

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 11.12.2018

Judgment delivered on 25.02.2019

CRR No. 321 of 2006

Dushyant Kumar son of Shamnbha Ram Bangde, aged about 35 years, resident of village Tatenga, PS Devri, District Durg, CG
--- Applicant

Versus

State of Chhattisgarh through District Magistrate, Durg
--- Respondent

For Applicant	-	Smt. Indira Tripathi, Advocate.
For Respondent	-	Shri Gary Mukhopadhyaya, GA

Hon'ble Smt. Vimla Singh Kapoor, J.

CAV Order

By this revision petition the applicant has assailed the judgment dated 10.05.2006 passed by Additional Sessions Judge (FTC) Durg in Criminal Appeal No. 372/2005 affirming the judgment dated 07.10.2005/28.10.2005 passed by Judicial Magistrate First Class, Balod in Criminal Case No. 905/2005 convicting the accused/applicant under Section 34 (1) (a) (2) of the Excise Act and sentencing him to undergo rigorous imprisonment for one year and pay fine of Rs. 25,000/-, in default of payment of fine to undergo further simple imprisonment for 06 months.

2. Facts of the case in short are that on 17.06.2005 acting upon a secrete information regarding possession of illicit liquor by the accused/applicant, the Excise Sub Inspector searched the house of the accused/applicant and seized 150 quarters of plain liquor and 50 quarters of *masaala* liquor total being 36 bulk liters, under Ex. P-1. After giving his own search, the Excise Sub Inspector searched the house of

the accused/applicant vide *Panchnama* Ex. P-5. Accused/applicant was taken into custody and after completing the procedural formalities, he was produced before the Court.

3. After examining the material available on record and the evidence of the witnesses, the trial Court convicted the accused/applicant under Section 34 (1) (a) (2) of the Excise Act and imposed the sentence as shown above. The findings recorded by the trial Court have subsequently been confirmed by the lower Appellate Court by the judgment impugned and it is that which is under challenge in this revision.

4. Counsel for the accused/applicant submits that both the Courts below have fallen into a serious error in convicting the accused/applicant under Section 34 (1) (a) (2) of the Excise Act and that the findings so recorded are contrary to the evidence led by the prosecution. He further submits that as the prosecution could not prove its case beyond reasonable doubt, the judgment impugned is liable to be set aside.

5. On the other hand, counsel for the respondent/State supports the judgment impugned and submits that the findings recorded by the both the Courts below convicting the accused/applicant as shown above, are strictly in accordance with law and there is no infirmity in the same.

6. Heard counsel for the parties and perused the evidence on record.

7. Ishwarlal (PW-2) examined in respect of seizure of liquor has not supported the case of the prosecution and has been declared hostile. He has categorically stated that no liquor was seized from the house of the accused/applicant. Police constable Dayalu Ram Sahu (PW-2) has stated that the house in question was informed by the accused/applicant to be of his own and not of his father, though he was also living in the said house. He has also admitted that his father, wife and children also used

to live in the said house. Contradicting the version of PW-2, it has been stated by the investigating officer (PW-3) that the house in question was informed by the applicant to be of his father where he also used to live along with his family members. Thus, the prosecution has not been able to prove that the liquor was seized from the exclusive and conscious possession of the accused/applicant as it is apparent from the evidence of PW-2 and PW-3 that the house in question was not in his exclusive possession. Though there is some difference in the evidence of PW-2 and PW-3 as to the ownership of the house where the liquor was found, yet it has been established that the accused/applicant was not the sole inmate thereof.

8. Judgment under challenge is thus not based on the evidence on record and being so it is liable to be set aside by allowing the revision. Revision petition is thus allowed, the judgment impugned is set aside and the accused/applicant is acquitted of the charge levelled against him.

Sd/-

(Vimla Singh Kapoor)

Judge