

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 09.01.2019

Judgment delivered on 15.01.2019

CRR No. 344 of 2006

Upendra Kumar, aged 33 years, son of Shri Ramdeo Prasad Singh, resident of Daltongunj, PS Daltongunj, District Palamu (Bihar) presently residing at Mandir Hasaud, District Raipur, CG

--- Applicant

Versus

State of Chhattisgarh

--- Respondent

For Applicant	-	Shri Vineet Pandey, Advocate.
For Respondent	-	Smt. M. Asha, PL

Hon'ble Smt. Vimla Singh Kapoor, J.

CAV Order

By this revision petition the applicant has assailed the judgment dated 13.06.2006 passed by Sessions Judge Raipur in Criminal Appeal No. 81/2006 affirming the judgment dated 31.03.2006 passed by Chief Judicial Magistrate Raipur in Criminal Case No. 663/2006 convicting the accused/applicant under Section 34 (1) (a) (2) of the C.G. Excise Act and sentencing him to undergo rigorous imprisonment for one year and pay fine of Rs. 25,000/-, in default of payment of fine to undergo further rigorous imprisonment for 06 months.

2. Facts of the case in short are that on 30.10.2003 acting upon a secrete information regarding transportation of illicit liquor by the accused/applicant in a Jeep bearing registration No. CG-04-B/3799, the Assistant Sub Inspector namely S.K. Jangde (PW-4) along-with two Head Constables namely Nandlal Patre (PW-2) and Parasram Patre (PW-1) went to the spot, searched the jeep having the registration number as above and found 10 cartons of Royal Master English liquor. Seizure thereof was effected under Ex. P-1 in the presence of the witnesses and *Dehati Nalisi* (Ex.P-4) was recorded, accused/applicant was arrested under Ex. P-2 and after returning to police station FIR (Ex.P-5) was registered. Samples taken from the seized liquor were sent for examination under Ex. P-6 and report thereof is Ex. P-8. After completing the further procedural formalities, he was produced before the Court but the charge framed against him under Section 34 (1) (a) (2) of the C.G. Excise Act was denied.

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) (2) of the Chhattisgarh Excise Act and sentenced him as described above. 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 in a serious error in convicting the accused/applicant under Section 34 (1) (a) (2) of the CG Excise Act

and that the findings so recorded are contrary to the evidence led by the prosecution. He further submits that the vehicle number allegedly carrying liquor has been mentioned differently at several places and even the papers pertaining thereto have not been seized by the prosecution nor any offence under the relevant Law has been registered by it if they were not produced by the applicant. According to the counsel for the accused/applicant, since the prosecution has not been able to prove its case beyond reasonable doubt, the judgment impugned is liable to be set aside.

5. On the other hand, counsel for the respondent/State supports the judgment impugned and submits that the findings recorded by both the Courts below convicting the accused/applicant as shown above, are strictly in accordance with law and there is no infirmity in the same.

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

7. Though the prosecution has tried to establish its case regarding transportation of 10 cartons (total 80 liters and 460 milli liter) of illicit liquor by the accused/applicant in the jeep bearing registration No. CG-04-B/3799 yet it has faltered at almost all the places in disclosing the vehicle particulars. *Rojnamcha Sanha* (Ex.P-7-C) mentions the number of the vehicle as CG-04-B/3797; seizure memo (Ex.P-1) and FIR (Ex.P-5) mention it as CG-04-B/3799, and the *Dehati Nalisi* (Ex.P-4) mentions it as CG-04-B/379. It is relevant to note here that the *Dehati Nalisi* (Ex.P-4) shows that the secrete information was in respect of the jeep bearing

registration number CG-04-B/3799 but while showing the search and seizure of liquor the vehicle number is mentioned as CG-04-B/379. Even though S.K. Jangde (PW-4) has tried to explain the variation in mentioning the particulars of the vehicle yet it weakens the case of the prosecution because it remains unestablished as to which vehicle was in fact involved in the incident. Even assuming for a moment that explanation given by (PW-4) is true, in that case the prosecution should at least have seized the documents pertaining to the vehicle from which the liquor was seized. Unfortunately, none of the papers have been seized by the prosecution nor did it register any offence against the accused for not possessing the same, if it was a case as such. Another irregularity in the case of the prosecution is as to the samples being taken out and sent for chemical examination. As per document of Ex. P-6 only four samples were taken out whereas the document of Ex.P-8 shows that one sample from each box i.e. total 10 samples from 10 boxes were taken out. This mismatch also creates doubt in the case of the prosecution. Further, evidence of constable (PW-3) shows that they had left the police station at 7-8 AM but the document of Ex. P-7-C mentions the time of departure as 1.45 o'clock. Even the constable Babulal who is said to have taken the samples for examination has not been examined by the prosecution. Two independent witnesses namely Parasram (PW-1) and Nandlal (PW-2) examined by the prosecution in respect of seizure have not supported the same and turned hostile. True it is that the statements of the police officials can be kept in equal pedestal like any other witness to arrive at a particular conclusion

but in the cases where countless irregularities are noticeable and the independent witnesses have also chosen to turn hostile, the Court has to strike the balance by looking into the other areas.

8. Thus in view of what has been discussed above, this Court arrives at the conclusion that the prosecution has not been able to establish its case beyond reasonable doubt that the liquor in question was seized from the possession of the accused/applicant - much less the conscious and exclusive. At the same time, view of both the Courts below is also not based on the evidence of the witnesses. Procedural lacuna on the part of the prosecution in proving its case have been given a complete go-bye by both the Courts below while forming the opinion against the accused. Accordingly, the judgment impugned is hereby set aside and the revision in hand is hereby allowed. Accused/applicant is already on bail and therefore no order to set him free is necessary.

9. Revision allowed.

Sd/-

(Vimla Singh Kapoor)
Judge