

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No. 324 of 2017**

- State Of Chhattisgarh Through the District Magistrate, Korba, Excise Circle Korba, District Korba, Chhattisgarh.

---- Petitioner

Versus

- Kalabai Dewangan W/o Mahesh Ram Dewangan Aged About 42 Years R/o Ravanbhata Chhuri Police Station Katghora, District- Korba, Chhattisgarh.

---- Respondent

For Petitioner/State : Shri Vinod Tekam, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma
Order on Board

09/10/2018

1. Heard on I.A.No.1/2017, application for condonation of delay in filing the petition.
2. For the reasons mentioned in the application, the same is allowed and delay of 29 days in filing the petition is condoned.
3. Also heard on the application for grant of leave to appeal filed under Section 378 (3) Cr.P.C.
4. The instant Cr.M.P. has been filed seeking leave to appeal against the judgment dated 24.10.2016, passed by the Sessions Judge, Korba CG) in ST No.80/2016, wherein the said Court has acquitted the non-applicant of the charges under Section 34(2) read with Section 59 of the Excise Act, 1915.

5. In the present case, 50 Nos. quarter bottles of plain liquor having 180ml of liquor in each bottle were seized from a house which is recorded in the name of Maheshram. It is alleged that the liquor seized was from possession of the respondent and her two daughters namely- Ms. Annu and Ms. Sonu that is why they were prosecuted before the Court of Chief Judicial Magistrate, Korba. The said Court opined that Ms. Annu and Ms. Sonu are not liable for possession of the liquor but the present respondent is responsible for the contraband liquor. In appeal, the learned Sessions Judge acquitted the present respondent on various grounds.

6. The core issue for consideration is whether the house in which the liquor was found was in exclusive possession of the present respondent. As per version of Sub-Inspector, Ashok Agrawal (PW4), the house in question is recorded in the name of one Maheshram s/o Jagannath Dewangan. From his statement it is not clear whether he has enquired about the person who is resident of the said house. There is also no evidence on record as to who brought the liquor in the said house and who was in conscious possession of the said liquor. Therefore, the Court below opined that exclusive possession of the respondent of the said house is not established.

7. Three persons were tried by the trial Court but the owner of the house namely – Maheshram was not prosecuted. It is also not clear as to how many persons are the resident of the said house and who has really transported the liquor and who was really in conscious possession of the said liquor. The lower appellate court has also discussed the other aspect of the matter that the entire liquor has not been examined and therefore, the

report is not covering the article seized in the case. After re-assessing the entire evidence, this Court has no reason to interfere with the finding recorded by the trial Court. Accordingly, the prayer for leave to appeal is rejected.

8. Consequently, Cr.M.P. stands dismissed.

Sd/

(Ram Prasanna Sharma)

Judge