

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 505 of 2009

Order reserved on 25.01.2019

Order pronounced on 18.03.2019

Deepak Kumar Gupta, S/o Late Mahesh Prasad, aged about 26 years, Occupation: Shopkeeper, R/o Village Khamhar, Police Station: Dharamjaigarh, District: Raigarh, (C.G.)

---- Applicant

Versus

The State of Chhattisgarh, Through: District Magistrate Raigarh, Chhattisgarh.

---- Respondent

For Applicant : Shri Vivek Bhakta, Advocate

For State/ Respondent : Shri I. Lakra, Dy. Govt. Advocate

Hon'ble Smt. Justice Vimla Singh Kapoor

C.A.V Order

What is under assail in this revision petition is the judgment dated 22.10.2009 passed by Additional Sessions Judge (FTC) Raigarh in Criminal Appeal No. 14/2009. By the said judgment, the findings recorded by Judicial Magistrate First Class Dharamjaygarh in Criminal Case No. 103/2008 convicting the accused/applicant u/s 34 (1)(A) of the Excise Act have been maintained. However, the sentence under default clause has been reduced to RI for 1 month from that of 6 months.

2. Case of the prosecution, in nut-shell, is that on 08.10.2008 acting upon a secret information, Excise Sub-Inspector namely R.K. Agrawal (PW-1) effected search of the house of the accused/ applicant and seized 49 quarters of country made *masala* liquor, 11 quarters of country made plain liquor, 16 quarters of Golden Goa Whiskey and 11 quarters of Foreign Master Whiskey. This

was done in presence of the witnesses namely Injare Sai (PW-2) and Bhikari Saunra (PW-3). On chemical examination, the seized articles were confirmed to be the country made and foreign liquor. After completion of investigation, charge-sheet was filed against the accused/applicant u/s 34 (1) (A) of the Excise Act followed by framing of charge accordingly.

3. Learned Magistrate vide order dated 22.04.2009 held the accused/applicant guilty under the said section and imposed the sentence of rigorous imprisonment for 1 month and pay fine of Rs. 5000/-, in default of payment of fine to further undergo RI for 5 months. In appeal, except reduction of the sentence imposed under the default clause, rest of the findings have been maintained by the judgment under challenge in this revision petition.

4. Counsel for the accused/applicant submits that both the Courts below have committed an error in holding the accused /applicant guilty u/s 34 (1) (A) of the Excise Act ignoring the fact that the witnesses to seizure have not supported the case of the prosecution and have been declared hostile. He further submits that even the provisions of Sections 57 and 57 (A) of the Excise Act have been given a complete go-bye while appreciating the evidence collected by the prosecution. According to the counsel for the applicant, the courts below have also not considered the existing legal position that the complainant being the Inspector of the Excise Department could not have proceeded with the investigation of the case.

5. On the other hand, counsel for the respondent/state submits that the impugned judgment being based on correct

analysis of the facts and evidence collected by the prosecution does not require any interference in this revision petition.

6. Having analysed the evidence adduced by the prosecution it is clear as a broad day light that on 08.10.2008 the Excise Sub-Inspector (PW-1) searched the house said to be of the accused/applicant and effected seizure of liquor of various descriptions and at his instance the case was set in motion by registration of the offence and ensuring arrest of the applicant. No independent witness has been examined by the prosecution to establish its case leading to the conviction of the applicant under the Excise Act. What is more surprising here is that even the seizure witnesses have not supported the case of the prosecution. Though PW-2 has made an utterance that while he was getting into the house of accused/applicant for having lunch, PW-1 asked him to sign certain papers, which he did accordingly. Mere this statement of PW-2 cannot be construed to mean that the house from where the seizure of liquor was effected belonged to the accused/applicant. Thus the fact that the house in question was in the exclusive possession of the accused/applicant or that the liquor was seized from his exclusive and conscious possession remains unproved as the prosecution has not filed any document to show that the house in question was in the name of the accused/applicant. The prosecution has also not bothered to show that no person other than the accused/applicant was residing in the said house.

7. Yet another legal requirement to be undertaken by the Excise Sub-Inspector (PW-1) for making a full report of all the particulars of arrest of the applicant as also the search and seizure made in his house to his immediate superior officer, has

also not been followed in this case. Likewise, the articles so seized were also not taken charge of by the officer of the police station within 24 hours of making such seizure, to be kept in the safe custody. Thus the procedure prescribed under sections 57 and 57 (A) of the Excise Act has also not been followed which vitiates the testimony of the excise sub-inspector. Further, the provision of section 54 of the Act, have also not been adhered to as the Excise Sub-Inspector (PW-1) has stated that for want of time he could not obtain the search warrant but he did not mention anything as to what was the reason which did not permit him to do so. Mere mention of “lack of time” is not enough, and in such cases he had to point out as to whether there was any possibility of running away of the accused/applicant or of concealing the evidence appearing against him. However, nothing like this has been uttered by the Excise Sub-Inspector (PW-1).

8. All the aforesaid thus makes it manifest that both the Courts below have committed a legal error in convicting and sentencing the accused/applicant under Section 34 (1)(A) Excise Act and being so the judgment impugned is liable to be set aside. It is done so. Accused/applicant is acquitted of the charge leveled against him by allowing this revision. Order accordingly.

Sd/-

(Vimla Singh Kapoor)

Judge