NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 473 of 2004

Lal Kumar @ Surdas S/o Ratan, aged about 25 years Caste-Dhoba, R/o Village – Baghadola, P.S. Pussour, Tahsil and District Raigarh, CG. **---- Applicant**

Versus

State of Chhattisgarh through District Magistrate, Raigarh, CG.
---- Respondent

For Applicant : Shri K. N. Nande, Advocate

For State/Respondent : Shri Aman Kesharwani, PL

Hon'ble Smt. Justice Vimla Singh Kapoor

Order On Board

25/04/2019

Case of the prosecution, in brief, is that on 22.07.2003 when head constable (PW-3) along with his staff member, while retuning from VIP duty he received a secrete information that the accused/applicant was transporting *mahua* liquor illegally. Acting upon the said information, PW-3 nabbed the accused/applicant near a culvert and seized five liters of *mahua* liquor contained in a jerrycan under Ex. P-1. Thereafter the liquor was sent to Excise sub-inspector (PW-2) for being examined, and on examination the same was found to be the *mahua* liquor vide report Ex. P-2. On the report lodged by PW-3, an offence under Section 34 (1) (a) of the Excise Act was registered against the accused/applicant under Ex. P-4 and after completion of investigation *challan* was filed accordingly.

2. Learned Magistrate on the basis of material on record found the accused/applicant guilty under Section 34 (1) (a) Excise Act and sentenced him to undergo RI for 2 months and pay fine of Rs. 5000/-, plus default stipulation vide judgment dated 31.03.2004 passed in criminal case No. 316/2003. Learned lower appellate Court also confirmed the said order as a

whole vide judgment impugned dated 17.09.2004 passed in criminal appeal No. 67/2004.

3. Counsel for the accused/applicant submits that while convicting the accused/applicant under Section 34 (1) (a) Excise Act the Courts below have not appreciated the evidence of the witnesses properly. He submits that out of the two independent seizure witnesses, one has not supported the case of the prosecution where as the other one has not been examined. He further submits that merely on the basis of statement of PW-3 who being the police head constable, the accused/applicant cannot be convicted. State counsel however supports the judgment impugned.

4. Of course, the independent seizure witness (PW-1) has not supported the case of the prosecution but the statement of PW-3 who apprehended the accused/applicant on the tip off and made the seizure of five liters of mahua liquor from his possession under Ex. P-1, the involvement of the accused/applicant in illegal transportation of *mahua* liquor is fully established. The accused/applicant did not lead any evidence or produce any license etc. authorizing him to transport or sell liquor in question. Furthermore, PW-2 who subjected the liquor to experience based examination including dipping the *litmus* paper there into, has opined it to be the *mahua* liquor vide Ex. P-2. Since the evidence of PW-2 and PW-3 appears to be fully trustworthy, the evidence of PW-3 resiling from his version and thereby not supporting the case of the prosecution does not have any significance. Both the Courts below have rightly appreciated the evidence of the witnesses while arriving at the conclusion holding the accused/applicant guilty under the Excise Act. Conviction of the accused/applicant is thus maintained.

5. As far as sentence part of the judgment impugned is concerned, looking to the fact that the incident had taken place in the year 2003 and also keeping in mind the fact that the accused/applicant has remained in jail for 10 days, this Court is of the opinion that no useful purpose would be served in

again sending him to jail. Accordingly, the sentence imposed on him is reduced to the period already undergone.

6. Revision allowed in part.

Sd/-

(Vimla Singh Kapoor)

Judge

Jyotishi/Pawan