

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 485 of 2006**

1. Chandra Prakash Sharma, S/o Shri Gaind Lal Sharma, aged about 27 years, R/o Gram Shakti Nagar, Civil Lines, Raipur (C.G.)
2. Rajesh Sinha, S/o Shri Pancham Das Sinha, aged about 31 years, R/o Gram Shakti Nagar, Civil Lines, Raipur (C.G.)

---- Applicants**Versus**

- State of Chhattisgarh, Through: Excise Officer, Gariyabandh Circle, District Raipur (C.G.).

---- Respondent

For Applicants : Mr. Ajay Mishra from Legal Aid

For Respondent/State : Mr. B. L. Sahu, P.L.

Hon'ble Smt. Justice Rajani Dubey**Order On Board****06.09.2019**

1. The present revision arises out of the impugned judgment of conviction and order of sentence dated 19/07/2006 passed by First Additional Sessions Judge, Raipur, Link Court Gariyaband, District Raipur in Cr. Appeal No. 134/2006 whereby, the learned appellate Court below has affirmed the conviction and sentence of the accused/applicants as awarded by the learned Judicial Magistrate First Class, Gariyabandh, Distt.- Raipur vide its judgment dated 19/06/2006 in Criminal Case No.75/2001 for the offence punishable under Section 34 (1) (a) of Excise Act, 1915 and sentenced them to undergo R.I. for two months and fine of Rs. 5000/- each with default stipulation.

2. Brief facts of the case are that on 25.05.2000, on the basis of information, police personnel searched and seized total 96 cartoons in which number of bottles is 4608 and each bottle contains 80 ml of illicit liquor from the matador. The driver of the matador Chandra Prakash Sharma (applicant No. 1) was taken into custody but the cleaner Horilal

Thakur got absconded. During investigation, it was found that the illicit liquor belongs to Rajesh Sinha (applicant No. 2). On this report, an offence was registered against applicants. After completion of investigation, charge-sheet has been filed and charge was framed under Section 34 (1) (a) Excise Act, 1915 of IPC against the present applicants by the trial Court.

3. So as to hold the accused/applicants guilty, the prosecution has examined as many as 04 witnesses. Statement of the accused/applicants were also recorded under Section 313 of the Cr.P.C. in which they denied the charges leveled against them and pleaded innocence and false implication in the case.

4. After hearing the parties, vide judgment of conviction and order of sentence dated 19/06/2006, learned Judicial Magistrate has convicted the applicants for the offence punishable under Section 34 (a) of Excise Act, 1915 and sentenced them to undergo R.I. for two months and fine of Rs. 5000/- each with default stipulation. This order was appealed by the applicants and in the appeal, learned Appellate Court has affirmed the conviction and sentence of the applicants under Section 34 (a) of Excise Act, 1915. 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 applicants 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 2000, and thereby more than 20 years have rolled by since then. The applicants have already remained in jail for 67 days, and no useful purpose would be served in again sending them to jail, therefore, in the interest of justice, it would be appropriate if the sentence imposed upon them may be reduced to the period already undergone by them.

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 witnesses Rameshwar (PW-1), Darasram (PW-2), and R. R. Shrivastava (PW-4) established the involvement of the accused/applicants in the crime in question beyond reasonable doubt. This Court does not see any illegality in the findings recorded by both the Courts below as regards conviction of the applicants under Section 34 (a) of Excise Act, 1915.

9. As regards sentence, keeping in view the facts that incident had taken place in the year 2000, and further that the applicants had already remained in jail for 67 days, therefore, their sentence is liable to be reduced to the period already undergone by them.

10. In view of the above consideration, the revision is partly allowed. While maintaining the conviction of the applicants, they are sentenced to the period already undergone by them. The applicants are reported to be on bail. Their bail bonds shall stand discharged.

Sd/-
(Rajani Dubey)
JUDGE