

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.1688 OF 2006

ORDER:

This Criminal Revision Case, under Sections 397 & 401 of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C."), is directed against the judgment, dated 12.10.2006, in CrI.A.No.69 of 2004, on the file of the learned I Additional Sessions Judge at Khammam, whereunder and whereby the conviction and sentence of the petitioner/accused to undergo Rigorous Imprisonment for a period of six (6) months and to pay a fine of Rs.5,000/-, in default to suffer simple imprisonment for a period of six (6) months of the offence punishable under Section 7(A) of the A.P. Prohibition Act, recorded in judgment, dated 27.08.2004, in C.C.No.682 of 2000, by the learned Judicial Magistrate of First Class, at Sathupalli, was confirmed.

2. The brief facts, that are necessary for the disposal of the present Criminal Revision Case, may be stated as follows:

On 22.03.1996 at about 16.30 hours, when P.Ws.2 and 3 along with their staff went to the house of the accused, situated in Ramachandar Rao Banjar Village, the accused was found in possession of 36 full bottles of Bagpiper Whisky of 750 ml each and 14 full bottles of Aristocrat Whisky of 750 ml each and in the presence of P.W.1 and one K. Appaiah, prepared Ex.P-1 house search memo and served a copy of the same on the accused, entered the premises of the house of the accused, conducted a search of the same and having found the above said contraband, have drawn two bottles of the said whisky bottles as samples, seized the contraband remaining and took the accused into custody under a cover of panchanama Ex.P-2. Hence, the complaint.

3. On appearance of the accused, he was examined under Section 239 Cr.P.C. and when the substance of accusation for an offence under Section 8(b) of the A.P. Prohibition Act, 1995 was framed, read over and explained to the accused, he pleaded not guilty and claimed to be tried.

4. To substantiate the charges, the prosecution examined P.Ws.1 to 4 and got marked Exs.P-1 to P-3.

5. After closure of the prosecution evidence, the accused was examined under Section 313(1)(b) Cr.P.C. with reference to the incriminating evidence appearing against him in the evidence of P.Ws.1 to 4. He denied the same. On behalf of the accused, no oral or documentary evidence is adduced.

6. The trial Court, after considering the evidence on record, found the accused guilty of the offence punishable under Section 8(b) of the A.P. Prohibition Act, 1995, and sentenced as stated above. On appeal, the said conviction and sentence was confirmed. Hence, the present Criminal Revision Case.

7. Now the point for determination is whether the judgments of both the Courts below are correct, legal and proper?

8. Heard the learned counsel for the petitioner and the learned Public Prosecutor for the respondent and perused the material available on record.

9. The powers of the High Court exercising jurisdiction under section 397 and 401 of the Code of Criminal Procedure are truncated. Unless the finding is shown to be perverse or incorrect or illegal or not based on any evidence on record, then only the judgment under challenge needs interference.

10. P.W.1 is the Panchayat Secretary of Kistaram Village in whose presence the panchanama was prepared and the said contraband was recovered from the house of the petitioner herein. The other three witnesses are official witnesses attached to the Prohibition and Excise Department. Unfortunately, P.W.1 was not cross-examined by the petitioner herein. Hence, the trial Court has taken into consideration the entire evidence adduced by P.W.1 since it is rebutted to be believed and convicted the accused in view of the evidence adduced by the other witnesses also.

11. The main ground raised by the learned counsel for the petitioner is that since P.W.1 was not cross-examined by the accused, the evidence of P.W.1 does not necessarily be considered as a gospel truth and the same should also be scrutinized by the concerned Court in a proper perspective.

12. Apart from the evidence of P.W.1, whose evidence is not subjected to cross-examination, there was also the evidence of P.W.2 corroborating the evidence of P.W.3 on all the aspects of the case and the prosecution has also not proved that the house from which the contraband was recovered is the house of the petitioner herein. From the interested evidence of the official witnesses, this Court is of the view that it is highly unsafe to convict the accused, which is punishable with a minimum imprisonment of six months.

13. Considering the facts and circumstances of the case and submissions of the learned counsel for the petitioner, the conviction imposed by the trial Court and confirmed by the lower appellate Court is hereby confirmed and the sentence of imprisonment and sentence of fine imposed on the petitioner/accused is hereby set aside and the petitioner/accused is acquitted of the offence punishable under Section 8(b) of the A.P. Prohibition Act, 1995.

14. Accordingly, the Criminal Revision Case is allowed. Miscellaneous Petitions, if any, pending in this criminal revision case stands closed.

RAJA ELANGO, J

Date: 28th July, 2016

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THE HONOURABLE SRI JUSTICE RAJA ELANGO

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