

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 136 of 2007

Subhash S/o Ramkhilawan Satnami, aged 22 years, R/o Village Badi Koni, Police Station – Koni, District Bilaspur (C.G.)

---- Applicant

Versus

- State of Chhattisgarh, Through District Magistrate, Bilaspur

---- Respondent

For Applicants : Shri Mirza Kaiser Baeg, Advocate
For Respondent/State : Shri R.K. Jaiswal, Panel Lawyer

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgment on Board

(07/11/2016)

1. This revision has been brought against the judgment dated 22/03/2007 in Criminal Appeal No. 24/2007 passed by the Sessions Judge, Bilaspur (C.G.), whereby the conviction and sentence against the applicant passed by the trial Court was maintained in the appeal.

2. The case against the applicant is this that on 05/07/2004 Inspector J. Toppo (PW-5) the then SHO, Police Station, Koni received information that applicant is having illegal possession of liquor at his residence in village Bade Koni. J. Toppo (PW-5) raided the house of applicant at about 20.15 p.m. on the same day and

recovered from the possession on applicant 17 numbers quarter bottles of country liquor. All the bottles were in sealed condition vide seizure memo (Ex.P/1). Seized article was examined by (PW-4) and found to be plain country liquor vide (Ex.P/4). FIR was lodged vide (Ex.P/5). Applicant was arrested and after completion of investigation charge-sheeted. The trial Court charged the applicant under Section 34(1)(a) of C.G. Excise Act, 1915. On his denial, trial was conducted and applicant by judgment dated 05/02/2007 was convicted under Section 34(1)(a) of C.G. Excise Act, 1915 and sentenced to undergo RI of three months along with fine of Rs.5000/-. Lower appellate Court decided the appeal against the judgment and maintained the conviction and sentence passed by the trial Court as per the details given in aforesaid paragraph.

3. The grounds in this revision petition are these that conviction against the applicant is based on evidence which is not legally admissible. No independent witness has supported the prosecution case and place of seizure has not been proved by the prosecution. On this point the evidence of investigating officer is contradictory, hence the seizure of article liquor cannot be attributed to be from the possession of the applicant. On this count applicant has been entitled for benefit of doubt, which was not extended to him by the Courts below.

4. On the other hand, State counsel has argued that

prosecution has proved its case beyond reasonable doubt on all particulars and there is no reason to disbelieve the statement of investigating officer, hence the judgments of the Courts below suffers from no infirmity and the finding of conviction has been given by two consecutive Courts, prayed that revision be dismissed.

5. After hearing at length the argument from both the sides the evidence of prosecution on which this conviction is based, is required to be examined. Seizure of Article, 17 quarter bottles of plain country liquor vide (Ex.P/1) has been proved by the Inspector J.Toppo in his statement, according to him these articles were seized from the possession of applicant and near the house of the applicant. In cross examination he remained consistent with the statement. He has been supported by police Constable Pren Prakash Tigga (PW-3) who has stated that the articles were seized from the possession of applicant in his presence. His statement has remained unrebutted. The witnesses on spot Kamlesh Kumar Kaushik (PW-1) and Sheetal Garhewal (PW-2) have turned hostile though they have admitted their signature on (Ex.P/1). They have been cross-examined at length by the prosecution but have not given any statement in support of the prosecution. After these witness they have been declared hostile, their statement has no negative effect on the statement of witnesses who have supported the case of prosecution. Inspector J. Toppo has stated that these witnesses were present at the time of seizure of articles and their

presence at the spot can be assumed on the basis of their admitted signature on (Ex.P/1). No question has been put to be Investigating Officer J. Toppo (PW-5) in his cross examination about having any enmity with the applicant or having some personal interest against him. Similarly no such question has been put to another witness Prem Prakash Tigga (PW-3) Police Constable who had been a member of raiding party to show that he had some personal grudge against the applicant.

6. It is not a rule of law that the statement of a Police Officer should be disbelieved when not supported by any independent witness. In this particular kind of case the Police Officer has not only conducted the procedure but he has witnessed this fact himself that applicant was in possession of articles, which were 17 quarters bottles of plain country liquor. No such ground has been raised by applicant that he had any authority to keep in possession the seized article. Hence for these reasons it is found that prosecution has proved its case beyond reasonable doubt. The finding on this point given by the trial court and the lower appellate Court suffers from no infirmity.

7. Counsel for the applicant at this stage prays that the sentence awarded to the applicant is too harsh and prayed that sentence of imprisonment may be modified to the period of custody already undergone by the applicant.

8. Section 401 of Cr.P.C. authorize that High Court may in its

discretion, in exercise of powers conferred on a Court of Appeal by sections 386, 389, 390 and 391 of the Code. Section 386 of Cr.P.C. provides that the Appellate Court is empowered under part (b) (iii) to alter the nature or the extent, or the nature and extent, of the sentence with or without altering the finding of sentence. In the circumstance of this case it seems proper that High Court should exercise this power. Hence for this reason, this revision is allowed in part. The finding of conviction recorded by the trial court and the lower appellate Court is maintained. The sentence part is modified, in-stead of sentence of rigorous imprisonment of three months awarded by the trial Court and confirmed lower appellate Court, the applicant is directed to undergo rigorous imprisonment of one month which is the minimum prescribed sentence under Section 34(1)(a) of the C.G. Excise Act. The sentence of fine is not interfered with. In this manner this revision is disposed of. The bail bond of the applicant is hereby cancelled and he is directed to surrender before the trial court for the purpose of undergoing the remaining part of the sentence, in which the period of custody already undergone by him shall be given as set off.

Sd/-

(Rajendra Chandra Singh Samant)

JUDGE