

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 516 of 2009

Order reserved on 18.03.2019

Order pronounced on 27.11.2019

Shyama Bai, aged about 35 years, wife of Panchuram Pardhi, R/o Village Boirdeeh, Police Station Lalbag, District Rajnandgoan (CG)

---- Applicant

Versus

State Of Chhattisgarh, through The District Magistrate,
Rajnandogaon (CG)

---- Respondent

For Applicant : Mr. Shashi Bhushan and Mr. Prasant
Tiwari, Advocates

For State/Respondent : Shri Aman Kesharwani, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

C.A.V. Order

1. Case of the prosecution is that on 16.02.2009, PW-3 – an IPS officer along with his staff proceeded to the spot on the basis of a secrete information and found 330 quarters of country made liquor kept in the house of the accused/applicant. Seizure of the same in presence of two independent witnesses being PW-1 and PW-2 was effected under Ex. P-1. However, the accused/applicant could not produce any document in respect of the said liquor. After receiving the examination report Ex.P-8, *Dehalti Nalisi* (Ex. P-3) followed by FIR (Ex.P-6) was recorded against the accused/applicant under Section 34 (A) of the Excise Act. Investigation resulted in filing of charge-sheet and framing of charge by the learned Magistrate for the offence under Sections 34 (1) (A) and 34 (2) of the Chhattisgarh Excise Act.
2. Learned Magistrate vide judgment dated 10.09.2009 passed in Criminal Case No. 246/2009 convicted the accused/applicant under Sections 34 (1) (A) and 34 (2) of the CG Excise Act and sentenced her to undergo Imprisonment for three months with fine of Rs. 5,000/- u/s 34 (1)

(A) and imprisonment for one year with fine of Rs. 25,000/- u/s 34 (2) of the Excise Act, plus default clauses. Learned Lower Appellate Court though maintained the conviction under both the sections yet waived the sentence under Section 34 (1) by keeping the sentence u/s 34 (2) of the Excise Act as it is. Hence this revision.

3. Counsel for the applicant submits that the judgment impugned does not rest on the evidence adduced by the prosecution and, therefore, the same is liable to be set aside. State counsel however supports the judgment impugned.

4. Having heard counsel for the parties and perused the documents on record it is evident that on the date of incident, 299 quarters of plain country made liquor and 31 quarters of *masala* country made liquor were found in the house of the accused/applicant. Evidence of Mahesh Yadav (PW-1) and Mangtin Bai (PW-2) – the two independent witnesses to seizure clearly states that on the date of incident the liquor quantified above was seized from the house of the accused/applicant in their presence and the seizure memos also carries their signature. The cross-examination of these two witnesses also contains the same thing like in the examination-in-chief. The Excise Sub Inspector (PW-4) who examined the samples of liquor and gave his report (Ex. P-8) has duly supported the case of the prosecution stating that by tasting, smelling and subjecting the same to litmus test, he arrived at the opinion of the same being liquor, and thus proved the report (Ex. P-8). PW-1 – another witness to the prosecution who went to the spot and effected the seizure of liquor in the presence of two witnesses has also supported the case of the prosecution. The defence however had not been in a position to rebut the evidence adduced by the prosecution in any convincing manner whatsoever to falsify the stand of the prosecution.

5. Thus the judgment impugned being based on proper appreciation of the evidence does not require any interference by this Court and, therefore, this revision is held to be without any merits and dismissed as such. Let consequences to follow.

**Sd/-
(Vimla Singh Kapoor)**

Judge

vyotishi/ajay