

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL REVISION CASE No.106 OF 2007

ORDER:

This Criminal Revision Case, under Sections 397 and 401 of the Code of Criminal Procedure, 1973, is filed by the petitioner-accused to set aside the conviction recorded against him under Section 248(2) Cr.P.C. for the offence under Section 8(b) of the A.P.Prohibition Act and the sentence of simple imprisonment for a period of one year and to pay fine of Rs.10,000/-, in default, to undergo simple imprisonment for a period of two months, *vide* judgment dated 12.12.2005 passed in C.C. No.58 of 2001 on the file of the Judicial Magistrate of First Class, Gadwal (for short, 'the trial Court'). The said conviction and sentence recorded against the petitioner-accused by the trial Court was confirmed by the learned III Additional Sessions Judge (Fast Track Court), Gadwal (for short, 'the Sessions Judge') in Criminal Appeal No.11 of 2006 on 31.03.2006.

2. Heard the learned counsel for the petitioner-accused, learned Assistant Public Prosecutor representing the respondent-State, apart from perusing the material on record.

3. Learned counsel for the petitioner-accused would submit that the investigating officer, who alleged to have seized the contraband from the possession of the accused, deposed as P.W.5, P.W.3 and P.W.4, who are excise officials, are the interested witnesses and P.W.1 and P.W.2 are the panch witnesses, they did not support the prosecution case; the contraband seized was not produced before the trial Court and there is no record to show destruction or production of the property before the Deputy Commissioner of Excise; both the Courts below erred in finding the accused guilty for the offence under Section 8(b) of the A.P.Prohibition

Act; and ultimately, prayed to allow the Criminal Revision Case by setting aside the conviction and sentence recorded by both the Courts below.

4. On the other hand, learned Assistant Public Prosecutor supported the judgments of both the Courts below and prayed to dismiss the Criminal Revision Case.

5. In view of the contentions raised on behalf of both sides, the point for determination is, whether the conviction and sentence recorded against the petitioner-accused for the offence under Section 8(b) of the A.P.Prohibition Act, are liable to be set aside?

6. Revisional jurisdiction of this Court under Sections 397 and 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. To know whether the findings are based on proper appreciation of the evidence on record, it is necessary to look into the evidence on record.

7. As seen from the material placed on record, the contraband, i.e., 1600 sachets of ID liquor, alleged to have been seized from the possession of the accused, is not produced before the trial Court. There is no record to show whether the property seized was destroyed in accordance with law or it was produced before the Deputy Commissioner of Excise concerned. P.W.1 and P.W.2 are said to be the mediators for the alleged seizure of contraband from the possession of the accused. They did not support the prosecution case. P.Ws.1 and 2 deposed that they subscribed their signatures on panchanamas, marked as Exs.P.1 to P.4. These two witnesses did not support the case of the prosecution.

P.W.3 is the Excise Head Constable. P.W.4 is Excise Police Constable. They have supported the case of the prosecution stating that on 13.02.2001 at midnight, he along with Sub Inspector of Police and the Head Constable visited Tummalapally village and raided the house of the accused and found arrack sachets in that house and those sachets were seized under the cover of panchanama in the presence of P.Ws.1 and 2. P.W.5 deposed that he himself conducted investigation in this case and filed charge sheet against the accused for the offence under Section 8(b) of the A.P.Prohibition Act. At his instance, Ex.P.6-F.I.R. was issued in the instant case. It is also pertinent to note that 1600 arrack sachets alleged to have seized, each arrack sachet said to be containing 100 ml., were not produced before the trial Court or there is no record to show the destruction of the ID arrack sachets. The entire evidence creates only suspicion against the accused. The prosecution has to prove the accusation against the accused beyond all reasonable doubt.

8. Learned counsel for the petitioner-accused has relied on a decision of the Hon'ble Supreme Court in **Jasbir Singh @ Javri @ Jabbar Singh v. State of Haryana**¹, wherein P.W.6-Sub Inspector of Police therein seized the material objects from the possession of the accused and he himself conducted investigation in the case and the other witnesses who deposed in favour of the prosecution were police constables. So, the Hon'ble Apex Court held that the entire investigation was doubtful and the accused were acquitted of the offences under Sections 399 and 402 I.P.C. and Section 25 of the Arms Act.

9. In the instant case also, P.W.5-Sub Inspector of Police had conducted the entire investigation, who is also a party to the alleged seizure. The other witnesses, who supported the prosecution case, are

¹ LAWS (SC) 2015 43

Excise Constable and Head Constable (P.Ws.3 and 4), which creates a doubt with regard to prosecution case. The accused is entitled for the benefit of doubt. Therefore, both the Courts below have not properly appreciated the facts and circumstances of the case and the conviction and sentence recorded against the petitioner-accused of the offence under Section 8(b) of the A.P. Prohibition Act are liable to be set aside.

10. In the result, the conviction and sentence recorded against the petitioner-accused for the offence under Section 8(b) of the A.P. Prohibition Act by the trial Court *vide* judgment dated 12.12.2005 in C.C. No.58 of 2001, which was confirmed by the learned Sessions Judge on 31.03.2006 in CrI.A. No.11 of 2006, are set aside and the petitioner-accused is acquitted of the said offence.

11. Accordingly, the Criminal Revision Case is allowed. Miscellaneous petitions, if any, pending in this Criminal Revision Case, shall stand closed.

Date: 25-04-2018

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Dr. SHAMEEM AKTHER, J