

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 711 of 2008

Order reserved on 03.04.2019

Order pronounced on 28.11.2019

Channu Ram Sinha, S/o Ghasiya Kalar, aged about 45 years, R/o Village Pond, PS Rajim, District Raipur (CG)

---- Applicant

Versus

State Of Chhattisgarh, through Police Station, Excise Circle, Gariyaband, District Raipur(CG)

--- Respondent

For Applicant : Ms. Saumya Sharma, Advocate

For State/Respondent : Mr. Aman Kesharwani, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

C.A.V. Order

Case put-forth by the prosecution in brief is that on 05.06.2008 Excise Sub Inspector (PW-4) received a secret information regarding the fact that the accused/applicant was keeping illicit liquor in his house, and in furtherance of the same he raided the spot and found 32 liters of illicit liquor contained in three jerrycans, 10 liters in each. This apart, another jerrycan containing two liters of *mahua* liquor was also found kept therein. Since there was an apprehension in the mind of Excise Sub Inspector of the said illicit liquor being disposed of by the accused/applicant elsewhere, he proceeded to the spot without even obtaining the search warrant. After examination of the substance seized under Ex.P-4 the same was found to be the *mahua* liquor vide Ex.P-7. Subsequently, the procedural formalities were undertaken followed by registration of FIR against the accused/applicant for the offence under Section 34(2) of the Excise Act.

2. Learned Magistrate vide judgment dated 08.09.2008 passed in Criminal Case No.353/2008 convicted the accused/applicant under Section 34(2) of the Excise Act and sentenced him to undergo RI for one year with fine of Rs.25,000/- plus default stipulation. Findings recorded by

learned Magistrate have received affirmation vide judgment impugned dated 03.10.2008 passed in Criminal Appeal No.127/2008. Hence this revision.

3. Counsel for the accused/applicant submits that though the prosecution has not proved its case beyond reasonable doubt, yet both the Courts below have recorded an erroneous finding convicting and sentencing the accused/applicant as described above. She submits that the independent witnesses have not supported the case of the prosecution and even the evidence of the witnesses hailing from the excise department suffers from innumerable contradictions and omissions, but this serious lapse on their part has been turned a blind eye by both the Courts below. She further submits that even the exclusive possession of the accused/applicant over the liquor seized by the prosecution has not been established as the independent witnesses have stated that in the house in question number of inmates were there at the relevant time.

4. State counsel however supports that judgment impugned and submits that concurrent findings recorded by both the Courts below are based on proper appreciation of the evidence on record and, therefore, they are not required to be interfered with in this revision.

5. Heard counsel for the parties and perused the material available on record.

6. Independent witness in the case being PW-1 has not supported the case of the prosecution including seizure of liquor as according to him at the relevant time in all 5 persons were residing in the house in question. Another independent witness PW-2 has also not supported the case of the prosecution and has been declared hostile. He in his cross-examination has reiterated that the house in question was being occupied by 5 persons including his wife and children. He has also denied the seizure of liquor having been effected from the house of the applicant. Further, if the

evidence of PW-3 and PW-4 - both the officials of the excise department is seen in its entirety, number of contradictions and omissions surface on the ground. According to PW-3, the liquor was seized from the veranda of the accused/applicant whereas PW-4 has stated that such seizure was effected from the bedroom of the accused/applicant. Thus there is serious discrepancy in the evidence of the witnesses and being so the benefit of doubt has to go to the accused/applicant. Since PW-1 and PW-2 have consistently stated that in the house in question as many as 5 persons were residing, it cannot be said that it is the accused/applicant alone who had stashed the liquor in his house, and the possibility of others keeping the same therein cannot be ruled out.

7. In aforesaid view of the matter, this Court is of the opinion that the prosecution has not proved its case beyond reasonable doubt and, therefore, the accused/applicant is entitled for benefit of doubt. Both the Courts below have not appreciated the evidence of the witnesses in its proper perspective and being so the judgment impugned cannot be allowed to stand. Revision is thus allowed and the judgment impugned is hereby set aside. As the accused/applicant is already on bail, his bail bonds stand discharged.

**Sd/-
(Vimla Singh Kapoor)**

Judge

jjyotishi/ajay