



HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 12/07/2017

Delivered on 02/08/2017

Criminal Revision No. 244 of 2005

- Chinta Ram Gond, aged about 44 (40) years, S/o Shri Hira Singh Gond, Agriculturist and Agricultural Labour R/o Village Bhadsena Thakurtola, P.S. Ambagarh Chowki, District – Rajnandgaon (C.G.).

---- Applicant

Versus

- State Of Chhattisgarh

---- Non-applicant

For Applicant	:	Shri P.K.C. Tiwari, Sr. Advocate with Shri Kripesh Kela, Advocate
For State	:	Shri U.N.S. Deo, Government Advocate

Hon'ble Shri Justice Sharad Kumar Gupta

CAV ORDER

1. In this criminal revision the challenge levied is to the judgment dated 15th June 2005 passed by Sessions Judge, Rajnandgaon in Criminal Appeal No. 106/2004 whereby Session Judge affirms the judgment of conviction and modified the order of sentence passed by the Additional Chief Judicial Magistrate, Rajnandgaon on 23/09/2004 in Criminal Case No. 1094/2001 from six months rigorous imprisonment to three months simple imprisonment on each count punishable under Sections 34(b) as well as 34(f) of the Chhattisgarh Excise Act (hereafter called as 'Act').
2. In brief, the prosecution case is that on receiving a complaint regarding illegal manufacture and sale of country made liquor, the Collector, Rajnandgaon directed the Nayab Tehsildar, Ambagarh



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Chowki to take necessary action. In pursuant to the direction the Sub Inspector (Excise) M.N. Sinha along with officials and witnesses reached in Thakurtola of Village Bhatsena on 09/08/2001. He sent Narendra Kumar to purchase the country made liquor from the applicant and a Panchnama was also prepared. After purchase made by narendra kumar of country made liquor, again a Panchnama in this connection was prepared. Thereafter the said Sub Inspector (Excise) along with other officials conducted raid in applicant's house without obtaining any search warrant and seized alleged 50 liters country made liquor in five jerricanes, 75 liter mahua Pas, 180 ml. Country made liquor in one bottle, one Five Rs. Note. Said country made liquor was immediately tested. The complaint was lodged against the applicant and after the conclusion of the trial he was convicted and sentenced under Sections 34(b) as well as 34(f) of the Act six months rigorous imprisonment and fine of Rs. 1000/- with default stipulation on each count.

3. Shri P.K.C. Tiwari, Senior Advocate for the applicant vehemently argued that the Sessions Judge, Rajnandgan seriously erred in applying Section 54 of the Act without considering the essential prerequisites. Both the Sub-ordinate Courts have not properly appreciated the evidence available on record.
4. Shri U.N.S. Deo, Government Advocate supported the conviction of the applicant. He submitted that sufficient evidence is available on record to convict and sentence the applicant.
5. It is well settled law that a Revisional Court by exercising its revisional power only may interfere with the finding of the lower Court where the



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lower Court has committed some illegality or given the perverse findings or carried out miscarriage of justice.

6. Before 23/04/2002, the offences punishable under Section 34(a) to (h) were punishable for the imprisonment which may extend to one year and fine which should not be less than Rs 200/- but may extend up to Rs 2000/-.
7. PW-3 M.N. Sinha, Sub Inspector (Excise) says in para No.1 of his statement on oath that, he had sent some persons to purchase the country made liquor, they bought back one quarter country made liquor, he had seized 50 bulk liter country made liquor and mahua Pas, one Five Rs. note which was the sale amount, from the house of applicant. His version is supported by para No. 1 of PW-1 H.L. Shukla, Sub Inspector, PW-2 Rupanand Pradhan, Naib Tahsildar, PW-4 Radhelal, Excise Constable, PW-5 Narendra Kumar, PW-6 Rekhilal, Head Constable. There is no such evidence in record on which it could be said that said statements are not normal, natural, or simple.
8. No reason to say that alleged Panchnama Ex.P/2 wherein it is mentioned that Narendra Kumar had been sent to purchase one quarter country made liquor from applicant, is not believable. There is no such material on strength of which it could be said that alleged Panchnama Ex.P/3 wherein it has been mentioned that Narendra Kumar had returned after purchasing one quarter country made liquor from the applicant, alleged seizure Ex.P/1, is not believable.
9. Non compliance of Section 54 of the Act is mere an irregularity and does not impeach the credibility of the witnesses, because punishment is not severe.



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10. On strength of above discussions, this Court finds out that both the sub-ordinate Courts have not committed any illegality or perversity in giving the findings of conviction of the Applicant. There is no material on record which indicate that miscarriage of justice has been carried out. Thus, this Court affirms the conviction of the Applicant mentioned above.

11. The incident was happened on 09/08/2001 i.e. around 16 years have been elapsed. Now the Applicant is near about 56 years old. He has been remained in jail for some days. Now he is in the main stream of society. Sending him again to jail would disturb his and his family members life. Hence, no useful purpose would be served. I am of the opinion that the cause of justice would be best subserved when the sentence of the Applicant would be altered to the period already undergone by him. I, therefore, reduce the sentence of 3 months simple Imprisonment under Section 34 (b) as well as 34 (f) C.G. Excise Act awarded to the applicant on each count to the period already undergone.

12. Consequently, the revision is partly allowed. The applicant is on bail. His bond stands discharged subject to the provisions contained in Section 437-A of the Cr.P.C.

Sd/-
SHARAD KUMAR GUPTA
Judge

2-8-2011