

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.1172 of 2016

Jagesar Sonkar, aged about 60 years, S/o Late Dhansingh Sonkar, R/o Village Newarikala, Police Station and Tahsil Balod, District Balod, Chhattisgarh

---- Applicant

versus

State of Chhattisgarh through Police Station Balod, District Balod, Chhattisgarh

--- Respondent

For Applicant	:	Shri Pawan Shrivastava, Advocate
For Respondent/State	:	Smt. Smita Ghai, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

13.12.2018

1. The instant revision has been preferred against the judgment dated 15.9.2016 passed by the Sessions Judge, Balod, District Balod in Criminal Appeal No.80 of 2016, whereby the Sessions Judge has dismissed the appeal and affirmed the judgment dated 18.7.2016 passed by the Chief Judicial Magistrate, Balod in Criminal Case No.454 of 2016 convicting and sentencing the Applicant as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 34(2) of the Chhattisgarh Excise Act	Rigorous Imprisonment for 1 year and fine of Rs.25,000/-, in default of payment of fine, Rigorous Imprisonment for 3 months

2. As per the prosecution story, on 12.2.2016, Head Constable Narmada Kothari (PW6) received a secret information from an informant and on the basis of the said information, she went to the

spot and called witnesses Sanatan (PW1) and Jhageshwar (PW2). In presence of the said witnesses, she searched and seized 7.200 bulk litres of English made liquor from illegal possession of the Applicant. Dehati Nalishi (Ex.P9) was recorded by her on the spot. After return to the police station, she registered First Information Report (Ex.P10). The seized liquor was examined by Excise Sub-Inspector Umesh Agrawal (PW3). His report is Ex.P7. On completion of the investigation, a charge-sheet was filed against the Applicant for offence punishable under Section 34(2) of the Chhattisgarh Excise Act. In support of its case, the prosecution examined as many as 7 witnesses. No witness has been examined by the Applicant in his defence.

3. After trial, the Trial Court convicted and sentenced the Applicant and the Appellate Court affirmed the judgment of conviction and sentence as mentioned in the first paragraph of this order. Hence, this revision.
4. Shri Pawan Shrivastava, Learned Counsel appearing for the Applicant submits that he does not want to press the instant revision on merits and confines his argument to the sentence part only. He submits that during pendency of the *lis*, the Applicant has already suffered rigorous imprisonment for about 12½ months. Therefore, the Applicant may be sentenced with the period already undergone by him. The Applicant is a poor and old man and, therefore, he is unable to pay the amount of fine of Rs.25,000/-. Therefore, either the amount of fine may be reduced suitably or the sentence imposed by the Courts below against default of payment of the fine may be reduced.

5. Learned Counsel appearing for the State supports the impugned judgment.
6. I have heard Learned Counsel appearing for the parties and perused the records of the Courts below.
7. The Applicant has already suffered the entire rigorous imprisonment for 1 year imposed upon him by the Courts below. Due to poverty, he could not deposit the amount of fine of Rs.25,000/- and against the default of payment of fine, he has already suffered rigorous imprisonment for about 15 days.
8. Taking into consideration the facts and circumstances and the submissions put-forth, the sentence of rigorous imprisonment for 3 months imposed by the Courts below against default of payment of the fine is reduced to rigorous imprisonment for 1 month only. It is directed that the Applicant shall be released from jail immediately if no sentence is left to be suffered by him.
9. Consequently, the revision is allowed in part to the extent indicated above.
10. 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