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(23)

HIGH COURT OF CHHATTISGARH, BILASPUR

Hon'ble Shri Justice Anil Kumar Shukla

Criminal Revision No.186 of 2004

Goverdhan
versus
State of Chhattisgarh

CAV Order

Post for pronouncement on 4.1.2017

Sd/-
Anil Kumar Shukla
Judge

4.1.2017

**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Revision No.186 of 2004**Order Reserved on : 23.12.2016Order Passed on : 4.1.2017

Goverdhan, S/o Manglu Bhaskar, aged about 27 years, R/o Village Hichchha,
P.S. Sarangarh, District Raigarh (Chhattisgarh)

---- **Petitioner**

versus

State of Chhattisgarh through District Magistrate, Raigarh (Chhattisgarh)

--- **Respondent**

For Petitioner	:	Shri Suryakant Mishra, Advocate appears on behalf of Shri Amit Sharma, Advocate
For State/Respondent	:	Shri Sanjeev Pandey, Government Advocate

Hon'ble Shri Justice Anil Kumar Shukla

C.A.V. ORDER

1. This revision has been preferred against the judgment dated 18.3.2004 passed in Criminal Appeal No.120 of 2003 by the Sessions Judge, Raigarh by which the judgment dated 31.7.2003 passed in Criminal Case No.940 of 2002 by the Judicial Magistrate First Class, Sarangarh convicting the accused/Petitioner for offence under Section 34(a) of the Excise Act and sentencing him to undergo rigorous imprisonment for 5 months and to pay fine of Rs.5,000/-, in default of payment of fine, to further undergo simple imprisonment for 6 months, has been affirmed.
2. The case of the prosecution before the Trial Court was that on 7.10.2002, Excise Sub-Inspector K.L. Pandey (PW-2) received information from an informant that the accused/Petitioner had kept illicit liquor in his house. Excise Sub-Inspector K.L. Pandey, without obtaining a search warrant, searched the house of the accused/Petitioner in presence of witnesses in which he found 250 ml. liquor from the house. The liquor was seized vide Ex.P-1. On



testing the liquor, it was found to be country-made. On making out a case under Section 34(a) of the Excise Act against the accused/Petitioner, a charge-sheet was filed against him in the Court of Judicial Magistrate First Class, Sarangarh. The Judicial Magistrate First Class, Sarangarh registered a case, being Criminal Case No.940 of 2002 against the accused/Petitioner and by the judgment dated 31.7.2003 convicted and sentenced him as mentioned in the beginning paragraph of this order. Being aggrieved by the judgment dated 31.7.2003, the accused/Petitioner preferred an appeal, being Criminal Appeal No.120 of 2003 before the Court of Session at Raigarh in which the Sessions Judge, Raigarh, by judgment dated 18.3.2004, dismissed the criminal appeal and affirmed the judgment of conviction and sentence passed by the Judicial Magistrate First Class. Hence, this revision.

3. The contentions raised by Learned Counsel appearing for the Petitioner are that the findings arrived at by the Courts below are contrary to the facts and law. The prosecution has not proved that the house from which the liquor was seized was owned by the Petitioner. No independent witness has supported the case of the prosecution. The Courts below have overlooked the contradictions and omissions of the evidence of the prosecution witnesses. Learned Counsel further submits that he confines his argument to the sentence part only and he does not challenge the conviction imposed upon the Petitioner. Challenging the sentence awarded to the Petitioner, Learned Counsel submits that on the date of incident, the Petitioner was aged about 27 years. Only 250 ml. country-made liquor was seized from him. Out of the rigorous imprisonment of 5 months awarded to him, he has already undergone 28 days. He has also deposited the total amount of fine
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of Rs.5,000/- imposed upon him. Therefore, Learned Counsel submits that the jail sentence awarded to the Petitioner be reduced to the period already undergone by him.

4. Learned State Counsel, supporting the impugned judgment of conviction and sentence, opposed the arguments advanced by Learned Counsel appearing for the Petitioner.
5. I have heard the contentions raised on behalf of the parties and perused the evidence available on record carefully.
6. From the record, it is revealed that the incident is of 7.10.2002. Seizure of 250 ml. country-made liquor was made from the Petitioner on the ground that he was not holding a valid licence to keep the liquor. According to Section 34(a) of the Excise Act, which was in force on 7.10.2002, the Petitioner was punishable for the offence with imprisonment for a term which could be extended to one year and fine which should not have been less than two hundred rupees but which could be extended to two thousand rupees. No evidence has been led by the prosecution regarding criminal antecedent of the Petitioner under Section 34(a) of the Excise Act. 14 years have passed since the date of incident and the Petitioner has already suffered jail sentence for 28 days.
7. Therefore, in the light of above discussion, I am of the considered opinion that interests of justice would be served if, while upholding the conviction imposed upon the Petitioner, he is sentenced with the imprisonment already suffered by him. According to Section 34(a) of the Excise Act, which was in force on the date of incident, the maximum amount of fine which could be imposed upon the Petitioner was Rs.2,000/- only, but, by the impugned judgment, fine of Rs.5,000/- has been imposed upon him. Therefore, the

sentence of fine is also reduced to Rs.2,000/- only.

8. Consequently, the criminal revision is allowed in part. The conviction imposed upon the Petitioner under Section 34(a) of the Excise Act is upheld, but the jail sentence awarded to him thereunder is restricted to the period already undergone by him. The sentence of fine imposed upon him is also reduced from Rs.5,000/- to Rs.2,000/-. Therefore, out of the amount of Rs.5,000/- already deposited by the Petitioner as fine, a sum of Rs.3,000/- be refunded to the Petitioner by Cheque within a period of one month from the date of receipt of a copy of this order.

9. Records be sent back along with a copy of this order forthwith.

Sd/-
Anil Kumar Shukla
Judge