singh Samant
Judge

08 /11/2016



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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 12 of 2007

Judgment Reserved on 18/10/2016

Judgment Delivered on 08 /11/2016

- Kartik Ram, S/o Dalganjan Yadav, aged 31 years, R/o Kamrid, Thana Saragaon, District Janjgir-Champa (C.G.)

---- Applicant

Versus

- State of Chhattisgarh, Through The District Magistrate, Janjgir-Champa (C.G.)

---- Respondent

For Applicant : Shri Shailendra Dubey, Advocate
For Respondent/State : Shri Neeraj Sharma, Dy. Govt. Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V Judgment

1. This revision has been preferred against the judgment dated 26/12/2006 passed by the Additional Sessions Judge, Janjgir in Criminal Appeal No. 121/2005 affirming the judgment of conviction and order of sentence dated 14/11/2005 passed by the Chief Judicial Magistrate, Janjgir in Criminal Case No. 3877/2004 whereby the accused/applicant was convicted under Section 34(1) (a) of C.G. Excise Act and sentenced to undergo rigorous imprisonment for one month and pay fine of Rs.5000/- in default of payment of fine to further undergo rigorous imprisonment for three months.

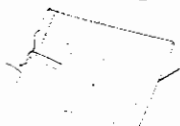


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2. The applicant was charge-sheeted under Section 34 of the C.G. Excise Act 1915 on the allegation that on 22/05/2004 at about 18.30 p.m. in village Kamrid, he was illegally in possession of 15 quarters (bottles) of plain country liquor without having any license to keep it in possession. Applicant was charged under Section 34 (1)(a) of the Chhattisgarh Excise Act, 1915, on his denial trial was conducted and judgment dated 14/11/2005 was passed by the Chief Judicial Magistrate, Janjgir, whereby applicant was convicted under the said offence charged and punished with rigorous imprisonment of one month along with fine of Rs.5000/-. This judgment was appealed before the Sessions Judge, Janjgir and as per the distribution the case was taken up by Additional Sessions Judge, Janjgir, the Criminal Appeal No. 121/2005 was heard and decided on 26/12/2006 whereby the judgment and conviction of sentence passed by the trial court was upheld and appeal was dismissed.

3. The ground of this revision are that the judgment of the trial Court and learned lower appellate Court are contrary to the material and evidence available and bad in the eyes of law. The learned Courts below have erred in law by imposing the sentence on account of default of payment of fine amount more than 1/3rd of the principle sentence, though the principle sentence of imprisonment was given only of one month, whereas the sentence for default in payment of fine was given three months. The evidence of prosecution is not trustworthy and the case was not



proved beyond reasonable doubt. The conviction is based only on suspicion. For the above reason counsel for the applicant prayed that the revision be allowed and the judgment of conviction against the applicant be set-aside.

4. This scope of revisional jurisdiction is to examine the order of lower court in the context of the legality, propriety and correctness only. A Revisional court can exercise its jurisdiction only on this ground, whether the finding given by the lower Court is perverse and against the principle of law, hence the case is examined accordingly.

5. Prosecution has examined witnesses before the learned trial Court. Head Constable Rajendra Prasad (PW-4) who has proved that he found applicant's in possession of 15 quarter (bottle) plain liquor without having any authority to keep possession of it. He has prepared seizure memo (Ex.P/1) and recorded Dehati Nalishi (Ex.P/7) and thereafter FIR (Ex.P/8) was lodged. This statement has been remained unshaken in his cross-examination. Independent witnesses Shantilal (PW-1) and Hajari Lal Yadav (PW-2) were declared hostile by the prosecution who have not supported the statement of Head Constable Rajendra Prasad (PW-4). Sushma Singh, Excise Sub Inspector (PW-3) has examined the contents of seized plain country liquor and given report (Ex.P/6) according to which the contents of bottle was plain country liquor.

6. On the basis of this evidence the trial Court found the statement of Rajendra Prasad (PW-4) believable and despite the hostility of the independent witnesses the conviction of the applicant has been based on this evidence. The lower appellate Court has examined at length, the quality of evidence produced by the prosecution in trial and has found the same to be worth believable and beyond reasonable doubt, whereby the judgment of conviction and sentence was upheld and appeal was dismissed.

7. Counsel for the applicant has placed reliance on the order passed by this Court in ***Santosh Nirmalkar v. State of Chhattisgarh*** reported in ***2009 (3) CGLJ 229*** in that case it was held that Section 57-A of C.G. Excise Act was not complied with and for this reason the petition was allowed. Applicant has also placed reliance on the order of this Court in ***Ganesh Soni & Others v. State of Chhattisgarh*** reported in ***2009 (3) CGLJ 275*** in which it was held that corroboration of the statement of the complainant and relatives for independent witnesses was necessary for conviction under Section 498-A of IPC is a finding of fact of that particular case. It has been held in the case of ***Govindaraju @ Govinda v. State (2012) 4 SCC 722*** by Apex Court " Wherever, the evidence of the police officer, after careful scrutiny, inspires confidence and is found to be trustworthy and reliable, it can form the basis of conviction." Further it was held that there is no rule of law that statement of a police officer cannot be relied upon unless corroborated by some independent witness.

Hence the argument on behalf of applicant is without substance.

8. The ground in revision that imprisonment in lieu of non-payment of fine is contrary to provisions of law is also not acceptable. Section 65 of IPC provides imprisonment in default of payment of fine can extend upto one fourth of the term of maximum imprisonment fixed for the offence. Under Section 34(1) of the C.G. Excise Act the maximum imprisonment provided is two years. Hence no illegality is found in the order of imprisonment for default of payment of fine in this case.

9. After examining these facts it appears that there is no scope for interference on the grounds of legality, propriety and correctness of the judgments passed by the trial court and the lower appellate Court. The Courts below have found the evidence of prosecution worth believing and proof beyond reasonable doubt. Hence this revision petition is not maintainable which is hereby dismissed accordingly.

Sd/-
Rajendra Chandra Singh Samant
Judge