

THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

CRIMINAL REVISION CASE NO.693 of 2007

ORDER:

This Criminal Revision Case by the petitioner-accused under Sections 397 and 401 Cr.P.C. is directed against the judgment dated 18.05.2007 in Criminal Appeal No.66 of 2006 on the file of the I Additional Metropolitan Sessions Judge, Visakhapatnam.

2. Heard the learned counsel for the petitioner-accused, the learned Assistant Public Prosecutor appearing for respondent-State and perused the record.

3. Case of the prosecution, in brief, is as follows:

On 21.06.2004 at about 6.00 hours, excise officials found the accused with one bag in his right hand at the gate of Poorna market Vegetable market, Visakhapatnam. On seeing the raid party, he tried to run away. On suspicion, excise officials searched the bag and found 2 Quart bottles of Royal Stag Delux Whisky, 2 Quart bottles of Genesis rare Old Premium Whisky, 2 Quart bottles of Bachelor Delux Whisky, one Seagram Blenders Pride whisky, total 7 Quart bottles of whisky, each containing 750 ml of liquor meant for defence personnel and defence service only. The accused failed to produce any license or permit to possess them. He confessed that he purchased them for Rs.2,200/- from an unknown person at 104 area and he wanted to sell them for his livelihood. The officials seized the contraband, sealed the bottles after taking samples and affixed identification slips. The accused was arrested under a mediators report. Based on the said report, a case in crime No.9/2004-2005 of Prohibition & Excise Station, Visakhapatnam-I was

registered for the offence punishable under Section 8 (b) (ii) of the A.P. Prohibition Act, and after completion of investigation, charge sheet was laid before the learned Special Judicial Magistrate of First Class for Prohibition & Excise, Visakhapatnam.

4. The learned magistrate took cognizance of the case as C.C. No.105 of 2004 for the offence punishable under Section 8 (b) (ii) of the A.P. Prohibition Act. After furnishing copies of documents, the learned Magistrate examined the accused under Section 239 Cr.P.C. and framed a charge for the offence punishable under Section 8(b) (ii) of the A.P. Prohibition Act. When the charge was read over and explained to the accused, he pleaded not guilty and claimed to be tried.

5. To substantiate his case, the prosecution examined P.Ws.1 to 3 and got marked Exs.P1 to P5. M.Os.1 to 4-sample bottles are also marked.

6. After closure of the prosecution evidence, accused was examined under Section 313 Cr.P.C. with reference to the incriminating evidence found against him in the evidence of prosecution witnesses. He denied the same. No oral or defence evidence was adduced on behalf of the accused. Thereafter, the learned Magistrate, after finding the accused guilty, submitted the entire record under Section 325 Cr.P.C. to the learned Chief Metropolitan Magistrate, Visakhapatnam for imposing punishment. On receipt of record, the learned Chief Metropolitan Magistrate, vide judgment dated 09.05.2006, sentenced the accused to undergo rigorous imprisonment for a period of one year and to pay fine of Rs.20,000/- in default to suffer simple imprisonment for a further period of two months for the

offence punishable under Section 8 (b) (ii) of the A.P. Prohibition Act, and M.O.s.1 and 2 were ordered to be sent to the Deputy Commissioner of Excise, Visakhapatnam for disposal as per law. Challenging the same, the accused preferred the above appeal. The appellate Court dismissed the appeal vide the impugned judgment. Challenging the same, the present revision came to be filed by accused.

7. Learned counsel for accused would contend that the judgment of both the Courts below are contrary to law and facts of the case; the prosecution failed to prove that the accused was carrying 7 whisky bottles; that as per the prosecution case, samples were collected only from 4 bottles; that the investigating officer ought to have collected samples from all the bottles and sent the same to the Forensic Science Laboratory for examination and report; that as per the Government Orders in force, a person is entitled to possess 6 bottles of liquor of 750 ml; that there is inconsistency in the evidence of P.Ws.1 to 3, and ultimately, prayed to allow the revision as prayed for by setting aside the conviction and sentence imposed by the courts below.

8. On the other hand, the learned Assistant Public Prosecutor seeks to sustain the judgments of the Courts below stating that there are no grounds to interfere with the concurrent findings.

9. Now the point that arises for consideration is whether the findings of both the courts below are legal, proper and correct?

10. Revisional jurisdiction of this Court under Section 401 Cr.P.C. is a truncated one. Unless the findings are based upon no evidence or perverse, or that inadmissible evidence

was taken into consideration in convicting the accused or that admissible evidence was overlooked, normally the revisional powers cannot be exercised to disturb the concurrent findings of the two courts below.

