

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.650 of 2004

Tameshawar Prasad, S/o Yadav Ram Sahu, aged about 45 years, R/o Village Khursipar, P.S. Dongergaon, District Rajnandgaon, Chhattisgarh

---- **Applicant**

versus

State of Chhattisgarh

--- **Respondent**

For Applicant	:	Shri M.L. Sen, Advocate on behalf of Shri S.C. Verma, Advocate
For Respondent/State	:	Shri Satish Gupta, Govt. Advocate

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

28.6.2018

1. This revision is directed against the judgment dated 8.12.2004 passed by the Sessions Judge, Rajnandgaon in Criminal Appeal No.122 of 2004 affirming the judgment dated 18.11.2004 passed by the Chief Judicial Magistrate, Rajnandgaon in Criminal Case No.1118 of 2004, whereby the Chief Judicial Magistrate has convicted the Applicant under Section 34(1)(a) of the Excise Act and sentenced him to undergo rigorous imprisonment for 1 year and pay fine of Rs.25,000/- with default stipulation.
2. As per the prosecution case, on 14.4.2004, at about 5:00 p.m., on receiving information from an informant, Excise Sub-Inspector K.R. Taram (PW4) searched the house of the Applicant and vide seizure memo (Ex.P1), in presence of witnesses, he seized 50 *pav* (one-fourth) plain liquor and 50 *pav* masala liquor from the kitchen of the house of the Applicant and 150 *pav* plain liquor from the *kotha* of the house where cattle were being kept. On completion of the

investigation, a charge-sheet was filed against the Applicant.

3. The prosecution, in support of its case, has examined as many as 5 witnesses. Statement of the Applicant was also recorded under Section 313 of the Cr.P.C. in which he denied the guilt and pleaded innocence.
4. After trial, the Chief Judicial Magistrate convicted and sentenced the Applicant as mentioned in the first paragraph of this order. The Appellate Court has also affirmed the order passed by the Trial Court. Hence, this revision.
5. Learned Counsel appearing on behalf of the Applicant submits that as per the evidence adduced by the prosecution itself it reflects that at the time of search, the Applicant was not present at the spot. He further submits that there is no evidence on record that the house from which the illicit liquor was seized was in ownership or exclusive possession of the Applicant. Therefore, the offence alleged against the Applicant is not proved and he is entitled to get acquittal.
6. Learned Counsel appearing for the State/Respondent supported the impugned judgment of conviction and sentence.
7. I have heard Learned Counsel appearing for the parties and perused the records with due care.
8. Raju Sen (PW1), Piyush Kumar (PW2) and Faguram (PW3) are the witnesses of seizure (Ex.P1). They have not supported the case of the prosecution. Raju Sen and Faguram have been

declared hostile also.

9. As per the statement of Investigating Officer K.R. Taram (PW4), on the information received from an informant, he went to the house of the Applicant. As soon as they reached the house, the Applicant ran away from there. On being searched, the seized liquor was found from the kitchen of the house and *kotha* of the house where cattle were being kept. The liquor was seized vide Ex.P1. In paragraph 8 of his cross-examination, he has stated that at the time of search and seizure, wife and children of the Applicant were present in the house. He has also admitted the fact that the Applicant was not present at the house. From the seizure memo (Ex.P1) also, it is clear that seizure was not made from the Applicant. There is nothing on record to show that the house from where the seizure was made was in ownership of the Applicant. From the statement of K.R. Taram (PW4), it is also clear that at the time of search and seizure, wife and children of the Applicant were present in the house. Therefore, even if it is considered for the sake of argument that the house in question was of the Applicant, then also wife and children of the Applicant were living in the house. In these circumstances, the seized liquor was in exclusive possession of the Applicant is not proved. Therefore, the offence alleged against him under Section 34(1)(a) of the Excise Act is not proved beyond reasonable doubt. Hence, he is entitled to get acquittal.
10. In the result, the revision is allowed. The impugned judgment of conviction and sentence is set aside. The Applicant is acquitted of the charge framed against him.

- 11.** Records of the Courts below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
JUDGE