

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL REVISION CASE No.1902 OF 2006

ORDER:

This Criminal Revision Case, under Sections 397 and 401 of the Code of Criminal Procedure, 1973, is filed by the petitioner-accused seeking to set aside the conviction recorded against him under Section 248(2) Cr.P.C. and the sentence of imprisonment to undergo rigorous imprisonment for a period of one year and to pay fine of Rs.10,000/-, in default, to undergo simple imprisonment for three months for the offence punishable under Section 7A r/w 8(e) of the A.P.Prohibition Act, *vide* judgment dated 08.10.2004 passed in C.C. No.1261 of 2000 on the file of the II Additional Judicial Magistrate of First Class, Rajahmundry (for short, 'the trial Court'), which was confirmed by the learned VIII Additional Sessions Judge (Fast Track Court), Rajahmundry, East Godavari District (for short, 'the Sessions Judge') in Criminal Appeal No.174 of 2004 on 18.07.2006.

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

3. Learned counsel for the petitioner-accused would submit that the scribe of the panchanama was not examined; the ID liquor alleged to have seized was not produced before the trial Court; both the Courts below have not properly appreciated the evidence of P.Ws.1 and 2 and erroneously held the petitioner-accused guilty of the offence under Section 7A r/w 8(e) of the A.P.Prohibition Act; there is no legally acceptable evidence to record conviction; and ultimately, prayed to set aside the conviction and sentence recorded against the petitioner-accused.

4. On the other hand, learned Assistant Public Prosecutor would submit that there is ample evidence connecting the petitioner-accused to the alleged offence under Section 7A r/w 8(e) of the A.P.Prohibition Act; both the Courts below have rightly recorded conviction and sentence against the petitioner-accused basing on the entire material on record; and ultimately, prayed to dismiss the criminal revision case.

5. 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.

6. To substantiate the case of the prosecution, P.Ws.1 and 2 were examined and Ex.P.1-mediators report, Ex.P.2-F.I.R., Ex.P.3-Chemical Examiner report of ID arrack, Ex.P.4-Chemical Examiner report of F.J.Wash and Ex.P.5-Memo filed by the concerned Station House Officer were marked. No witnesses were examined and no documents were marked on behalf of the petitioner-accused.

7. Learned Magistrate, who has conducted trial in this case, after appreciating the entire evidence on record, was pleased to convict the petitioner-accused for the offence punishable under Section 7A r/w 8(e) of the A.P.Prohibition Act and sentenced to suffer rigorous imprisonment for a period of one year and to pay fine of Rs.10,000/-, in default, to undergo simple imprisonment for three months. The Court of

Session in Criminal Appeal No.174 of 2004, *vide* judgment dated 18.07.2006, was pleased to confirm the same.

8. In view of the contentions raised on behalf of both sides, the point for determination is, whether the evidence placed on record is sufficient to convict and sentence the accused for the offence punishable under Section 7A r/w 8(e) of the A.P.Prohibition Act and whether the conviction and sentence recorded against the petitioner-accused are liable to be set aside?

9. P.W.1-Jakkala John is the Village Servant, who deposed about the conduct of panchanama on 10.01.1999 and seizure of five litres of ID liquor from the possession of the petitioner-accused under Ex.P.1-mediators report. As per the evidence of P.W.1, two samples were taken from the ID liquor seized. Exs.P.3 and P.4 are the Chemical Examiner reports, wherein the Expert opined that the liquor seized contains ID arrack and Fermented wash fit for distillation. There is also evidence of P.W.1 that the petitioner-accused was indulged in manufacturing ID liquor with the help of jaggery, etc. P.W.1 in clear terms deposed about the seizure of five litres of ID liquor from the possession of the petitioner-accused. There is no need to examine the scribe of Ex.P.1-mediators panchanama. P.W.2-K.Sitaramaswamy is the investigating officer, who corroborated the evidence of P.W.1 and also other circumstances of the case. The evidence of P.Ws.1 and 2 is convincing and there are no material omissions and contradictions. The petitioner-accused has no licence to manufacture ID liquor. Both the Courts below have appreciated the entire evidence on record and acted on legal evidence. There is no infirmity in the findings of both the Courts below. There is no miscarriage of justice. The requirements of Section 7A r/w 8(e) of the A.P.Prohibition Act have been proved. There is no substance in the contentions raised on

behalf of the petitioner-accused. All the contentions raised on behalf of the petitioner-accused do fail. The petitioner-accused was 20 years old on the date of offence. More time has been elapsed from the date of commission of offence till today. Under these circumstances, the sentence of imprisonment imposed against the petitioner-accused for the offence under Section 7A r/w 8(e) of the A.P. Prohibition Act is reduced to six months from one year. The sentence of payment of fine remained unchanged.

10. With the above modification, the Criminal Revision Case is dismissed. The trial Court shall take appropriate steps against the petitioner-accused to implement the impugned judgment. Miscellaneous petitions, if any, pending in this Criminal Revision Case, shall stand closed.

Date: 17-04-2018

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Dr. SHAMEEM AKTHER, J

