

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CRR No. 418 of 2009**

1. Kalap Ram Saura, S/o Biranchi Saura, aged about 38 years, R/o. Saurapara, District Raigarh, CG.
2. Resham Lal Pradhan, S/o Dibo Pradhan (Wrongly mentioned as Dibu Pradhan), aged about 42 years, R/o Sariya, Police Station Sariya, Tahsil – Sarangarh, District Raigarh, CG.

**---- Applicants**

**Versus**

State of Chhattisgarh through District Magistrate, Raigarh, District Raigarh, CG.

**---- Respondent**

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| For Applicants       | : Shri Vivek Tripathi, Advocate |
| For State/Respondent | : Shri Aman Kesharwani, PL      |

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**Hon'ble Smt. Justice Vimla Singh Kapoor**

**Order On Board**

**15/05/2019**

On 17.02.2006 Head Constable (PW-3) received a secret information that the accused/applicants were carrying Mahua liquor on their motorcycle from Orissa side and acting thereupon he along with his associates laid barricades in order to apprehend the offenders. In the process, the bike borne accused/applicants were stopped and 20 Liters of Mahua liquor worth Rs.600/- was found kept in a motor tube. Having completed the procedural formalities the seizure of the liquor and the motorcycle used in carrying the same was effected under Ex.P-1 and P-2 in the presence of the witnesses. After investigation, the *challan* was filed under Section 34 (1) (a) of the Excise Act followed by framing of charge thereunder.

2. Learned trial Court vide judgment dated 17.08.2009 held the accused/applicants guilty under the said Section with imposition of

sentence of 3 months S.I. and fine of Rs.7000/- each. Lower Appellate Court subsequently also approved the findings of the Magistrate in *toto* vide judgment under challenge passed on 25.08.2009 in Criminal Appeal No.20/2009. Hence this revision.

3. Counsel for the accused/applicants referring to certain so called procedural lacuna tries to assail the judgment impugned being not based on proper appraisal of the facts and evidence led by the prosecution. State counsel however holds the judgment impugned to be strictly provision based warranting no interference therewith.

4. Having heard the arguments so advanced and perused the material placed in particular the evidence of PW-1, PW-2 and PW-3, it becomes quite apparent that on the date of incident the accused/applicants were found in possession of illicit Mahua liquor which was seized under Ex.P-1 and so also the motorcycle used for such transportation was seized under Ex.P-2. The accused/applicants could not produce any licence authorizing them to carry the liquor in question and, therefore, the only inference which can be drawn is that they were indulged in illegal transportation thereof. PW-1 and PW-2 stood firm while stating that the seizure of liquor and the motorcycle used for its transportation was made from the accused/applicants and none else. PW-3 also corroborates the version of PW-1 and PW-2. All this makes this Court arrive at the conclusion of holding the accused/applicants guilty under Section 34(1)(a) of the Excise Act. Held so.

5. As far as sentence part of the judgment impugned is concerned, looking to the fact that the incident had taken place in

the year 2006 and also keeping in mind the fact that the accused/applicants have remained in jail for about 10 days, this Court is of the opinion that no useful purpose would be served in again sending them to jail. Accordingly, the sentence imposed on them is reduced to the period already undergone, with no alteration in the fine sentence.

6. Revision thus allowed in part.

Sd/-

**(Vimla Singh Kapoor)**

**Judge**

Jyotishi/ajay.