

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Criminal Revision No. 105 of 2005**

**Order reserved on : 18.01.2017**

**Order passed on : 01.02.2017**

1. Ramadhar, aged 55 years, S/o Pachkaud Sahu
  2. Santosh Kumar, aged 25 years, s/o Sadaram Sahu
- Both R/o Kasdol, PS and Tah.Kasdol, Distt Raipur (CG)

**---- Applicants**

**Versus**

- State of Chhattisgarh through SHO Kasdol, District- Raipur (CG)

**---- Respondent**

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|----------------------|---|-----------------------------------------------------------------------------------------|
| For Applicants       | : | Shri Ravindra Sharma, Advocate on behalf of Shri HV Sharma, counsel for the applicants. |
| For Respondent/State | : | Shri Suryakant Mishra, PL                                                               |

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**Hon'ble Shri Justice Anil Kumar Shukla**

**CAV Order**

1) This revision has been preferred against the judgment dated 26.02.2005 passed in Criminal Appeal No. 207 of 2004 by the Second Additional Sessions Judge, Baloda Bazar by which the judgment dated 05.08.2004 passed in Criminal Case No.1393 of 2002 by the Judicial Magistrate First Class, Baloda Bazar convicting the applicants for offence under Section (34)(a) of the Chhattisgarh Excise Act (for short, 'the Act') read with Section 34 IPC and sentencing them to undergo rigorous imprisonment for three months and to pay fine of Rs.1,000/- each, in default of payment of fine, to further undergo RI for three months, has been affirmed. The applicants had already paid the fine amount and receipt of the same has been kept in the record.

2) Prosecution story, in brief, is that when Police Constable Dwarika Prasad (PW-5) was on duty at Police Station Kasdol, on 03.05.2001 in the night at 1.10 am at Kasdol *naka*, he caught the present applicants who were transporting illegal liquor without any license in a bag on their Rajdoot motor-cycle No. MP-23-YA-9382. Thereafter, the applicants were taken to the PS Kasdol where the illegal liquor was seized vide Ex.P/2 in presence of independent witnesses Eshwar (PW-3) and Shatruhan (PW-4) and the same was duly tested and measured by the Excise Sub-Inspector OPL Sahu (PW-1) and found it to be Super Master liquor of 43 pav (7.7 bulk liters). FIR has been registered under Section 34(a) of the Act read with Section 34 of the IPC vide Ex.P/3 against the applicants and a charge-sheet was filed against them in the Court of Judicial Magistrate First Class, Baloda Bazar. Criminal Case No.1393 of 2002 was registered against the applicants and by the judgment dated 05.08.2004 convicted and sentenced them as mentioned in the first paragraph of this order. Being aggrieved by this judgment, the applicants preferred Criminal Appeal- 207 of 2004 before the Court of Sessions at Baloda Bazar in which the Second Additional Sessions Judge, Baloda Bazar by judgment dated 26.02.2005, dismissed the criminal appeal and affirmed the judgment of conviction and order of sentence passed by the Judicial Magistrate First Class. Hence this revision.

3) Learned counsel submits that he confines his argument to the sentence part only and does not challenge the conviction imposed upon the applicants. Accosting the sentence part awarded to the applicants, learned counsel submits that on the date of the incident, applicant-1 Ramadhar was aged about 55 years and Santosh Kumar was aged about 25 years. The quantity of Super Master liquor seized from them was 7.7

bulk liters. Out of the jail sentence of three months RI awarded to them, they have already undergone 15 days and deposited fine amount of Rs.1,000/- each imposed upon them. The incident is of the year 2001 and already sixteen years have elapsed. Therefore, considering all the facts and circumstances of the case, learned counsel prays to reduce the sentence of the applicants imposed upon them to the period already undergone by them.

4) 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 applicants.

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

6) From the record, it is revealed that the incident is of 03.05.2001. Seizure of 7.7 bulk litres Super Master liquor was made from the applicants and they were not holding a valid licence to keep the same. According to Section 34 (a) of the Chhattisgarh Excise Act which was in force on 03.05.2001, the applicants were punishable for the said offence with imprisonment for a term which could be extended to one year with minimum fine of Rs.500/- and maximum to Rs.5,000/-. No evidence has been led by the prosecution regarding criminal antecedent of the applicants under Section 34(a) of the Act. Nearly 16 years have passed since the date of incident and the applicants have already suffered jail sentence for 15 days.

7) In light of above discussion, I am of the considered opinion that interest of justice would be served if, while upholding the conviction imposed upon the applicants, they are sentenced with the imprisonment already suffered by them.

8) Accordingly, on the basis of aforesaid discussion, the revision filed by the applicants is hereby allowed in part. The conviction of the applicants under Section 34(a) of the Act read with Section 34 IPC is hereby maintained. However, the sentence of the applicants is reduced to the period already undergone by them.

9) It is reported that the applicants are on bail. Their bail bonds are not discharged at this stage and shall remain operative for a period of six months in view of the provisions contained under Section 437-A of the Cr.P.C.

Sd/-  
(Anil Kumar Shukla)  
JUDGE

padma