

THE HON'BLE SRI JUSTICE P. KESHA RAO
CRIMINAL REVISION CASE NO. 296 OF 2015

ORDER:

Heard the learned counsel for the petitioner and the learned Public Prosecutor appearing for the respondent State.

2. The present Criminal Revision Case is filed questioning the judgment in CrI.A.No.191 of 2013 dated 13.11.2014 on the file of the Court of the Special Judge for trial of cases under SCs and STs (POA) Act-cum-VI Additional Sessions Judge, Kurnool, confirming the judgment in C.C.No.403 of 2013 dated 17.12.2013, convicting the petitioner for the offence under Section 37 of the AP Excise Act.

3. The facts in brief are that the petitioner has been charged for the offence under Section 37 of the AP Excise Act. The case of the prosecution is that on 30.3.2013 at about 5.15 p.m., the Inspector of Police, Prohibition and Excise, Kurnool, along with his staff went to Kalva village from Hussainapuram along with the mediators. After reaching Kalva village, they observed that the accused who was a licensee to run toddy shop was in the premises. On inspection, they found 14 litres of toddy in one 15 litres capacity parrot green plastic pot and one plastic mug. On testing the said toddy, it was found to be adulterated with Chloral Hydrate as it turned into pink colour. The Inspector

drew three samples and sent the same for analysis. The report of the analysis was received by the prosecution vide Ex.P5 showing that the toddy seized was adulterated with Chloral Hydrate and free from diazepam. In connection with the same, crime was registered vide FIR.No.1428 of 2012-2013 under Section 34 (a) of the A.P. Excise Act. After completion of the investigation, a charge sheet was laid. At the time of filing of the charge sheet, the offence was altered from Section 34 (a) to 37 of the AP Excise Act.

4. To bring home the guilt of the accused, prosecution in all examined PWs 1 to 6 and got marked Exs. P1 to P5 apart from MOs 1 to 3. PWs 1 and 2 are the panch witnesses and PW3 is the Inspector who registered the crime and PW4 is Inspector of Police Enforcement, Prohibition and Excise, Kurnool, who conducted the raid and seized the adulterated toddy and PW5 is the Constable who accompanied PW4. PW6 is another Sub-Inspector of Police.

5. Though PWs 1 and 2 are the panch witnesses, they were declared hostile since both of them categorically deposed that when they went to Orvakal village on their personal work, the Excise Police called them and obtained their signatures on some white paper. They do not know the contents of the said paper. However, they admitted their signatures in Ex.P1

panchanama. PW3, the Inspector of Police who registered the crime, deposed that on 31.3.2013 at 9.30 a.m., the Enforcement staff handed over the panchanama and the accused along with other case records to him, basing on which, he registered a crime for the offence under Section 34 (a) of the AP Excise Act against the petitioner. However, in the cross-examination, he has admitted that there is a correction with regard to the date and hour of the occurrence on Ex.P3. He further admitted that it was true that in the column of the date and hour when reported, it was mentioned as 30.3.2013 at about 9.30 p.m. He also admitted that a further perusal of the panchanama shows that the petitioner along with the case records were handed over the station sentry on 30.3.2013 at 9.30 p.m. However, PW4, the Inspector of Police who conducted a raid, deposed that on 30.3.2013 at about 5.15 p.m., on receipt of credible information, he along with another Inspector, Staff and mediators PWs.1 and 2 proceeded to Kalva village and visited TFT Counter No.1 toddy shop. At the time of inspection, the petitioner was found transacting the business and on examination of the toddy available in a plastic pot and one plastic mug, it proved to be adulterated since the toddy colour changed to pink colour. PW5 is a Constable,

Enforcement, Prohibition and Excise, Kurnool, who accompanied PW4 at the time of raid.

