

THE HON'BLE SRI JUSTICE RAJA ELANGO
CRIMINAL REVISION CASE No.385 of 2005

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ORDER:

The above Criminal Revision Case is filed by the petitioner - accused No.3 against the Judgment, dated 08.02.2005, passed in CrI.A. No.144 of 2004, by the II Additional Sessions Judge (FTC), Parvathipuram, Vizianagaram District, whereby the learned Sessions Judge dismissed the appeal by confirming the conviction and sentence imposed by the Additional Judicial Magistrate of First Class, Bobili, in C.C.No.35 of 2004, vide judgment, dated 09.08.2004, wherein the learned Magistrate found the accused No.3, along with other accused, guilty of the offence under Section 7-A r/w.8(e) of A.P. Prohibition Act and convicted and sentenced her to undergo simple imprisonment for a period of one year and to pay a fine of Rs.10,000/-, in default, to suffer simple imprisonment for a period of three months.

The case of the prosecution in brief is as follows:

During the course of route watch conducted by the Prohibition & Excise Sub-Inspector of Bobbili Excise Station, along with his staff, he found accused Nos.1 to 3 each carrying a polythene bag containing 100 sachets of I.D. Arrack. Then, the police arrested the accused and seized the contraband and collected 3 I.D. arrack sachets as sample from each bag under cover of occurrence report. The police brought the accused to the Excise Station and basing on the occurrence report, a case in Crime No.165 of 2003-04 for the offence under Section 7-A r/w.8(e) of the A.P. Prohibition Act was registered. After receipt of Chemical Examiner's report, the police filed charge sheet against the petitioner and the other accused.

The said case was taken on file as CC No.35 of 2004. On appearance of the accused, the charge under Section 7-A r/w.34(e) of the A.P. Prohibition Act was read over and explained to them in

Telugu for which they pleaded not guilty and claimed to be tried.

To substantiate its case, prosecution examined P.Ws.1 and 2 and marked Exs.P1 to P3. No oral or documentary evidence was adduced on behalf of the accused.

On appreciation of oral and documentary evidence, the trial Court found the accused guilty for the offence under Section 7-A r/w.34(e) of the A.P. Prohibition Act and accordingly, convicted and sentenced them to undergo rigorous imprisonment for a period of one year each and to pay a fine of Rs.10,000/- each, in default, to suffer rigorous imprisonment for a period of three months each. Aggrieved by the conviction and sentence imposed by the trial Court, the petitioner – A3 filed CrI.A. No.144 of 2004 before the II Additional Sessions Judge, (Fast Track Court), Parvathipuram. The learned Sessions Judge, after re-appreciating the evidence on record, dismissed the appeal by confirming the sentence and conviction recorded by the trial Court, vide judgment impugned. Challenging the same, the present revision case is filed.

Learned counsel for the petitioner submitted that the judgments of both the Courts below are contrary to law and that the Courts below came to the conclusion that the petitioner committed the offence, without verifying that there is no individual witness to prove the case of the prosecution and that the prosecution has failed to examine any independent witness to prove the alleged seizure of the contraband and that there is no reason for non-securing any independent witness by the prosecution, though the occurrence took place in a busy locality and the witnesses examined by the prosecution are only official witnesses and therefore, he prays to allow the revision.

On the other hand, learned Additional Public Prosecutor submitted that the that the findings of the Courts below need not be interfered with, inasmuch as the findings are based upon proper

appreciation of evidence and therefore, he prays to dismiss the revision.

A perusal of the record discloses that the investigating agency has examined two official witnesses only to prove its case. In this type of cases, the investigating agency should have taken more care to establish the guilt of the accused by examining independent witnesses. In the present case, the prosecution has failed to examine any other independent witness while seizing the contraband to speak about the possession of contraband by the accused and also the seizure of the same by the police. Hence, this Court is of the view that it is highly unsafe to convict the accused on the basis of the available evidence. Therefore, the conviction and sentence imposed by the trial Court, as confirmed by the appellate Court, are liable to be set aside.

Accordingly, the Criminal Revision Case is allowed setting aside the conviction and sentence imposed by the Additional Judicial Magistrate of First Class, Bobbili, in C.C.No.35 of 2004, vide judgment, dated 09.08.2004, as confirmed by the II Additional Sessions Judge (FTC), Parvathipuram, in CrI.A. No.144 of 2004 vide Judgment, dated 08.02.2005. The petitioner - accused No.3 is found not guilty of the offence under Section 7-A r/w.34(e) of the A.P. Prohibition Act and she is acquitted for the said charge.

The fine amount, paid if any, by the petitioner shall be refunded to her. Bail bonds shall stand cancelled and the sureties are discharged.

Miscellaneous petitions, pending if any, shall stand closed.

RAJA ELANGO, J

August 01, 2016.
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