

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 267 of 2009**

Loknath Chouhan S/o Shri Chetan Chouhan, aged about 29 years, R/o Village-Boierdih, Police Station Baramkela, Tahsil Sarangarh, District- Raigarh (C.G.).

--- Applicant

Versus

State of Chhattisgarh Through District- Magistrate, Raigarh (C.G.).

---- Respondent

For Applicant	:	Mr. Ashish Gupta, Advocate
For Respondent	:	Mr. S.R.J. Jaiswal, PL

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

19/09/2018

1. This revision has been preferred under Section 397 read with Section 401 of the Code of Criminal Procedure against the judgment dated 14/05/2009 passed by the Additional Sessions Judge, Sarangarh, District- Raigarh (C.G.) in Criminal Appeal No. 22/2008, whereby the learned Additional Sessions Judge maintained the judgment of conviction dated 29/05/2008 passed in Criminal Case No. 42/2005 by the Judicial Magistrate First Class, Sarangarh convicting the accused/applicant under Section 34 (1) (a) of the Chhattisgarh Excise Act and sentenced him to undergo SI for 1 month and to pay fine of Rs. 5000/- with default stipulation.
2. As per prosecution story, on 10/01/2005 Investigating Officer, G.K. Tiwari (PW4) received an information from the informant and he searched the house of the present applicant before some witnesses. On search, he found one plastic bag in which 10 bulk liters of country made liquor was

kept. The said liquor was seized from the possession of the accused/applicant. After investigation, a charge-sheet under Section 34 (1) (A) of the C.G. Excise Act was filed. Charges were framed.

3. To guilt the accused/applicant, total five prosecution witnesses were examined. Statement of accused/applicant under Section 313 of the Cr.P.C was also recorded, wherein he pleaded his innocence and denied the charges framed against him.
4. After trial, the trial Court has convicted and sentenced the accused/applicant as mentioned in the first paragraph of this order, which was also affirmed by the Appellate Court. Hence, this revision.
5. Learned counsel appearing on behalf of the applicant submits that allegedly the liquor was seized from the house of the applicant, but there is nothing on record on the basis of which it can be established that the applicant is having ownership of the said house or he was in exclusive possession of the said house. He further submits that the witnesses have also admitted the fact that other members of family were also residing in the said house, thus, it cannot be established that there was exclusive possession of the applicant on the seized liquor. Therefore, no offence is proved against the present applicant and he may be acquitted from the charges.
6. Learned Counsel appearing for the State opposes the prayer made by the counsel for the applicant.
7. I have heard Learned Counsel appearing for the parties and perused the record.
8. G.K. Tiwari (PW4) was the Investigating Officer. He deposed that on

01/01/2005 during patrolling, he received an information and on the basis of said information, he searched the house of the applicant before some witnesses. He found one bag in a room in which 10 bulk liters of country made liquor was kept. The said liquor was seized vide Ex.P-2. He also prepared search Panchnama Ex.P-1 and gave a memo to the applicant also on the spot.

9. Goverdhan (PW1) and Meghnath (PW2) are the witnesses of seizure. They have not supported the case of the prosecution and have turned hostile.
10. Excise Inspector- Manohar Lal (PW3) and Excise Inspector- Nilambus Swarnkar (PW5), both have supported the statement of G.K. Tiwari (PW4). Manohar Lal (PW3) admitted the fact that in the house where the liquor was seized, other family members were also residing along with the present applicant. G.K. Tiwari (PW4) also admitted the fact that he had not collected any document relating to ownership of the applicant over the said house.
11. On minute examination of above evidence, it is clear that allegedly the liquor was seized from a room of one house, which was allegedly owned by the applicant, but there is nothing on record on the basis of which it is established that the said house was owned by the applicant. Admittedly, in the said house other family members of the applicant were also residing at that time, therefore, it is also not established that the applicant was having exclusive possession over the said house. In these circumstances, the alleged liquor, seized from a room of the house, is not established to be of applicant because he was not having exclusive possession over that.
12. Considering the above aspects of the matter, no offence is proved against

the present applicant.

13. In the result, the revision is allowed. The applicant is acquitted of the charges framed against him.
14. It is reported that the applicant/accused is on bail. His bail bond is not discharged at this stage and the same shall remain operative for a further period of 6 months in view of the provisions contained in Section 437-A of Cr.P.C.
15. Records of the Court below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
Judge