

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.571 of 2006

Mangal Singh @ Mange, S/o Shri Magar Singh Sikh, aged about 27 years,
resident of Camp No.1, Chandrashekhar Aazad Mohalla, Thana Chawni,
District Durg, Chhattisgarh

---- **Petitioner**

versus

State of Chhattisgarh through the District Magistrate, Durg, Chhattisgarh

--- **Respondent**

For Petitioner	:	Shri Vivek Tripathi, Advocate
For State/Respondent	:	Shri Sameer Behar, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

9.8.2017

1. This revision has been preferred under Section 397 read with Section 401 of the Code of Criminal Procedure against the judgment dated 14.9.2006 passed in Criminal Appeal No.93 of 2006 by the Sessions Judge, Durg affirming the judgment dated 19.7.2006 passed in Criminal Case No.723 of 2006 by the Additional Chief Judicial Magistrate, Durg by which the Learned Additional Chief Judicial Magistrate has convicted the Petitioner under Section 34(1)(a)(2) of the Chhattisgarh Excise Act and sentenced with rigorous imprisonment for 1 year and fine of Rs.30,000/- with default stipulation.
2. Case of the prosecution, in brief, is that on 23.1.2006, during the patrolling duty, Sub-Inspector M.K. Dhruw received a secret information from the informant that the Petitioner has kept some illicit liquor in his house. He along with two witnesses proceeded towards the house of the Petitioner and searched the house. During the search, total 28 bulk litres of country-made masala liquor were found below the cot placed in the house. Thereafter,

First Information Report was registered. After completion of investigation, a charge-sheet was filed against the Petitioner. Charge under Section 34(1)(a)(2) of the Chhattisgarh Excise Act was framed against the Petitioner. After trial, the Learned Additional Chief Judicial Magistrate convicted and sentenced the Petitioner as mentioned above which has been affirmed in appeal by the Learned Sessions Judge. Being aggrieved, the Petitioner has preferred the instant revision.

3. Learned Counsel appearing for the Petitioner argued that the independent witnesses of seizure did not support the prosecution story. He further argued that there is no cogent evidence on record to show that the Petitioner was in conscious possession of the illicit liquor. He further submitted that the conviction of the Petitioner is based on suspicion and suspicion however strong it may be cannot take place of a legal proof.
4. On the other hand, Learned Counsel appearing for the State opposed the revision and supporting the impugned judgment submitted that the concurrent finding of conviction and the order of sentence do not warrant any interference by this Court.
5. I have heard Learned Counsel appearing for the parties at length and perused the records of the Courts below minutely.
6. The prosecution has examined total 5 witnesses. Out of them, Prakash Sonkar (PW-1) and Kuldeep Kumar (PW-3) are the witnesses of seizure, but they have not supported the prosecution story and, therefore, they have been declared hostile. No witness has been examined in defence.
7. Investigating Officer Sub-Inspector M.K. Dhruw (PW-5) has

deposed that on 23.1.2006, during the patrolling duty, he received a secret information from the informant that Mangal Singh alias Mange, resident of Camp-1, Azad Mohalla, i.e., the Petitioner had been selling liquor illegally for last many days and today also, i.e., on the date of search, he had brought liquor from outside and kept in his house for sale. As per the statement of the Investigating Officer, during the search, total 28 bulk litres of country-made masala liquor were found below the cot placed in the house. The liquor was seized vide seizure memo Ex.P-1. In paragraph 5 of his statement, M.K. Dhruw (PW-5) has categorically stated that when they reached the house of the Petitioner, at that time, both the Petitioner and his wife were present there. He has also admitted that the house of the Petitioner was surrounded by a huge area. He deposed that he does not know that the father and brother of the Petitioner were also residing in the same area.

8. Thus, it is clear from the above statement of M.K. Dhruw (PW-5) that the house in question from where the liquor was seized was surrounded by a huge area and in that house apart from the Petitioner other persons were also residing. The prosecution has not led any evidence to establish that the house in question exclusively belonged to the Petitioner. Therefore, even if it is accepted that the liquor was seized from that house, it cannot be presumed that the said liquor was in conscious and exclusive possession of the Petitioner. Therefore, the offence under Section 34(1)(a)(2) of the Chhattisgarh Excise Act alleged against the Petitioner is not proved beyond doubt.

9. Resultantly, the revision deserves to be and is hereby allowed. The impugned judgment of conviction and sentence is set aside.

The Petitioner is acquitted of the charge framed against him. The amount of fine deposited by him shall be refunded to him.

10. It is reported that the Petitioner is on bail. His bail bonds are not discharged at this stage and the same shall remain operative for a further period of six months from today in view of the provisions contained in Section 437A of the Cr.P.C.
11. Records of the Courts below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
Judge