11. The prosecution examined P.Ws.1 to 3 and got marked Ex.P1-mediators report; Ex.P2-FIR; Ex.P3-analysis report copy; Ex.P4-rough sketch and Ex.P5-copy of destruction proposals. As per G.O.Ms. No268, Revenue (Ex.III) Department, dated 01.04.1997, a person can possess 6 liquor bottles of 750 ml each, without license or permission. In the instant case, under Ex.P1 dated 21.06.2004, the excise officials seized 7 liquor bottles each containing 750 ml indian liquor, which is above the permissible quantity of indian liquor. It is evident from Ex.P5 that proposals were sent for destruction of the liquor seized. P.W.1 is the Prohibition & Excise Sub Inspector. P.W.3 is the Inspector of Prohibition & Excise. Their evidence reveals seizure of the 7 liquor bottles of 750 ml each from the possession of the accused in the presence of P.W.2 and other mediators and that the accused has no license or permission to possess the same. P.W.2 is the mediator for the seizure and supported the prosecution case. Admittedly, the accused is not in possession of any license to possess the above quantity of liquor bottles. There is no inconsistency in the evidence of prosecution witnesses. They have no grouse or animosity against the accused to implicate him falsely. They withstood the test of cross-examination. Nothing has been elicited in their cross-examination to disbelieve their evidence.

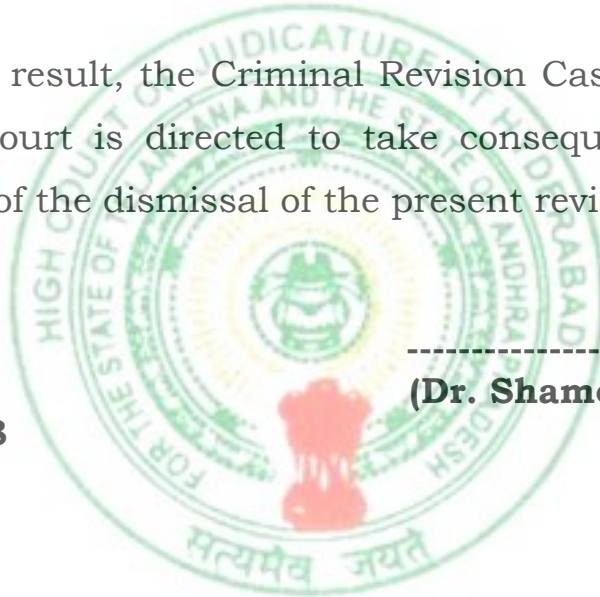
12. Both the courts below rightly appreciated the entire evidence on record and recorded concurrent findings with regard to guilt of the accused. There is ample evidence to

substantiate the allegations against the accused. The ingredients to constitute the offence alleged are proved beyond all reasonable doubt. Both the Courts below elaborately dealt with the oral and documentary evidence and acted on the basis of the admissible evidence on record, and rightly found the accused guilty, accordingly, convicted and sentenced him. The findings of the Court below are based on proper appreciation of evidence on record. There is nothing to take a different view. There is no illegality or miscarriage of justice. The concurrent findings need not be interfered with. There are no grounds to interfere with the same. The revision case is devoid of merit and is liable to be dismissed.

13. In the result, the Criminal Revision Case is dismissed. The trial Court is directed to take consequential steps in pursuance of the dismissal of the present revision.

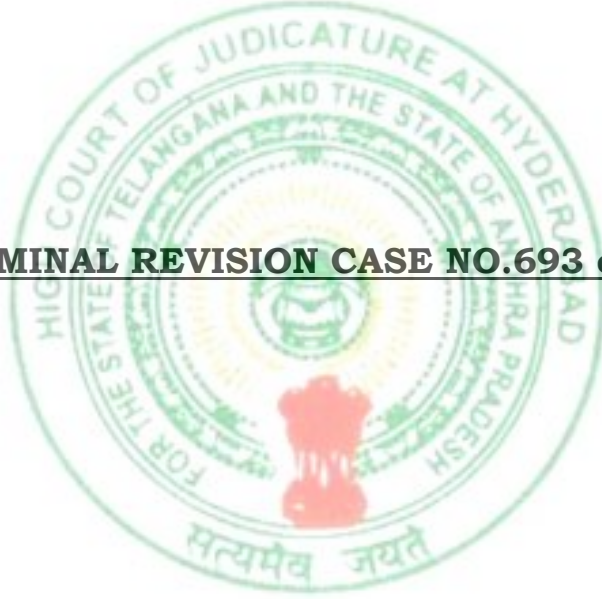
26.04.2018
DRK

(Dr. Shameem Akther, J)



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