

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 203 of 2004

Order reserved on : 04.01.2017

Order passed on : 19.01.2017

- Baijoram @ Baijnath, aged about 50 years, s/o Samundlal, R/o village Kusumel Thana, Dabra, Distt Janjgir-Champa (CG)
---- Applicant

Versus

- State of Chhattisgarh through Collector, Distt Janjgir, Champa (CG)
---- Respondent

For Applicant : Shri Parag Kotecha and Shri Waquar Naiyer, Advocates
For Respondent/State : Shri Suryakant Mishra, PL

Hon'ble Shri Justice Anil Kumar Shukla

CAV Order

1) This revision has been preferred against the judgment dated 01.11.2003 passed in Criminal Appeal No. 253 of 2003 by the Additional Sessions Judge, Sakti by which the judgment dated 08.10.2003 passed in Criminal Case No.1896 of 2003 by the Additional Chief Judicial Magistrate, Sakti convicting the applicant for offence under Sections 34(1)(a) and 34(2) of the Chhattisgarh Excise Act (for short, 'the Act') and sentencing him to undergo simple imprisonment for one year and to pay fine of Rs.25,000/-, in default of payment of fine, to further undergo simple imprisonment for four months, has been affirmed.

2) Prosecution story, in brief, is that on 23.08.2003 Excise Sub-Inspector PL Nayak (PW-1) received information from an informant that the present applicant was making country made liquor. On receiving this information, a raid was conducted by PL Nayak (PW-1) along with BD Patre (PW-4). They found 30 bulk litres country made liquor from the

possession of the applicant which was seized vide Ex.P/3 and on getting tested, it was found to be country-made liquor. A case was made out against the applicant under Sections 34(1)(a), 34(2) and 59(a) of the Act and a charge-sheet was filed against him in the Court of Additional Chief Judicial Magistrate, Sakti. He registered a case being Criminal Case No.1896 of 2003 against the applicant and by the judgment dated 08.10.2003 convicted and sentenced him as mentioned in the first paragraph of this order. Being aggrieved by this judgment, the applicant preferred Criminal Appeal- 253 of 2003 before the Court of Session at Sakti in which the Additional Sessions Judge, Sakti by judgment dated 01.11.2003, dismissed the criminal appeal and affirmed the judgment of conviction and sentence passed by the Additional Chief Judicial Magistrate. Hence, the applicant preferred this revision.

3) The prosecution examined PL Nayak (PW-1) Excise Sub-Inspector, Santosh Kumar (PW-2), Muru (PW-3) and BD Patre (PW-4), Excise Head Constable out of which, PW- 2 and 3 turned hostile. No evidence was led in defence.

4) Learned counsel for the applicant argued that the applicant has been falsely implicated in the case and the findings arrived at by the Courts below are contrary to the facts and law. There was no seizure of any kind of liquor from the possession of the applicant. 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 argued that there is non-compliance of provisions of Sections 57 and 57A of the Act. It was contended that non-compliance of provisions of Sections 57 and 57A of the Act vitiates the prosecution. Reliance was placed on decisions of this

Court rendered in **Santosh and another Vs State of Chhattisgarh** in Criminal Revision No.273 of 2005 decided on 29.09.2005; **Dubin Ram Vs State of Chhattisgarh** in Criminal Revision No.156 of 2005 decided on 30.09.2005; and **Suresh Kumar Vs State of Chhattisgarh** in Criminal Revision No.134 of 2006 decided on 29.03.2006, wherein it was held that non-compliance of provisions of Sections 57 and 57A of the Act vitiates the prosecution.

5) On the other hand, learned State counsel supported the impugned judgment of conviction and sentence and opposed the arguments advanced by learned counsel for the applicant.

6) I have heard learned counsel for the parties, perused the judgment impugned and the evidence available on record carefully.

7) In exercise of revisional jurisdiction, this Court may examine the concurrent findings of the Courts below for the purpose of satisfying itself as to the correctness, legality or propriety of any finding of the impugned judgment.

8) The only point which requires consideration in this Revision is whether there is non-compliance of provisions of Sections 57 and 57A of the Act by the Excise Sub-Inspector Shri PL Nayak (PW-1) and BD Patre (PW-4) after effecting the seizure of 30 bulk liters of country made liquor from the possession of the applicant.

9) Sections 57 and 57A of the Act read as under :

"Section 57. Report by Excise Officer— Where any Excise Officer below the rank of Collector makes any arrest, seizure or search under this Act, he shall, within twenty-four hours thereafter, make a full report of all the particulars of the arrest, seizure or search to his immediate official superior and shall, unless bail be accepted under Section 59,

take or send the person arrested, or the thing seized, with all convenient dispatch, to a Judicial Magistrate for trial or adjudication.

