

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 03.10.2018

Judgment delivered on 23.10.2018

CRR No. 332 of 2009

Ramlal son of Jotlal Suryawanshi, aged about 40 years,
R/o Nawapara (Khajia) Thana - Baloda, District Janjgir
Champa, CG **--- Applicant**

Versus

State of Chhattisgarh through District Judicial Magistrate
Janjgir Champa, CG **--- Respondent**

For Applicant	-	Shri Shalvik Tiwari, Advocate.
For Respondent	-	Ms. M. Aasha, PL

Hon'ble Smt. Vimla Singh Kapoor, J.

CAV Judgment

By this revision petition the applicant has assailed the judgment dated 29.06.2009 passed by Sessions Judge, Janjgir Champa in Criminal Appeal No. 33/2009 affirming the judgment dated 25.05.2009 passed by Chief Judicial Magistrate, Janjgir in Criminal Case No. 1253/2008 convicting the accused/applicant under Section 34 (1) (f) of the Excise Act and sentencing him to undergo rigorous imprisonment for three months and pay fine of Rs. 5000/-, in default of payment of fine to undergo further rigorous imprisonment for 15 days.

2. Facts of the case in short are that on 28.04.2008 during patrolling Excise Sub Inspector (PW-1) received an information

regarding the accused/applicant being in possession of Mahua pass and acting thereupon search of his house was made under Ex. P-1 and consequently seizure of 10 KG of Mahua pass kept in an earthen pot, as also the instruments used for preparing the same, was made under Ex. P-2.

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) (f) 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 applicant submits that though the prosecution has not been able to establish its case beyond reasonable doubt yet the Court has placed implicit reliance on its stand-point and arrived at an erroneous conclusion of holding the accused/applicant guilty under the Excise Act. He further submits that there is no evidence to show that the Mahua pass was seized from the exclusive possession of the accused/applicant but even then the Courts below have convicted him for the same, which is not sustainable in law. According to the counsel for the accused/applicant, not even a single independent witness has been examined by the prosecution in support of its case.

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. Hari Gopal (PW-2) – an employee of the liquor furnace while supporting the case of the prosecution has stated that on the date of incident house of the accused/applicant was searched, 10 Kg of Mahua pass kept in an earthen pot was seized and was put to chemical examination also. However, as regards arrest of the applicant in his presence, this witness has been declared hostile. He has admitted that he went to the spot along with the excise people and had put signature on the papers as was asked by them. M.P. Kurre (PW-1) has also stated that on receiving an information he rushed to the spot and as there was apprehension in his mind regarding elimination of the illicit material, search was made in the presence of the witnesses though without warrant, and 10 Kg of Mahua liquor (*Mahua pass*) kept in an earthen pot was seized under Ex. P-2. Defence has not led any evidence that there was any licence, permit or pass for possessing the liquor seized from his possession.

8. Close scrutiny of the material available on record including the evidence of the witnesses in particular that of Haripal (PW-2) and M.P. Kurre (PW-1) goes to show that 10 Kg of Mahua pass and the instruments required for its manufacture were seized from the exclusive possession of the accused/applicant who has even been unable to produce any material to demonstrate that his act was permitted by any law or rules. Both the Courts below, therefore, have been fully justified in convicting and sentencing the

accused/applicant as mentioned above, and no illegality or infirmity is noticeable in the judgment impugned.

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

Jyotishi