THE HON'BLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.579 of 2005

ORDER:

This Criminal Revision Case is preferred by the petitioners-accused Nos.1 and 5 against judgment, dated 29.03.2005, passed in Crl.A.No.119 of 2004 by the II Additional Sessions Judge, Parvathipuram, whereby the learned Sessions Judge confirmed the conviction and sentence imposed by the Additional Judicial Magistrate of First Class, Parvathipuram, in CC No.1089 of 2000 vide Judgment, dated 26.07.2004.

The case of the prosecution is as follows:

On 09.08.1999 while the Excise Police were conducting route watch, the petitioners and other accused were coming from Pedamerangi village on bicycles carrying some loads, with the help of torch-lights. On seeing the excise police, they tried to escape, but the police surrounded them and stopped them. On examination of the gunny bags on the cycles, they found one rubber tune with 50 litres of arrack. On interrogation, A1 to A5 stated their identity and then, the Inspector drawn the samples from the rubber tubes into separate bottles and the sachets, and sealed them, and affixed identification slips to the property. A1 to A5 were arrested and on the basis of the mediators report Crime nO.350/98-99 was registered and the accused were sent to judicial custody and sent the samples to chemical examiner and destroyed the remaining property. The chemical examiner opined that the samples contain illicit distillery liquor. After completion of investigation, the charge sheet was filed against the accused for the offence 34(a) of A.P. Excise Act r/w.7 of A.P. Prohibition Act.

The trial Court took cognizance of the case against the petitioners-accused for the said offences. On appearance of the accused, the offences under Section 34(a)(ii) of A.P. Excise Act has been framed and read over and explained to them in Telugu and they pleaded not guilty and claimed to be tried.

To prove its case, prosecution examined PWs.1 and 5 and marked Exs.P.1 to P.5, besides Mos.1 to 17. No oral or documentary evidence was adduced on behalf of the accused.

During the course of trial, A2 died and therefore, case against A2 was dismissed as abated. On appreciation of oral and documentary evidence, the trial Court found the accused Nos.1, 3 to 5 guilty of the offence under Section 34(a)(ii) of A.P. Excise Act, and accordingly, convicted and sentenced them to suffer rigorous imprisonment for a period one year each and to pay a fine of Rs.10,000/- each in default, to suffer simple imprisonment for a period of three (3) months each. Aggrieved by the same, the petitioners-A1 and A5 preferred appeal in Crl.A. No.119 of 2004 before the II Additional Sessions Judge, Parvathipuram. The learned Sessions Judge, after re-appreciation of the evidence, dismissed the appeal by confirming the conviction and sentence passed by the trial Court. Challenging the same, the present revision is preferred by the petitioners-A1 and A5.

Heard and perused the entire material available on record.

After perusing the entire material available on record and also the judgments of the Courts below, this Court of the view that there are no valid reasons to interfere with the judgments of the Courts below in convicting the petitioners for the above said offence

When this Court pointed out that there are no merits in the revision, learned counsel for the petitioners – A1 and A5 restricted his arguments to the quantum of sentence, and requested that a lenient view may be taken while imposing sentence since the petitioners were in prison for a substantial period.

Considering the facts and circumstances of the case and also taking into consideration the submissions of the learned counsel for the petitioners, this Court is inclined to pass the following order:

The conviction recorded by the Additional Judicial Magistrate of First Class, Parvathipuram, vide judgment, dated 26.07.2004, in CC No.1089 of 2000, as confirmed by the II-Additional Sessions Judge, Parvathipuram, vide judgment, dated 29.03.2005, in Crl.A. No.119 of 2004, for the offence under Section 34 (a) (ii) of A.P. Excise Act, is hereby confirmed. However, the sentence of imprisonment imposed by the trial Court, as confirmed by the appellate Court, against the petitioners-A1 and A5, under the above head, is modified and reduced to the period which the petitioners have already undergone and the fine amount is not interfered with.

Accordingly, the Criminal Revision Case is partly allowed. Consequently, miscellaneous applications, if any pending, shall stand closed.

RAJA ELANGO, J

October 14, 2016.
KTL