

THE HON'BLE SRI JUSTICE RAJA ELANGO
CRIMINAL REVISION CASE No.581 of 2005

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ORDER:

The above Criminal Revision Case is filed by the petitioner - accused No.4 against the Judgment, dated 29.03.2005, passed in CrI.A. No.143 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, Parvathipuram, in C.C.No.1089 of 2000, vide judgment, dated 26.07.2004, wherein the learned Magistrate found the accused No.4, along with other accused, guilty of the offence punishable under Section 34(a)(ii) of A.P. Excise Act and convicted and sentenced him 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, along with his staff, at the tank bund situated 100 yards western side to Pedamerangi road limits, they found A1 to A5 coming on bicycles with some load. On seeing the police, the accused tried to escape from that place. But, the police surrounded them and stopped them and examined the cycles and found 200 liters of arrack sachets, totaling 1,000 liters of arrack sachets, were carrying on each cycle. On interrogation, the accused stated their identity and the Inspector drew the samples of arrack. Basing on the mediators report, the SI of police registered a case in Crime No.350 of 98-99 against the accused and sent the accused to the judicial custody. The samples were analysed by the Chemical Examiner and he opined that that the samples contain illicit distilled liquor. Thus, the accused committed an offence punishable under Section 34(a) of A.P. Excise

Act read with 7 of the A.P. Prohibition Act. After receipt of Chemical Examiner's report, the police filed charge sheet against the petitioner and the other accused.

The case was taken on file for the offence under Section 34(a)(ii) of the A.P. Excise Act read with Section 7-A of the A.P. Prohibition Act against the accused. The accused No.2 died during the pendency of the case. On appearance of the accused Nos.1 and 3 to 5 the charge 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 to 5 and marked Exs.P1 to P5 besides MOs.1 to 17. 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 Nos.1 and 3 to 5 guilty for the offence under Section 34 a)(ii) of the A.P. Excise 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 – A4 filed CrI.A. No.143 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 taking into consideration that the individual witnesses turned hostile and there is no other evidence to show that the petitioner was

in possession of the said contraband and the other 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 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 prosecution examined two mediators as PWs.1 and 2, apart from the official witnesses. But, PWs.1 and 2 turned hostile and they did not support the case of the prosecution. 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, Parvathipuram, in C.C.No.1089 of 2000, vide judgment, dated 26.07.2004, as confirmed by the II Additional Sessions Judge (FTC), Parvathipuram, in CrI.A. No.143 of 2004 vide Judgment, dated 29.03.2005. The petitioner - accused No.4 is found not guilty of the offence under Section 34(a)(ii) of the A.P. Excise Act and he is acquitted for the said charge.

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

discharged.

Miscellaneous petitions, pending if any, shall stand closed.

RAJA ELANGO, J

August 02, 2016.

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