

HIGH COURT OF CHHATTISGARH, BILASPUR

Order reserved on 26.09.2018

Order pronounced on 10.12.2018

CRR No. 486 of 2005

Balkrishna Rao son of Shyam Rao Maratha, aged about 41 years, R/o Forest Colony, Fafadih, PS Ganj, Raipur, District Raipur, CG

--- Applicant

Versus

State of Chhattisgarh

--- Respondent

For Applicant	-	Smt. Kiran Jain, Advocate.
For Respondent	-	Shri Majid Ali, GA

Hon'ble Smt. Vimla Singh Kapoor, J.

CAV Order

By this revision petition the applicant has assailed the judgment dated 30.08.2005 passed by Sessions Judge, Raipur in Criminal Appeal No. 178/2005 affirming the judgment dated 21.06.2005 passed by Chief Judicial Magistrate, Raipur in Criminal Case No. 397/2005 convicting the accused/applicant under Section 34 (1) (a) of the Excise Act and sentencing him to undergo rigorous imprisonment for two years and pay fine of Rs. 25,000/-, in default of payment of fine to undergo further rigorous imprisonment for 09 months.

2. Facts of the case in short are that on 24.05.2001 Assistant Sub Inspector P.K. Pathak (PW-6) along with constable Pushpendra Singh (PW-4) brought one jeep to the police station bearing registration No. MP-23-L 6797 in which 1152 quarters of liquor were stuffed. On inquiry, accused/applicant - the driver of the jeep

could not produce even the licence to drive the said vehicle and was transporting the liquor without licence. On effecting the seizure in presence of the witnesses, the liquor was sent for chemical examination and ultimately it was found to be foreign liquor (whiskey). After investigation, charge-sheet was filed by the police and thus criminal law was set in motion.

3. After examining the material available on record and the evidence of the witnesses the trial Court convicted the accused/applicant under Section 34 (1) (a) of the Excise Act. The findings recorded by the trial Court have subsequently been confirmed by the lower appellate Court by the judgment impugned and it is that which is under challenge in this revision.

4. Counsel for the accused/applicant submits that both the Courts below have fallen into a serious error in convicting the accused/applicant under Section 34 (1) (a) of the Excise Act and that the findings so recorded are contrary to the evidence led by the prosecution. He further submits that as the prosecution could not prove its case beyond reasonable doubt, the judgment impugned is liable to be set aside.

5. On the other hand, counsel for the respondent/State supports the judgment impugned and submits that the findings recorded by the both the Courts below convicting the accused/applicant as shown above, are strictly in accordance with law and there is no infirmity in the same.

6. Heard counsel for the parties and perused the evidence on record.

7. Bhagela (PW-2) has stated that on the date of incident when he was selling bags in the market, police inspector (PW-6) called him and on being asked by him he took the boxes out of the vehicle and signed document of seizure Ex. P-2. Kanhaiya (PW-3) has stated that in his presence the police people had seized 24 cartons each containing 48 quarters of liquor under Ex. P-2 duly signed by him. PW-4 and PW-6 have also stated that the accused/applicant was found carrying 24 cartons of liquor in a jeep bearing the registration number as mentioned above. S.K. Jain (PW-1) is the witness who did chemical examination of the liquor seized from the possession of the accused/applicant has stated that it was foreign liquor (whiskey) and the report given by him is Ex. P-1.

8. This Court has perused the material available on record with every possible care and caution, and on doing so, it is crystal clear that on the date of incident the accused/applicant was found in possession of 1152 quarters of foreign liquor (whiskey) which he was transporting in a jeep. Seizure witness (PW-3) has also supported the case of prosecution stating that 24 cartons of English liquor were seized in his presence and under his signature. The record does not indicate that the accused/applicant was having any licence etc. to show that he was, in any manner, authorized to possess or transport such an article with him. Apart from the witnesses of police and excise department, two independent witnesses (PW-2 and PW-3) have also lent support to

the case of the prosecution stating that the liquor was found in the house of the accused/applicant and the police had informed them regarding its seizure having been made. Prosecution has thus succeeded in proving its case beyond all reasonable doubt and being so the findings recorded by both the Courts below convicting the accused/applicant under Section 34 (1) (a) of the Excise Act being based on proper appreciation of the evidence on record, do not call for any interference by this Court. Even the sentence awarded by the Courts below appears to be just and proper looking to the quantity of the intoxicant seized from the possession of the accused/applicant which comes to 1152 quarters.

9. In the result, the revision being without any substance is liable to be dismissed and it is dismissed as such with the judgment impugned being affirmed hereby.

Sd/-

(Vimla Singh Kapoor)
Judge