NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 43 of 2008

Order reserved on 14.05.2019

Order delivered on 07.11.2019

Babulal Soni S/o. Shri Kapoor Chand Soni, Aged about 48 years, R/o. Meeranagar, P.S. Civil Line, Raipur District Raipur (C.G.)

---- **Applicant**

Versus

State Of Chhattisgarh, Through Police Station Civil Line, Raipur District Raipur (C.G.)

---- Respondent

For Applicant	:	Mr. A.K. Prashad, Advocate
For Respondent	:	Mr. Aman Kesharwani, PL

Hon'ble Smt. Justice Vimla Singh Kapoor

CAV Judgment

This revision is directed against the judgment dated 31.12.2007 passed by the Additional Sessions Judge (FTC) Raipur District Raipur in Criminal Appeal No. 51 of 2007, affirming the judgment of conviction and order of sentence dated 31.07.2007 passed by the Chief Judicial Magistrate, Raipur in Criminal Case No. 388/2007, convicting the accused/applicant under section 34(1) (a) 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 04.03.2007 Assistant Sub Inspector of Police Station Civil Lines was on patrolling duty, he received a secret information regarding the accused/applicant was selling illicit liquor from his house at Meeranagar. He along with his associates nabbed the applicant and on being searched 160 quarter i.e. 28 liters of country made liquor (Ex.P-1) was seized from him. After effecting seizure and making arrest of the accused thus on completion of investigation charge sheet was laid under Section 34(1)(a) 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(1)(a) 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-A of the Excise Act and that the findings so recorded are contrary to the evidence led by the prosecution. He submits that the seizure witness namely Mahendra Naik (PW-1) and Babulal (PW-2) have not supported the case of 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. State counsel however, supports the findings recorded by the both the Courts below.

6. Heard counsel for the parties and perused the evidence on record.

7. Y. N. Sharma (PW-4)- Assistant Sub Inspector has stated that he received a secrete information from the informer, thereafter he registered this information in Rojnamcha Sanha under Ex.P-7 and proceeded to the house of the applicant along with his team-mates. He issued notice to the applicant under Ex.P-3 regarding search and seizure of illicit liquor in the presence of the witnesses and seized 160 quarter i.e. 28 liters of country made liquor (Ex.P-1) from his house thereafter the applicant was arrested vide Ex.P-6 and FIR (Ex.P-9) was registered against him. B.S. Chandel (PW-3)- 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.-2 that the article produced before him was country made 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. 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 160 quarter i.e. 28 liters of country made liquor. 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. 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 (1)(a) of the Excise Act being based on proper appreciation of the evidence on record, do not call for any interference by this Court.

8. 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.

Sd/-

(Vimla Singh Kapoor)
JUDGE

Santosh