6. On appreciating the said evidence, learned Magistrate convicted the petitioner and sentenced him to suffer rigorous imprisonment for one year and to pay a fine of Rs.10,000/-, in default to suffer simple imprisonment for a period of three months by judgment dated 17.12.2013. Aggrieved by the same, the petitioner filed Crl.A.No.191 of 2013 on the file of the Court of the Special Judge for trial of cases under SCs and STs(POA) Act-cum-VI Additional Sessions Judge, Kurnool.

7. Learned Sessions Judge, after hearing, dismissed the appeal by judgment dated 13.11.2014 whereby, confirmed the sentence of imprisonment awarded against the petitioner, against which, the present Criminal Revision Case is filed.

8. Learned counsel for the petitioner contended that PWs 1 and 2 who are the independent witnesses, who were examined to prove the raid and seizure of the adulterated toddy, did not support the case of the prosecution. They were declared hostile and both of them have stated that when they went to Orvakal village on their personal work, their signatures were obtained by the prosecution on some white papers and they do not know the contents of the said paper. There is a material inconsistency and interpolation with regard to the date and

time of inspection in the evidence of PWs 3 and 4. Therefore, the conviction as confirmed by the lower appellate Court, is not sustainable in law since the prosecution failed to prove the guilt of the accused beyond reasonable doubt.

9. Per contra, learned Public Prosecutor appearing for the respondent State supported the impugned order.

10. Having heard both the counsel and from the perusal of the material on record, it is revealed that though PWs 1 and 2 who were examined as independent witnesses being party to the raid and seizure of the toddy, they never supported the case of the prosecution. Both of them specifically stated that their signatures were obtained by the Inspector of Police on white paper and they do not know the contents of the same except identifying their signatures on Ex.P1. However, in the cross-examination of PW3 who registered the crime, he admitted that there is a correction with regard to the date and hour of occurrence on Ex.P3 i.e., FIR in Cr.No.1428 of 2012-2013. He also admitted that in the column of date and hour when reported, it was mentioned as 30.3.2013 at 9.30 p.m. He further admitted that the second page of panchanama shows that the accused along with the case records were handed over to the station sentry on 30.3.2013 at 9.30 p.m. However, PW4 Inspector, who conducted the raid, deposed that on 30.3.2013

at about 5.15 p.m. on credible information, they conducted a raid in the premises of the licensee and found the adulterated toddy. However, in the evidence of PW4, nothing has been mentioned with regard to handing over of the case record to PW3. But according to PW3, the enforcement staff handed over the panchanama and accused along with other case records to him on 31.3.2013 at 9.30 a.m.

11. The discrepancy and interpolations made with reference to the date and hour of reporting the matter and the inspection, in the absence of any corroborative evidence in the form of independent witnesses, goes to the very root of the matter. Though PWs 1 and 2 were examined as independent witnesses, they did not support the case of the prosecution. If the evidence of PWs 1 and 2 is discarded, there is no other independent witness. In fact, in the cross-examination of PWs 4 and 5, it was suggested that there were several houses in and around the premises in question where the raid was conducted. However, no other person from the local area is examined. On the other hand, PWs 1 and 2 who were projected as independent witnesses, came to Orvakal village from a different place. This anomaly is also not explained by the prosecution. Mere identification of their signatures on Ex.P1 by PWs 1 and 2, does not prove the case of the

prosecution in the light of the discrepancy brought on record in the form of cross-examination of PW3 with reference to the correction relating to the date and hour of occurrence on Ex.P3. Conviction cannot be based on the sole testimony of the official witnesses.

12. Therefore, this Court is of the opinion that the prosecution has failed to prove the guilt of the petitioner beyond reasonable doubt and the petitioner is entitled for the benefit of doubt.

13. Accordingly, Criminal Revision Case is allowed and the judgment in CrI.A.No.191 of 2013 dated 13.11.2014 confirming the judgment in C.C.No.403 of 2013 dated 17.12.2013 convicting the petitioner for the offence under Section 37 of the AP Excise Act, is set aside.

Pending miscellaneous petitions, if any, shall stand closed.

P. KESHA RAO,J

Date: 20.9.2018

KPM