

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 485 of 2010**

- Gyanchand, S/o Shri Jairam, aged about 40 years, R/o village- Piraiya, Thana- Chakarbhata, District- Bilaspur (C.G.)

---- Applicant**Versus**

- State of Chhattisgarh, through District Magistrate, Bilaspur District- Bilaspur (C.G.)

---- Respondent

For Applicant	:	Smt. Indira Tripathi, Advocate
For Respondent/State	:	Shri Suryakant Mishra, PL

Hon'ble Smt. Justice Rajani Dubey**Order On Board****26.04.2019**

1. The present revision arises out of the impugned judgment of conviction and order of sentence dated 15/09/2010 passed by the 3rd Additional Sessions Judge, Bilaspur, in Cr. Appeal No. 44/2010 whereby, the learned appellate Court below has confirmed the conviction and sentence of the accused/applicant as awarded by the learned Judicial Magistrate First Class, Bilha, district Bilaspur, vide its judgment dated 30/04/2010 in Criminal Case No. 346/2009 for the offence under Sections 34 (1) (A) Excise Act and sentenced him to undergo R.I. for three months with fine of Rs. 5,000/- plus default stipulation.

2. Brief facts of the case are that on 13.09.2009, Sub-Inspector of Excise department, C.H. Yadu while on petrolling duty, has searched the appellant and his motorcycle and found 7 liters illegal liquor in his possession. After preparation of seizure memo and Panchnama, he registered the case against the appellant. After completion of investigation charge-sheet was filed and charges were framed against

the accused/applicant under Section 34 (1)(A) C.G. Excise Act.

3. So as to hold the accused/applicant guilty, the prosecution has examined as many as 02 witnesses. Statement of the accused/applicant was also recorded under Section 313 of the Cr.P.C. in which he denied the charge leveled against him and pleaded innocence and false implication in the case.

4. After hearing the parties, vide impugned judgment of conviction and order of sentence dated 30/04/2010, learned Judicial Magistrate, First Class, has convicted the applicant for the offence under Section 34 (1) (A) C.G. Excise Act and sentenced him to undergo R.I. for three months with fine of Rs. 5,000/-. This order was appealed by the applicant and in the appeal, learned Appellate Court has affirmed the conviction and sentence of the appellant. Hence, the present revision.

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

6. Counsel for the applicant submits that he is not pressing the revision so 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 2009, and thereby more than 9 years have rolled by since then. He is aged about 50 years. The applicant has already remained in jail for about 7 days, and no useful purpose would be served in again sending him to jail, therefore, in the interest of justice, it would be appropriate if the sentence imposed upon him may be reduced to the period already undergone by him.

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

8. Having gone through the material on record and the evidence of the witness C.H. Yadu (PW-1), involvement of the accused/applicant in the crime in question stands proved beyond reasonable doubt. This Court does not see any illegality in the findings recorded by both the Courts below as regards conviction of the appellants under Section

34 (1) (A) C.G. Excise Act.

9. As regards sentence, keeping in view the facts that incident had taken place in the year 2009, and further that the appellant had already remained in jail for about 7 days, therefore, his sentence is liable to be reduced to the period already undergone by him.

10. In view of the above consideration, the revision is partly allowed. While maintaining the conviction of the appellant, he is sentenced to the period already undergone by him.

Sd/-
(Rajani Dubey)
JUDGE