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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 83 of 2006

Order reserved on : 06.01.2017

Order passed on : 20.01.2017

- Yashoda Bai, W/o Vijay Yadav, aged about 28 years, Occupation-Housewife, r/o Indira Awas, Lakha, Tehsil and district - Raigarh (CG) **---- Applicant**

Versus

- State of Chhattisgarh through Excise Sub-Inspector, Raigarh, district- Raigarh (CG)

---- Respondent

For Applicant	:	Shri KN Nande, Advocate
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 31.01.2006 passed in Criminal Appeal No.149 of 2005 by the Session Judge, Raigarh by which the judgment dated 11.11.2005 passed in Criminal Case No.165 of 2005 by the Judicial Magistrate First Class, Raigarh convicting the applicant for the offence punishable under Section 34(1)(a) of the Chhattisgarh Excise Act (for short 'the Act') and sentencing her to undergo Simple Imprisonment for one month and to pay fine of Rs.5,000/-, in default of payment of fine, to further undergo SI for two months, has been confirmed.

2) Prosecution story, in brief, is that on 26.08.2005 when Excise Sub-Inspector JPN Dixit (PW-1) was on duty, received information from an informant that the applicant was in possession of illicit liquor. On receiving this information, a raid was conducted in presence of witnesses in which two litres liquid in four polythene bags (500 ml each) was found

from the possession of the applicant which was seized vide Ex.P/1 and on getting the same tested, it was found to be Mahua liquor. A case was made out against the applicant under Section 34(1)(a) of the Act and a charge-sheet was filed against her in the Court of Judicial Magistrate First Class, Raigarh wherein a case was registered being Criminal Case No.165 of 2005 against the applicant and by the judgment dated 11.11.2005 the Judicial Magistrate First Class convicted and sentenced the applicant as mentioned above. Being aggrieved by this judgment, the applicant preferred Criminal Appeal No.149 of 2005 before the Court of Session at Raigarh in which the Sessions Judge, Raigarh by judgment dated 31.01.2006, dismissed the appeal and affirmed the judgment of conviction and sentence passed by the Judicial Magistrate First Class. Hence the applicant preferred this revision.

3) The prosecution examined JPN Dixit (PW-1) Excise Sub-Inspector, Pancham Singh (PW-2) and Vivek (PW-3) 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. 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. He further argued that there is non-compliance of provisions of Sections 57 and 57A of the Act. It was contended by him 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 JPN Dixit (PW-1) after effecting the seizure of 2 liters of Mahua 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 minimum punishment of imprisonment of one month, which may extend to one year and fine which shall not be less than Rs.5,000/- but may extend to Rs.25,000/- 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 is below 25 bulk liters.

12) Here, in the present case the Mahua liquor that has been seized from the possession of the applicant is only two liters.

13) 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 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/her innocence.

14) 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 JPN Dixit (PW-1) in his evidence deposed that the seized liquid was Mahua liquor and it was two litres, in his cross-examination, there is no clarity regarding quantity and quality of the seized liquid. Likewise, other two independent witnesses Pancham Singh (PW-2) and Vivek (PW-3) have not given any reason for arriving at a conclusion that the liquid seized from the possession of the applicant herein was Mahua liquor and its quantity was two liters, rather they denied the seizure of any liquor from the possession of the applicant in their presence. 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 Mahua liquor alleged to have been seized from the possession of the applicant nor produced the same in Court, an adverse inference can therefore safely be drawn against the prosecution for non-production thereof.

15) Independent witnesses Pancham Singh (PW-2) and Vivek (PW-3) have turned hostile and did not support the prosecution story. They clearly stated in their evidence that the Excise Sub-Inspector made them sign on a plain paper and there was no seizure of any type of liquor from the possession of the applicant in their presence.

16) It is pertinent to note that there is nothing on record to show as to where and in whose custody the seized Mahua liquor of two liters was kept. There is also nothing to show that Excise Sub-Inspector JPN Dixit (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 Mahua liquor that was seized from the possession of the applicant herein was of how much quantity and there is complete non-compliance of the provisions of Sections 57 and 57A of the Act.

17) 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 Mahua liquor of two liters; testimony of Excise Sub-Inspector JPN Dixit

(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 Pancham Singh (PW-2) and Vivek (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.

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

Sd/-
(Anil Kumar Shukla)
JUDGE

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