

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL REVISION CASE No.1847OF 2006

JUDGMENT:

The present Criminal Revision Case is preferred by revision petitioner - appellant - accused under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short 'Code'), questioning the sentence of rigorous imprisonment for a period of one year inflicted and fine of Rs.2,000/- imposed with default sentence to undergo simple imprisonment for one month for the offence punishable under Section 37 (a) of the Andhra Pradesh Excise Act, 1968, by the learned Special Judicial Magistrate of First Class, Prohibition & Excise, Mahabubnagar, by his judgment, dated 31.01.2000, in C.C. No.445 of 1996, as affirmed by the learned VI Additional Sessions Judge, Mahabubnagar, by his judgment, dated 03.11.2006, in Criminal Appeal No.34 of 2000.

2. Heard Sri Mohd. Ghulam, learned counsel for the petitioner, and the learned Special Assistant Public Prosecutor for the State of Telangana.

3. His main submissions have been, that in fact, the sole mediator examined by the prosecution did not support the prosecution case, thus, independent evidence on record virtually is not occurring. His further submission is that the petitioner is not the owner or employer, but he is only an employee working at the relevant time and

the evidence of PW.4 – Investigating Officer would clearly indicate the same as he made positive admissions in the cross-examination to that effect. The learned counsel has drawn the attention to the cross-examination of PW.4.

4. The learned Special Assistant Public Prosecutor, per contra, would support the judgment of the appellate Court.

5. It is clear from the evidence on record that PW.1 is the mediator. According to the evidence of PW.3, who was the Sub-Inspector of Prohibition & Excise Range, Veepanagandla, that he along with one Sree Ramulu and Chandraiah accompanied PW.2, who is their Prohibition & Excise Inspector, proceeded to Ayyawaripally village and secured the presence of PW.1 and one Kavali Kistanna to act as panchayatdars, and at about 5.30 p.m., they reached the hut and raided it where toddy was being sold by the accused in the said hut. When they searched having served Ex.P-1 search memo, they found mud pot (thotti) which contains about 32 liters of toddy and samples were drawn, and when analyzed, the toddy turned into pink colour confirming that the toddy was adulterated with chloral hydrate and then drawn three samples of 450 ml. each and having observed the formalities, one of them was intended to send to analyst and having deposited initially with the Court and having obtained the analyst's report that the toddy was adulterated with chloral hydrate, filed the charge sheet.

6. Various facts have been elicited in the cross-examination of this witness. But, when PW.4, the Sub-Inspector of Prohibition & Excise, who laid the charge sheet, examined, in his cross-examination, he answered to a pertinent question that though, he got mentioned in paragraph No.1 of the charge sheet that accused No.1 is the employee, but he did not get filled up the blank referring to under whom he was the employee. Of course, he tries to support that lapse that due to oversight it was prepared routinely.

7. The crucial question is, whether the petitioner – accused was employer or employee, and whether the order of conviction and sentence inflicted can be sustained?

8. Admittedly, PW.1, the mediator, completely turned hostile. Despite the said fact the Investigating Officer ought to have examined another mediator irrespective of the fact whether the other mediator would support or not.

9. The learned lower appellate Court refers to the statutory presumption engrafted in the shape of Section 42 of the Act while observing that initial burden rests on the prosecution to prove its case in accordance with Sections 101 to 104 of the Indian Evidence Act, 1872. He would observe that the prosecution has placed the evidence of officials and Ex.P-2, *panchanama*, and, therefore, the said presumption would establish the guilt of the accused, and also would

point out the answers given by PW.3 in his cross-examination, who is the Sub-Inspector of Prohibition & Excise, who conducted the seizure. He would answer that the search memo was not signed by the mediators. He did not seize the cash from the possession of the accused, and though, he enquired Sarpanch regarding the hut of the accused, but he did not record any statement of the Sarpanch and has not obtained any certificate there-for. Of course, he denied the suggestion that only to harass the accused, he foisted a false case.

10. Once the prosecution is unable to explain or establish whether the petitioner is an employee or employer actually running the business, and when there is no evidence of independent witnesses or mediators and the only mediator examined turned hostile wholly and the prosecution did not bother to examine the other mediator to prove the seizure through the independent evidence, it has to be held that the Courts below overlooked the same and that omission accounts for legal infirmity and recording conviction amounts to perversity.

11. Therefore, the present Criminal Revision Case is allowed, setting aside the conviction as well as the sentence of imprisonment inflicted by the learned Magistrate Court and the fine amount of Rs.2,000/- imposed in C.C. No.445 of 1996, by his judgment dated 31.01.2000, as affirmed by the learned appellate Court in Criminal Appeal No.34 of 2000, by his judgment, dated 03.11.2006.

As a sequel thereto, miscellaneous petitions, if any, pending in the present revision, stand closed.

A. SHANKAR NARAYANA, J

December 07, 2017.

Mgr

