

THE HON'BLE SRI JUSTICE P. KESHA VA RAO

CRIMINAL REVISION CASE No.1752 of 2006

ORDER:

Heard the learned counsel for the petitioner and the learned Public Prosecutor for the respondents.

The present Criminal Revision Case is filed questioning the judgment passed in Criminal Appeal No.209 of 2002 dated 23.10.2006 on the file of the Court of II Additional Sessions Judge, Kadapa at Proddatur, confirming the judgment in C.C.No.271 of 2001 dated 17.7.2002 on the file of the court of the II Additional Judicial Magistrate of I Class, Proddatur, convicting the petitioner for the offence under Section 34(a) of the Andhra Pradesh Excise Act.

The facts in brief are that on 5.1.2001 the Sub Inspector of Prohibition and Excise, inspected the premises of the petitioner and found 200 liters of F.J.Wash, in his possession. The petitioner was arrested and interrogated and samples of the said F.J.Wash was taken and sent to chemical examination. Pursuant thereto, a crime was registered vide Crime No.285 of 2002 for the offence under Section 34(a) and Section 7(a) read with section 8(e) of the Andhra Pradesh Prohibition Act. After filing of the charge sheet, the learned Magistrate has taken cognizance of the offence against the petitioner and numbered the case as C.C.No.271 of 2001. On trial, the petitioner was convicted for the above said offence by judgment dated 17.7.2002. Aggrieved by the said judgment, Criminal Appeal No.209 of 2002 was filed on the file of the II

Additional Sessions Judge, Kadapa at Proddatur. After hearing, the learned Sessions judge, confirmed the conviction of the petitioner vide judgment dated 23.10.2006. However, sentence of imprisonment was reduced to six months from one year. Aggrieved by the same, the present criminal revision case is filed.

Learned counsel appearing for the petitioner, basically contended that both the Courts below committed an error in convicting the petitioner in the absence of any independent witnesses. Conviction cannot be based on the evidence of police officials i.e. PWs.3 to 5. He also contended that the entire stock i.e. 200 litres of F.W.Wash was also not seized. Only sample was taken and sent to chemical examiner's report. On this ground, he sought for acquittal of the petitioner.

Per contra, the learned Public Prosecutor appearing for the State contended that though the independent witnesses who were examined as PWs.1 and 2 were declared hostile, the Excise Inspectors and the constable who were at the scene of offence were examined as PWs 3 to 5, their evidence is trustworthy and based on which conviction can be passed.

Having heard both the counsel and from the perusal of the material on record, both the Courts below after appreciating the evidence held that the offence against the petitioner under Section 34(a) of the Andhra Pradesh Excise Act has been proved beyond reasonable doubt. On further perusal of the material, except the evidence of PWs.3 to 5, there is no independent witness. PWs.1 and 2 who were examined were declared as hostile and have not supported the case of the prosecution. Though PWs.3 to 5 were

examined, in the light of the submission of the learned counsel for the petitioner that the entire stock was not seized except the sample, shows any amount of doubt with regard to the seizure. It is also pertinent to note that the Inspector of Police who inspected the premises and seized the stock and taken the sample and sent for chemical examination is not examined. In fact Sri N.Haroon Saheb was the Excise Inspector who inspected and seized the stock. However, the said inspector has not been examined. On the other hand, PW.3 who after receipt of the panchanama registered the crime and issued First Information Report has been examined. Even from the judgments of both the Courts below, it is evident that PWs.1 and 2 who are the independent witnesses turned hostile and they did not support the case of the prosecution. Added to the same, the Excise Inspector who conducted the raid and seized the material is also not examined. The said two aspects are fatal to the prosecution case. In the case of Krishan Chand v. State of Himachal¹ Pradesh the Apex Court held as under:

“The High Court failed to appreciate that in the absence of independent witnesses, the evidence of the police witnesses must be scrutinized with greater care, especially when police witnesses contradicted themselves on the issue as to in whose handwriting the seizure memo, the arrest memo, consent memo and the NCB form were written and the evidence adduced by the prosecution was not reliable.”

From the above, it is clear that in the absence of independent witnesses the evidence of police witness was scrutinized with greater care, especially when they contradicted

¹ (2018) 1 Supreme Court Cases 222

themselves with regard to the prosecution case. In the case on hand, when the independent witnesses did not support the case of the prosecution, the prosecution ought to have examined the Inspector who conducted the raid and seized the stock. When the prosecution failed to examine the best possible evidence available with them, an adverse inference has to be drawn. Therefore, this Court is of the opinion that the prosecution failed to establish the guilt of the accused, beyond reasonable doubt. As such, this Court is of the opinion that it is a fit case where benefit of doubt can be extended to the petitioner and he can be acquitted.

Accordingly, the Criminal Revision Case is allowed setting aside the judgment passed in Criminal Appeal No.209 of 2002 dated 23.10.2006 on the file of the Court of II Additional Sessions Judge, Kadapa at Proddatur, confirming the judgment in C.C.No.271 of 2001 dated 17.7.2002 on the file of the court of the II Additional Judicial Magistrate of I Class, Proddatur, convicting the petitioner for the offence under Section 34(a) of the Andhra Pradesh Excise Act.

Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE P.KESHA RAO

Date: 06/09/2018

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