

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 227 of 2005

Order reserved on : 30-10-2018

Order passed on : 14.11. 2018

Somesh, S/o. Brijmohan Sharma, Aged about 21 years, R/o. Machhitalab, Gudhiyari, Raipur District Raipur (C.G.)

---- Applicant

Versus

State Of Chhattisgarh, Through SHO, P.S. Ganj, District Raipur (C.G.)

---- Respondent

For Applicant : Mr. N.T. Quadri, Advocate
For Respondent : Ms. M. Asha, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

C.A.V. Judgment

1. This revision is directed against the judgment dated 25.05.2005 passed by the Additional Sessions Judge Raipur in Criminal Appeal No. 73 of 2005, affirming the judgment of conviction and order of sentence dated 21.02.2005 passed by the Chief Judicial Magistrate, Raipur in Criminal Case No. 400/2004, convicting the accused/applicant under section 34-A of the Excise Act and sentencing him to undergo rigorous imprisonment for 1 year and pay fine of Rs. 25,000/- with default stipulations.

2. Facts of the case, in short, are that on 20.05.2004, acting upon a secrete information regarding the accused/applicant carrying illicit liquor on a motorcycle, the Head constable along with his associates nabbed them near Satkar Hotel and on being searched, 296 quarters of foreign liquor was found on the seat of said motorcycle kept in between the accused/applicant who was riding the same and the co-accused namely Jitendra @ Jeetu who was sitting as pillion rider. After effecting seizure and making arrest of the accused persons and thus on completion of investigation charge sheet was laid under Section 34-A of the Excise Act.

3. After examining the material available on record and the evidence of the witnesses the trial Court convicted the accused/applicant under Section 34-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-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. On analyzing the case put fourth by the prosecution and weighing the evidence adduced by it, it comes to the fore that on the date of incident acting upon a secret information the head constable found 296 quarters of foreign liquor from the motorcycle being driven by the applicant herein, on which the co-accused was sitting as a pillion rider. The seizure of liquor quantified as above has been duly supported by documents of Ex. P-2 and P-4. Though, PW-3 and PW-4 – the witnesses to seizure have chosen to turn hostile, they have duly admitted their signature on the seizure memo. The finding of the Courts below that PW-3 and PW-4 appear to have been influenced by the defence side, and for that they elected to turn their back to the case of the prosecution, appears to be well founded. Similarly, the other argument that the head constable was not competent to make seizure in this case, does not convince the judicial mind of this Court because as per the law an official of Police Department not below the rank of constable is fully competent to proceed with the investigation in the like cases.

Thus, there is no force in this argument of the defence counsel as well. In this view of this matter, the conclusion drawn by both the Courts below slapping conviction on the accused/applicant under section 34-A of the Excise Act is fully justified being based on due appreciation of the material collected by the prosecution. No infirmity or illegality with the same is visible.

8. 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.

9. Revision dismissed.

Sd/-
(Vimla Singh Kapoor)
JUDGE

Jyotishi/Santosh