

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 435 of 2004

1. Gulabdhhar Dubey, aged about 40 years, S/o Bechan Prasad Dubey, R/o Digh, P.S. Koirona, Distt. Bhadohi (UP) presently Khamtarai, Raipur (CG)
2. Surjit Singh, aged about 45 years, S/o Amarchand R/o Khamtarai, P.S. Khamtarai, Raipur (CG)

---- Applicants

Versus

- State Of Chhattisgarh through Police Station Supela, Durg, Distt. Durg (CG)

---- Respondent

For Applicants	:	Shri S. Pandya, Advocate.
For Respondent/State	:	Shri Vivek Sharma, G.A.

Hon'ble Shri Justice Pritinker Diwaker

Order On Board

22/11/2017

Challenge in this revision is to the judgment dated 26.8.2004 passed by First Additional Sessions Judge, Durg in Criminal Appeal No.388/03 affirming the judgment of conviction and order of sentence dated 26.8.2003 passed by Chief Judicial Magistrate, Durg convicting

each of the applicants under Section 34(a) of the Excise Act and sentencing them to undergo SI for three months, pay a fine of Rs.2000/- and in default thereof to suffer additional SI for two months.

02. As per the prosecution case, acting upon a secret information on 22.12.1998 the police party apprehended a vehicle truck bearing registration No. MP 26-D/1854, which was being driven by applicant No.1 Gulabdhhar Dubey and owned by applicant No.2 Surjit Singh, at Supela Chowk at around 1 in the night and on search being made, recovered 550 boxes containing liquor worth Rs.6.60 lakhs. When the applicant No.1 was asked for showing documents regarding possession of said liquor he failed to produce any such document. Accordingly, offence under Sections 34 and 39 of Excise Act was registered against him and after completion of investigation, charge sheet was filed against both the applicants under Sections 34, 39 and 49(a) of Excise Act. The trial Court framed charge under Section 34(a) of Excise Act against both the applicants.

03. So as to hold the accused persons guilty, the prosecution examined 3 witnesses in all. Statements of the accused were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication. In their defence they examined two witnesses.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, vide judgment dated 26.8.2003 convicted and sentenced the applicants as mentioned above which also stood affirmed in appeal by the impugned judgment.

05. Counsel for the applicants submits that he is not pressing this revision on merits and would confine his arguments only in respect of the quantum of sentence. He submits that the applicants have already remained in jail for about 10 days, the incident took place about 19 years back and therefore, they may be sentenced to the period already suffered by them.

06. On the other hand, State counsel supporting the impugned judgment has submitted that the judgment impugned is strictly in accordance with law and there is no illegality or infirmity in it warranting any interference by this Court.

07. Heard counsel for the respective parties and perused the material on record.

08. PW-1 Purushottam is a witness to seizure Ex.P/1. While supporting the prosecution case he has stated that seizure of liquor was made in his presence from applicant No.1 Gulabdhhar who was driver of the vehicle. PW-2 LB Singh, investigating officer, has also duly supported the prosecution case and nothing could be elicited from him in lengthy cross-examination to cast doubt on the prosecution case. PW-3 Mitthulal, Police Constable, was one of the members of the raid party. He has fully supported the prosecution case.

09. DW-1 Bhupendra Shrivastava has stated that at the relevant time applicant No.2 Surjit Singh had gone to Rajasthan. DW-2 Umendra Singh has stated about false implication of applicant No.1 by the police.

10. Close scrutiny of the evidence makes it clear that on the date of incident applicant No.1 was driving the vehicle in which 550 boxes containing liquor were found by the police, for which he could not produce any documents. It is also an admitted fact that the said vehicle was owned by applicant No.2. All the prosecution witnesses have duly supported the prosecution case. Though DW-2 has stated about false implication of the applicants but his version runs contrary to the unrebutted documentary and oral evidence available on record. Even no such defence was taken by the applicants in their statements under Section 313 of Cr.P.C. Thus, considering the overall evidence available on record, this Court is of the view that the trial Court was justified in holding the applicants guilty under Section 34(a) of Excise Act and likewise, the appellate Court was justified in affirming the said judgment. There is no reason to interfere with the said findings.

However, so far as sentence part is concerned, taking into consideration the fact that the incident occurred about 19 years ago, presently the applicants would be 60-65 years of age, they have already remained inside for about 10 days, I am of the opinion that no useful purpose would be served in sending them back to jail at this stage and the ends of justice would be served if their jail sentence is reduced to the period already undergone by them and they are directed to pay enhanced amount of fine with default stipulation.

11. In the result, the revision is allowed in part. While maintaining conviction of the applicants under Section 34 (a) of Excise Act, their sentence is reduced to the period already suffered by them. However, they shall pay an additional fine of Rs.3000/- each within six months

from today and in default thereof have to undergo simple imprisonment
for two months.

Sd/

(Pritinker Diwaker)

Judge

Khan