

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No.314 of 2007

- Smt. Atiya Begum. Aged about 28 years, wife of Shri Abdul Rafeaque, R/o Near Madarsa, P.S. Purani Basti, Distt. Raipur (C.G.)

---- Applicant

Versus

- State of Chhattisgarh, through the P.S. Purani Basti, Raipur(C.G.)

--- Respondent

For the Applicant : Shri Y.C. Sharma, Advocate.

For the State/Respondent : Shri Sameer Behar, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgment on board

03/01/2017

1. This revision has been brought against the judgment of conviction and order of sentence passed by First Additional Sessions Judge, Raipur in Criminal Appeal No.26/2007 on 28.06.2007, whereby the conviction and sentence under Section 397 read with Section 401 of Criminal Procedure Code, 1973, passed against the applicant in Criminal Case No.217/07 before Chief Judicial Magistrate, Raipur on 17.04.2007, was upheld.
2. The case of prosecution in brief is this, that on 03.03.2007 one information was received by Jeewan Nagesh PW/4, SHO,

P.S.-Purani Basti, District-Raipur, that applicant resident of Khokhopara, Raipur, is having illegal liquor on her possession. On this information, Jeewan Nagesh PW/4 conducted a raid. On the same day at 11:50 p.m. in the night, from the house in possession of applicant 32 boxes of Goa Special Whiskey was recovered. Each bottle having content of 180 ml liquor. The total quantity of liquor was 276 litre and 480 ml. Seizure were made vide Ex.P/1, one notice Ex.P/8 was served on applicant to produce documents of authority for keeping in possession the seized liquor, applicant could not produce any document. FIR Ex.P/9 was lodged by Jeewan Nagesh PW/4, registering offence under Section 34(a) of Excise Act, 1915. Seized article liquor was examined by P.K. Netam PW/5 Assistant District Excise Officer vide Ex.P/10, in which it was confirmed that seized article was foreign liquor. On completion of investigation, applicant was charge-sheeted.

3. Applicant was charged under Section 34(a) C.G. Excise Act, 1915, to which she denied. Prosecution has examined five witnesses. On examining under Section 313 of Cr.P.C., applicant pleaded innocence and false implication. No witness was examined in defence. Trial Court passed the judgment dated 17.04.2007, whereby the applicant was convicted under Section 34(a) C.G. Excise Act, 1915 and sentenced with R.I. of 2 years along with fine of Rs.50,000/-, with default stipulation to undergo

R.I. of six months in case of non-payment of fine. Appeal against this judgment was heard and decided by the First Additional Sessions Judge, Raipur, in which the conviction against the applicant was upheld but sentence was modified to R.I. of one year along with fine of Rs.50,000/- with default stipulation, as ordered by the trial Court.

4. The grounds taken in this revision are, that the conviction and sentence passed by the Courts below are bad in law, independent witnesses have not been examined. Kanhaiya Kumar Sharma PW/1 and Bobby Yadav PW/2 both were engaged as driver in the same police station, even then they have not supported the prosecution. Bobby Yadav PW/2 was not declared hostile even when he stated against the prosecution case, no proof was produced by the prosecution regarding the ownership of the house concerned, from where the liquor was seized. On this ground, it is prayed that revision be allowed and the conviction and sentence against the applicant by the Courts below be set aside.
5. It is submitted by the counsel for the applicant, that the so called independent witnesses have stated against the prosecution. There had been discrepancies in the statement of Jivan Nagesh PW/4 in comparison to the FIR Ex.P/9 recorded by him. For these reasons, it was not proved that applicant was in conscious

possession of the liquor. There is no statement to clarify, that from which part of the house, the alleged liquor was recovered. Further it is submitted that the test report Ex.P/10 is also discrepant, it has been admitted by the witness of test report Ex.P/5, that he conducted the test only of four bottles of liquor produced in sample before him which cannot be considered as report of the bulk seized in the raid. On these grounds, it is prayed that applicant be given benefit of doubt.

6. On behalf of State, it was submitted that prosecution has proved its case beyond reasonable doubt. Trial court and the lower appellate Court have considered the prosecution evidence on record and have given a correct finding of conviction against the applicant. There is no scope for interference in the impugned judgment.
7. In a revision, under 397 of Cr.P.C. and the powers vested in High Court under Section 401 of Cr.P.C.. the scope of revisional jurisdiction is very limited, only to consider the legality, propriety and correctness of the order passed by the trial Court and the lower appellate Court. A Revision Court cannot sit as an Appeal Court and by evaluating the evidence on record set aside the finding given by the Courts below. While exercising revisional jurisdiction, this Court can only see to this, whether the order or judgment passed by the Courts below is perverse against the

principles of law laid down and whether any evidence was shut out for consideration on arriving at a finding.

