

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 255 of 2008

Sumiran S/o Daya Das, aged about 40 years, resident of Village Chattera, P.S Arang, District Raipur, CG..

---- **Applicant**

Versus

State of Chhattisgarh through Police Station Arang, District Raipur, CG.

---- **Respondent**

For Applicant : Shri Aditya Khare, Advocate

For State/Respondent : Shri Raghvendra Verma, GA

Hon'ble Smt. Justice Vimla Singh Kapoor

Order On Board

04/04/2019

Case of the prosecution, in brief, is that on 23.01.2002 acting upon a secrete information that the accused/applicant was found selling liquor illegally, Sub-inspector V.S. Thakur along with his staff members namely Lakhan Lal (PW-1) and Hemu (PW-2) raided his house and found 47 quarter of *masala* liquor and 4 quarters of plain liquor kept there in a gunny bag. The same was seized under seizure memo Ex. P-1. After being seized, the liquor was sent to Excise Sub-inspector (PW-4) for being examined, and on examination the same was found to be the country made *masala* liquor vide Ex. P-5. Thereafter, the offence under Section 34 (1) (a) of the Excise Act was registered against the accused/applicant vide report Ex. P-3. After investigation *challan* was filed under the same section.

2. Learned Magistrate on the basis of material on record found the accused/applicant guilty under Section 34 (1) (a) Excise Act and sentenced him to undergo RI for 3 months and pay fine of Rs. 5000/- plus default stipulation vide judgment dated 29.02.2008 passed in criminal case No. 952/2006. Learned lower appellate Court also confirmed the said order as a whole vide judgment impugned dated 05.04.2008 passed in criminal appeal No. 51/2009.

3. Counsel for the accused/applicant submits that while convicting the accused/applicant under Section 34 (1) (a) Excise Act both the Courts below have not appreciated the evidence of the witnesses properly. He submits that in the absence of the opinion of the expert as to whether the seized article was liquor, the finding of conviction has been recorded which is not proper. He further submits that though the seizure witnesses have not supported the case of the prosecution yet the accused/applicant has been convicted by the Courts below and being so the judgment impugned is liable to be set aside. State counsel however supports the judgment impugned.

4. From perusal of evidence of the witnesses in particular PW-1, PW-2 and PW-3 it is apparent that the accused/applicant was found in possession of 47 quarters of masala liquor and 4 quarters of plain liquor kept there in a gunny bag. Evidence of Yogeshwer Shukla (PW-4) who did the experience based examination of the article sent to him clearly goes to so that it was nothing else but liquor. The seizure witnesses have also supported the case of the prosecution. The accused/applicant did not even produce any license authorizing him to keep this much of liquor in his house. In this view of the matter, no illegality or infirmity is noticeable in the conviction part of the judgment impugned. His conviction is therefore maintained.

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 2002 and also keeping in mind the fact that the accused/applicant has remained in jail for 17 days, this Court is of the opinion that no useful purpose would be served in again sending him to jail. Accordingly, the sentence imposed on him is reduced to the period already undergone.

6. Revision allowed in part.

Sd/-

(Vimla Singh Kapoor)

Judge