

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CRR No. 62 of 2008**

- Sumrit Bai, W/o Paras Ram, Sonkar, aged about 58 years, R/o Banspar Para, Ward No.36, Tahsil & District Rajnandgaon, C.G.

**---- Applicant**

**Versus**

- State Of Chhattisgarh, Through the District Magistrate, Rajnandgaon, C.G.

**---- Respondent**

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| For Applicant        | : | Shri N.S. Dhurandhar and Shri Pramod Ramteke, Adv. |
| For Respondent/State | : | Shri Wasim Miyan, PL                               |

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**Hon'ble Smt. Justice Rajani Dubey**

**Order On Board**

**22.07.2019**

1. The present revision arises out of the judgment of conviction and order of sentence dated 04.01.2008 passed by the Learned Session Judge, Rajnandgaon, in Cr. Appeal No. 74/2007, whereby the learned appellate Court below has affirmed the conviction and sentence of the accused/applicant awarded by the learned Chief Judicial Magistrate, Rajnandgaon, vide its judgment dated 29.11.2007 in Cr. Case No. 1638/2004 for the offence under Section 34(1)(a) of the Chhattisgarh Excise Act, and sentenced her to undergo RI for one year and to pay fine of Rs.25,000/-, with default stipulation.

2. Brief facts of the case are that on 06.10.2004, the Excise Sub Inspector received an information from the informant that present applicant is in possession of illicit liquor. Thereafter, the Excise Sub

Inspector raided the house of the applicant and on being searched he found 222 quarters of (Pawwa) of country made liquor, which was kept beneath the floor and the same was seized from the possession of the applicant. After filing of charge-sheet, charges were framed against the accused/applicant under Section 34(1) (a) of the Chhattisgarh Excise Act.

3. So as to prove the guilt of the accused/applicant, the prosecution has examined 04 witnesses. Statement of the accused/applicant was also recorded under Section 313 of the Cr.P.C. in which she denied the charges leveled against her and pleaded innocence and false implication in the case.

4. After hearing the parties, vide impugned judgment of conviction and order of sentence dated 29.01.2017, learned Chief Judicial Magistrate has convicted the applicant under Section 34(1)(a) of the Chhattisgarh Excise Act and sentenced her to undergo RI for one year and to pay fine of Rs.25,000/- plus default stipulation. This order was appealed by the applicant and in the appeal, learned appellate Court has affirmed the conviction and sentence of the applicant. Hence, the present revision.

5. Heard counsel for the parties and perused the material on record including the impugned judgment.

6. Counsel for the applicant submits that the judgment of conviction and sentence are against the evidence available on record and law. The learned both the Courts below failed to consider the fact that the country made liquor, which was seized from the possession of the possession of the applicant was not sent to any laboratory for its

examination, from which it appears that the petitioner has been implicated in the present case. The learned Courts below failed to appreciate the fact that the prosecution has produced the evidence against the applicant only on the report submitted by the Excise Sub Inspector and thus Excise Sub Inspector has submitted this report only on the basis of smelling and testing of liquid and only on the basis of testing, the prosecution has failed to prove its case beyond reasonable doubt. Lastly, it is submitted that applicant is a poor lady, therefore, he is not pressing this revision as far as it relates to the conviction part of the judgment and would confine his argument to the sentence part thereof only. According to him, the incident is said to have taken place in the year 2004 and thereby more than 15 years have rolled by since then, she is aged about 67 years, the applicant has already remained in jail for about more than three months and no useful purpose would be served in again sending her to jail. Therefore, it would be in the interest of justice if the sentence imposed on her may be reduced to the period already undergone by her.

7. Learned State counsel has no objection to this preposition.

8. Having gone through the material on record and the evidence of the witnesses including K.R. Taran (PW-1), Smt. Dhanseer Rathore(PW-2), Shiv Kumar(PW-3) and Manoj Kumar (PW-4), establishes the involvement of the accused/applicant in the crime in question, this Court does not see any illegality in the findings recorded by both the Courts below as regards conviction of the applicant under Section 34(1)(a) of the Chhattisgarh Excise Act, being so they are hereby maintained.

9. As regards sentence, keeping in view the fact that the incident had taken place in the year 2004 and the applicant has already remained in jail for about more than three months and further considering the fact that the applicant has already faced a prolonged trial and suffered trauma of uncertainty arising out of her conviction by the Sessions Court, the revision is partly allowed and his sentence is liable to be reduced to the period already undergone by him. Conviction part of the impugned judgment is maintained.

10. The applicant is on bail. Her bail bond shall stand discharged.

11. Revision thus partly succeeds.

Sd/-  
**(Rajani Dubey)**  
JUDGE