8. Jeewan Nagesh PW/4 SHO, P.S.-Purani Basti has stated that on receiving the information that applicant resident of Khokhopara, Raipur, is having possession of liquor illegally at her residence. He conducted the raid, on search of the house in possession of applicant he found 32 boxes of Goa Special Whiskey. The total volume of liquor was 276 litre and 480 ml., seizure of the recovered articles were made vide Ex.P/1, in presence of the witnesses. In cross-examination, his statement has remained unrebutted.
9. Kanhaiya Kumar Sharma PW/1 was cited as witness to Ex.P/1, who has not supported the prosecution and he has been declared hostile, another witness Bobby Yadav PW/2 has though stated in examination-in-chief, that liquor was seized in his presence from the applicant vide Ex.P/1 to which he signatory. In cross-examination, he has admitted that he has seen the applicant for the first time in Court and that he is engaged as driver by the concerned police-station. This witness has not been declared hostile, but he has to some extent given this support to the prosecution that in his presence liquor was seized vide Ex.P/1 for which he has affixed his signature as witness.

10. Head Constable Habil Nand PW/3, was a member of the raiding party, when the house in possession of the applicant was searched and the article liquor was seized from her possession. He has further stated that after the procedure of search and seizure, one notice Ex.P/8 was served on applicant to produce documents authorizing the possession of liquor, to which the applicant replied that she does not have any document. In cross-examination, his presence in search and seizure has not been challenged and no question has been put to him regarding the notice Ex.P/8. Non mentioning the time and place has been established, but it is of no consequence, because this witness has made statement, that this notice was given at the place of incident. The statement about reply of applicant about not having in possession any document authorizing the possession of liquor and signed by her and the signature affixed by her on Ex.P/8 was also not specifically challenged, hence, this unrebutted statement by itself establishes the presence of applicant at the time of search and seizure.
11. Trial Court has believed the statement of Jeewan Nagesh PW/4 and Head Constable Habil Nand PW/3 in arriving at this conclusion, that the seizure of illegally possessed liquor from the possession of applicant was made. Lower Appellate Court has confirmed this finding after due consideration on the evidence of

prosecution. This finding cannot be considered as perverse.

12. It is not rule of law, that the statement of police witness should always disbelieved, in such cases the rule of caution applies because the police Officer is interested to see that the prosecution succeeds. On the other hand, there should be some personal interest on the part of police witness to show that such witnesses was interested to falsely implicate the accused person. In this case Jeewan Nagesh PW/4, was simply suggested that he has falsely implicated the applicant to which he has denied, no question has been put to him about any personal interest against the applicant neither any question about any enmity or ill will against the applicant has been put to him. Similarly, in the cross-examination of Habil Nand PW/3 no such question were put to him. Hence, for these reasons, the reliance placed in the statement of these witnesses by the trial Court and lower appellate Court, can not be said to be unreasonable.

13. Now the arguments submitted on behalf of the applicant, that it was required of the prosecution, to prove the ownership of the house. In such case, the ownership of the house is not in question, it is only the possession, which is the necessary factor. Of all the witnesses examined by the prosecution, none has been asked or suggested by the defence that house from which liquor was recovered and seized, was not in possession of the applicant. Hence, the recovery of articles from such a place can be believed

to have been recovered from the possession of the applicant. Hence, this argument on behalf of the applicant is without substance.

14. Further it has been argued, that conscious possession of the applicant, is not proved. After the finding about the articles recovered from the sole possession of the house of applicant, there is no further need to prove conscious possession. The discrepancies in the statement of the witnesses, is insignificant. Hence, these grounds in this revision have no force and which are not sufficient to establish, that the impugned judgment of conviction and order of sentence against applicant, is against the law.
15. Further the ground of argument, that the test report ExP/10 conducted by PK Netam PW/5 was limited to examining the contents 4 bottles only form the seized articles. Habil Nand PW/3 has stated that out of the seized liquor, 4 quarter bottles of liquor were sent for examination. Excise Officer P.K. Netam PW/5 has admittedly stated that he examined the contents of the bottles produce before him and gave report vide Ex.P1. In cross-examination, no question was raised by the defence that the 4 sample bottles sent for examination before the Excise Officer, were not the representative samples of the whole bulk seized from the applicant. There is no such provision and rule under the Excise Act to necessitate examining the whole bulk for the

purpose of giving such finding, that the contents of each and every bottle seized is liquor. Under these circumstances, there is no occasion to come to a different conclusion from the findings of conviction recorded by the Courts below. Hence, for these reasons, there is no substance in this revision

16. Accordingly, the petition is dismissed.

Sd/-

(Rajendra Chandra Singh Samant)

Judge

Nisha