Section 57A. Police to take charge of articles seized— An officer in charge of a police station shall take charge of and keep in safe custody pending the orders of a magistrate or an Excise Officer, all articles seized under this Act which may be delivered to him, and shall allow any Excise Officer who may accompany such articles to the police station, or who may be deputed for the purpose by his superior officer, to affix his seal to such articles and to take samples of and from them. All samples so taken shall also be sealed with the seal of the officer in charge of the police station."

10) A plain reading of the aforesaid provisions clearly shows that where an Excise Officer below the rank of Collector makes any arrest, seizure or search under the Act, he shall within 24 hours thereafter, make a full report of all the particulars of the arrest, seizure or search to his immediate superior officer. Section 57A of the Act also requires that an officer in charge of a police station shall take charge of and keep in safe custody pending the orders of a magistrate or an Excise Officer, all the articles seized under this Act which may be delivered to him, and shall allow any Excise Officer who may accompany such articles to the police station, or who may be deputed for the purpose by his superior officer, to affix his seal to such articles and to take samples of and from them. All samples so taken shall also be sealed with the seal of the officer in charge of the police station.

11) Section 34 of the Act entails severe punishment of imprisonment which may extend to three years and fine which shall not be less than

Rs.25,000/- but may extend to one lakh rupees upon conviction for an offence covered by clause-a of Sub-section 1, where the quantity of the intoxicant being liquor found at the time or in the course of detection of the offence exceeds twenty five bulk liters. Sections 57 and 57A of the Act protect the accused alleged of any offence under the Act from a false or a bogus prosecution. The intention of enacting Section 57A of the Act also appears to be that the articles seized should be proved by the prosecution to be country made liquor and to give an opportunity to the accused to prove otherwise by sending one of the samples so taken for analysis, if so desired. Section 57A of the Act further ensures that the articles seized and the samples taken therefrom are not tampered with. Needless to say that it is also incumbent upon the Excise Officer who is making the arrest, seizure or search under the Act to produce the intoxicant seized and the samples so prepared in the Court so as to facilitate comparison of the seals as also verification of the quantity by the Court, if so desired. Thus, the provision of Sections 57 and 57A of the Act are mandatory and ensure the benefit of the accused to establish his innocence.

12) In the present case, on perusal of the material on record, it is evident that there is no evidence to show that after seizure, the liquid was duly tested, measured and produced before the Court. Though Excise Sub-Inspector PL Nayak (PW-1) in his evidence deposed that the seized liquid was country made liquor and it was thirty litres. In his cross-examination, there is no clarity regarding quantity and quality of the seized liquid. Likewise, BD Patre, Excise Head Constable (PW-4) has not given any reason for arriving at a conclusion that the liquid seized from the possession of the applicant herein was country made liquor and

its quantity was 30 liters. Since severe punishment is prescribed in a case where a quantity of intoxicant exceeds 25 bulk liters, it is incumbent on the prosecution to prove that the quantity seized was measured and exceeded 25 bulk liters. The prosecution is therefore required to establish that the quantity seized from the applicant herein was measured. Thus, the testimony of these witnesses is rendered doubtful. Since it is clear from their evidence that they neither tested and measured the quality and quantity of the country made liquor alleged to have been seized from the possession of the applicant from a jerrican nor produced the same in Court, an adverse inference can therefore safely be drawn against the prosecution for non-production thereof.

13) Independent witnesses Santosh Kumar (PW-2) and Muru (PW-3) have turned hostile and did not support the prosecution story. They have deposed in their evidence that the Excise Constable made them sign on a plain paper.

14) It is pertinent to note that there is nothing on record to show as to where and in whose custody the seized country made liquor of 30 bulk liters was kept. There is also nothing to show that Excise Sub-Inspector PL Nayak (PW-1) had, within 24 hours after making the seizure, made a full report of all the particulars of arrest, seizure or search to his immediate superior officer as required under Section 57 of the Act. It is thus not established by the prosecution that the country made liquor that was seized from the possession of the applicant herein was above 25 bulk liters and there is complete non-compliance of the provisions of Sections 57 and 57A of the Act.

15) Having thus considered the evidence led by the prosecution, I am of the opinion that there is complete non-compliance of the provisions of

Sections 57 and 57A of the Act which vitiates the prosecution; it is not established beyond doubt that the applicant was found in possession of country made liquor in excess of 25 bulk liters; testimony of Excise Sub-Inspector PL Nayak (PW-1) is rendered doubtful since he did not produce the intoxicant alleged to have been seized from the applicant in the trial Court; and the independent witnesses Santosh Kumar (PW-2) and Muru(PW-3) did not corroborate the testimony of Excise Sub-Inspector relating to seizure and test performed upon the intoxicant alleged to have been seized from the possession of the applicant.

16) In the result, the revision is allowed. The conviction of the applicant is set aside. The applicant is acquitted of the charged framed against him. Fine if paid, shall be refunded to the applicant. The seized liquid shall be destroyed in accordance with law.

Sd/-
(Anil Kumar Shukla)
JUDGE

padma