

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Criminal Revision Case No.797 of 2007

ORDER:

As there was no representation for the petitioners-accused on 19.04.2018, the matter was directed to be listed today under the caption "For Dismissal". Even today, there is no representation for the petitioners-accused. This Criminal Revision Case is of the year 2007. Therefore, without waiting for the counsel for petitioners-accused to advance arguments, this Criminal Revision Case can be disposed of on merits.

2. This Criminal Revision Case, under Sections 397 & 401 of the Code of Criminal Procedure, 1973, is filed by the petitioners-accused, challenging the judgment, dated 18.06.2007, passed in CrI.A.No.269 of 2004 by the Special Sessions Judge-cum-IV Additional District Judge, Tirupati, whereby, the judgment, dated 15.10.2004, passed in C.C.No.704 of 2001 by the Judicial Magistrate of First Class, Puttur, was confirmed.

3. Heard the learned Assistant Public Prosecutor representing the respondent-State and perused the record.

4. The averment in the grounds of this Revision reveals that the impugned judgment is contrary to law and against the evidence on record. Both the Courts below ought not have taken the confessional statement made to the Excise police officials into

consideration. Nothing was seized from the possession of the petitioners-accused. Section 27 of the Indian Evidence Act, 1872 (for short, 'the Act') applies to the facts and circumstances of the case. Drawing of samples is doubtful. The Court below erred in accepting the F.S.L. report, as the samples were kept in the custody of Excise police officials in the Excise Police Station for a period of 71 days. There are no independent witnesses to support the case of prosecution and ultimately prayed to allow the Criminal Revision Case.

5. As seen from the record, P.Ws.1 and 2 are the Excise police officials. The investigating officer is not examined in this case. Samples alleged to have been collected from I.D.Liquor were not immediately sent to the Forensic Science Laboratory for examination and report. There is delay of 71 days in doing so. M.Os.1 and 2 are sample bottles. Ex.P.1 is the Special Report, Ex.P.2 is the FIR in Crime No.383/2000-2001 and Ex.P.3 is the Analysis report. Admittedly, there are no independent witnesses to support the prosecution case. There is no explanation from the side of the prosecution as to why independent witnesses were not examined in the instant case. Further, I.D.Liquor said to have been seized from the possession of the petitioners-accused was not produced before the Court or before any authority concerned. There is no evidence to show that investigation was conducted in accordance with procedure established by law. At the most, a suspicion can be drawn against the petitioners-accused. The recovery of 10 litres of

I.D.Liquor was not proved in accordance with law. Under these circumstances, the benefit of doubt shall go to the petitioners-accused and they are entitled for acquittal from the charge framed against them under Section 7(A) of the A.P.Prohibition Act, 1995.

6. Accordingly, this Criminal Revision Case is allowed by setting aside conviction and sentence recorded in C.C.No.704 of 2001 by the Judicial Magistrate of First Class, Puttur, as confirmed in CrI.A.No.269 of 2004 by the Special Sessions Judge-cum-IV Additional District Judge, Tirupati. The petitioners-accused are found not guilty for the offence punishable under Section 7(A) of the A.P.Prohibition Act, 1995, and are acquitted accordingly. The petitioners-accused were enlarged on bail by this Court by suspending the sentence of imprisonment imposed against them, vide order dated 22.06.2007, passed in CrI.R.C.M.P.No.1194 of 2007. In view of their acquittal, their bail bonds shall stand cancelled.

Miscellaneous petitions, if any, pending in this Criminal Revision Case, shall stand dismissed.

Dr. SHAMEEM AKTHER, J

26th April, 2018
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