NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 17 of 2009

Order reserved on 05.12.2018

Order delivered on 07 .01.2019

Brijmohan S/o. Jagdish Sahu, Aged about 23 years, Occupation Labourer, R/o. Near Bamleshwari Temple, Ramsagarpara, Raipur District Raipur (C.G.)

---- **Applicant**

Versus

State Of Chhattisgarh, Acting through Police Station Azad Chowk, Rapur District Raipur (C.G.)

---- Respondent

For Applicant : Mr. Syed Imtiaz Ali, Advocate

For Respondent : Mr. Gary Mukhopadhyay, GA

Hon'ble Smt. Justice Vimla Singh Kapoor

CAV Judgment

This revision is directed against the judgment dated 19.12.2008 passed by the Additional Sessions Judge (FTC) Raipur in Criminal Appeal No. 117 of 2008, affirming the judgment of conviction and order of sentence dated 23.07.2008 passed by the Judicial Magistrate, First Class Raipur in Criminal Case No. 728/2006, convicting the accused/applicant under section 34(2) of the Excise Act and sentencing him to undergo rigorous imprisonment for 1 year and pay fine of Rs. 25,000/- with default stipulations.

2. Facts of the case, in short, are that on 20.03.2005, acting upon a secrete information regarding the accused/applicant selling illicit liquor from his house, Radheyshyam Mishra, Head Constable of Police Station Azad Chok along with his associates nabbed the applicant and on being searched, 144 quarter (25 bulk liter) country made liquor seized from the house of the applicant. After effecting seizure and making arrest of the accused person and thus on completion of investigation charge sheet was laid under Section 34(2) of the Excise Act.

3. After examining the material available on record and the evidence of the witnesses the trial Court convicted the accused/applicant under Section 34(2) of the Excise Act. 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(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. Ajay Tiwari (PW-1) witness to seizure though has denied the seizure of liquor yet he has admitted his signature on the seizure memo (Ex.P-1). He has however clearly stated that bottles of liquor contained in bags were found in the house of the accused/applicant and the police had told him regarding its seizure. Radheyshyam Mishra (PW-3) – Head constable, has stated that on receiving a secrete information, house of the accused/applicant was raided by him along with his team-mates and 144 quarters of country made masala liquor contained in three plastic bags and an amount of Rs. 3,600/- the sale proceeds of liquor, was seized under Ex. P-1 in presence of the witnesses. J.K. Arora (PW-4) - the Excise Sub Inspector has stated that he had vast experience of examining the intoxicants and on the basis of that experience he has opined under Ex. P. 6 that the article produced before him was plain and masala liquor. He has further stated that the substance was in the taste of spirit and its colour did not change even after the litmus paper was dipped into.

8. This Court has perused the material available on record with every possible care and caution, and on doing so, it is crystal clear that on the date of incident the accused/applicant was found in possession of 144 quarters of country made masala liquor contained in three plastic bags and an amount of Rs. 3,600/-. The record does not indicate that the accused/applicant was having any licence etc. to show that he was, in any manner, authorized to possess such an article with him. Apart from the witnesses of police and excise department, independent witness (PW-1) has also lent support to the case of the prosecution stating that the liquor was found in the house of the accused/applicant and the police had informed them regarding its seizure having been made. Prosecution has thus succeeded in proving its case beyond all reasonable doubt and being so the findings recorded by both the Courts below convicting the accused/applicant under Section 34 (2) of the Excise Act being based on proper appreciation of the evidence on record, do not call for any interference by this Court. Even the sentence awarded by the Courts below appears to be just and proper looking to the quantity of the intoxicant seized from the possession of the accused/applicant which comes to 25 bulk liters.

9. In the result, the revision being without any substance is liable to be dismissed and it is dismissed as such with the judgment impugned being affirmed hereby. From the record, it is evident the accused/applicant has not completed the minimum jail sentence of one year prescribed for the offence and it falls shorter by some days, therefore, let him be sent to jail for completing the same.

10. Revision dismissed.

Sd/-
(Vimla Singh Kapoor)
JUDGE

Santosh