

THE HONOURABLE SRI JUSTICE RAJA ELANGO
CRIMINAL REVISION CASE No.2163 OF 2006

ORDER:

This Criminal Revision Case is filed by the petitioner/appellant/accused under Sections 397 and 401 Cr.P.C. challenging the judgment, dated 11.12.2006, in Criminal Appeal No.101 of 2006 on the file of the II Additional District and Sessions Judge, Chittoor at Madanapalle whereunder and whereby, the learned Sessions Judge dismissed the appeal filed by the petitioner against the judgment, dated 21.6.2006, in C.C.No.300 of 2005 on the file of the II Additional Judicial Magistrate of First Class, Madanapalle, but modified the conviction and sentence imposed by the lower Court by reducing the sentence of imprisonment from two years rigorous imprisonment to one year, while maintaining the sentence of fine.

2. The Prohibition and Excise Sub Inspector, Madanapalle filed charge sheet in Cr.Pr.No.29/05-06 under Section 7(a) read with 8(e) of the A.P. Prohibition Act, 1995 against the accused. The brief averments of the charge sheet are on 22.4.2005, at 5:30 P.M., at Thattivaripalle tank bund on Madanapalle – C.T.M. Bus road, the accused was found in possession of five liters of I.D. liquor in a five liters capacity white plastic can illegally and hence, he was arrested and the contraband was seized after drawing sample, and registered the case and investigated into.

3. The case was taken on file by the learned Magistrate for the offence under Section 7 (a) read with 8(e) of the A.P. Prohibition Act against the accused.

4. When the accused appeared before the trial Court, copies of the documents were supplied to him and he was examined under Section 239 Cr.P.C. for which, he admitted the offence.

5. Charge under Section 7(a) read with 8(e) of the A.P. Prohibition Act has been framed, read over and explained to him. As the petitioner pleaded guilty before the trial Court, on the basis of the guilt pleaded by him, the trial Court convicted him Section 241 Cr.P.C. and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.10,000/-, in default, to undergo simple imprisonment for a period of three months. Aggrieved thereby, the petitioner preferred the aforementioned appeal wherein the learned Sessions Judge also has considered the fact as to whether the guilt pleaded by the accused is in accordance with law and whether conviction can be imposed on the basis of the plea of guilt by the petitioner or not. Accordingly, the learned Sessions Judge dismissed the appeal confirming the judgment of the trial Court. However, the learned Sessions Judge modified the conviction and sentence of the trial Court by reducing the sentence of imprisonment from two years rigorous imprisonment to one year, while maintaining the sentence of fine. Challenging the said judgment, the petitioner filed this Revision Case.

6. Heard and perused the material available on record.

7. Neither the trial Court nor the appellate Court dismissed the case of the prosecution and convicted the accused only on the basis of plea of guilty of the accused. It is true that on plea of guilty, the trial Court can convict the accused under Section 241 Cr.P.C. After the conviction on plea of guilty, an appeal will lie only to the extent of question of sentence. The learned Sessions Judge also considered the sentence and reduced it to a period of one year.

8. After perusal of the records and the charge sheet filed by the police concerned, this Court intends to decide the issue independently on the basis of the charge sheet filed.

9. It is evident from the charge sheet that except the officials, no other person was shown as witness to the said occurrence. Apart from that, the charge sheet does not disclose the reason for non-examination of the independent witnesses. In a case where minimum sentence is prescribed by law, it is the duty of the Investigating Officer to examine independent witnesses to substantiate the accusation. In the present case, no independent witness was examined. Further, the samples were not taken as per Rule 24 of the A.P. Excise (Arrack and Toddy Licenses General Conditions) Rules, 1969. Considering the said facts and circumstances, this Court is of the view that benefit of doubt can be given to the petitioner and the petitioner is liable to be acquitted.

10. Accordingly, this Criminal Revision Case is allowed setting aside the conviction and sentence recorded in the judgment, dated 21.6.2006, in C.C.No.300 of 2005 passed by the II Additional Judicial Magistrate of First Class, Madanapalle, which was partly modified in the judgment, dated 11.12.2006, in Criminal Appeal No.101 of 2006 on the file of the II Additional District and Sessions Judge, Chittoor at Madanapalle against the petitioner/accused for the offence punishable under Section 7(a) read with 8(e) of the A.P. Prohibition Act and accordingly, he is acquitted of the said charge. The fine amount, if any, paid by the petitioner/accused shall be refunded to him. The petitioner/accused shall be released forthwith, if he is not required in any other crime.

11. Miscellaneous petitions pending, if any, in this Criminal Revision Case shall stand closed.

JUSTICE RAJA ELANGO

4.8.2016

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