

THE HONOURABLE SRI JUSTICE RAJA ELANGO
CRIMINAL REVISION CASE No.1733 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 18.10.2006, in Criminal Appeal No.205 of 2004 on the file of the VIII Additional Sessions Judge (Fast Track Court), Chittoor whereunder and whereby, the learned Sessions Judge dismissed the appeal filed by the petitioner against the judgment, dated 30.8.2004, in C.C.No.43 of 2004 on the file of the Special Judicial Magistrate of First Class for Excise, Chittoor.

2. Case of the prosecution, in brief, is as follows:

On 6.12.2003, at about 11:00 A.M., the excise officials proceeded on raid and on reaching Mogaralapalle Cross on Poyanapalle – Cheelapalle bus road, the accused was found coming from the opposite side on a two wheeler with two bags and trying to escape leaving the scooter. The excise officials caught hold of him on suspicion. On checking the scooter, they found two bags and each bag contained 200 ID liquor sachets. They collected sample consisting of 4 ID liquor sachets i.e., 2 sachets from each bag. They seized the vehicle and the remaining contraband under the cover of panchanama. They returned to the station along with the accused, case property and the vehicle. Based on the panchanama, a case in Crime No.335/2003-2004 was registered and the accused was produced before the trial Court for judicial remand. After completion of investigation, the Prohibition and Excise Inspector laid the charge sheet.

3. The case was taken on file by the learned Magistrate for the offence under Section 8(e) of the A.P.Prohibition Act, 1995 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 pleaded not guilty and claimed to be tried. So, he was placed for trial.

5. The prosecution examined P.Ws.1 to 4 and got marked Exs.P-1 to P-7 besides case property – M.O.1. On behalf of the accused, none was examined and no documents were got marked.

6. After considering both oral and documentary evidence, the trial Court found the accused guilty for the offence under Section 8(e) of the A.P. Prohibition Act and accordingly, convicted and sentenced him to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.5,000/- and in default, to undergo simple imprisonment for three months. Aggrieved thereby, the petitioner preferred the aforementioned appeal and the same was dismissed by the learned Sessions Judge confirming the judgment of the trial Court on the ground that the trial Court has not committed any error. Challenging the said judgment, the petitioner filed this Revision Case.

7. Heard and perused the material available on record.

8. The trial Court as well as the lower appellate Court lost its sight as far as the recovery of liquor is concerned since the date of raid is 16.12.2003 whereas Ex.P-1 – signature of P.W.1 contains the date as 6.12.2003. As per Rule 24 of the A.P. Excise (Arrack and Toddy Licenses General Conditions) Rules, 1969, three samples have to be taken whereas the police concerned have taken only two samples, which is contrary to the said Rules. Further, as per the evidence, two sachets from each of the two bags were taken as samples and hence, the quantity of liquor must be 400 ml. but not 350 ml. For the said discrepancies, this Court is of the view that benefit of doubt can be

given to the petitioner and the petitioner is liable to be acquitted.

9. Accordingly, this Criminal Revision Case is allowed setting aside the conviction and sentence recorded in the judgment, dated 30.8.2004, in C.C.No.43 of 2004 passed by the Special Judicial Magistrate of First Class for Excise, Chittoor, which was confirmed in the judgment, dated 18.10.2006, in Criminal Appeal No.205 of 2004 passed by the VIII Additional Sessions Judge (Fast Track Court), Chittoor against the petitioner/accused for the offence punishable under Section 8(e) of the A.P. Prohibition Act and accordingly, he is acquitted of the said charge under Section 248(1) Cr.P.C. 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.

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

JUSTICE RAJA ELANGO

4.8.2016

AMD

THE HONOURABLE SRI JUSTICE RAJA ELANGO

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