

HIGH COURT OF CHHATTISGARH, BILASPUR
CRR No. 375 of 2011

- Harjeet Singh, S/o Sohan Singh aged about 40 years, resident of Kedarpur, Ambikapur, District – Sarguja (C.G.)

---- Applicant

Versus

- State of Chhattisgarh, through the District Magistrate, Ambikapur District- Sarguja (C.G.)

---- Respondent

For Applicant	:	Ms. Indira Tripathi, Advocate
For Respondent	:	Mr. I. Lakra, Dy. G.A.

Hon'ble Smt. Justice Rajani Dubey

Order on board

24.07.2019

1. The present revision arises out of the impugned judgment of conviction and order of sentence dated 07.07.2011 passed by Sessions Judge, Sarguja (Ambikapur) in Criminal Appeal No. 54/2010 whereby the learned Appellate Court below has confirmed the conviction and sentence of the applicant as awarded by the learned Principal Judicial Magistrate, Ambikapur vide its judgment dated 15.03.2010 in Criminal Case No. 86/2010 for the offence under Section 34(2)(1) of the C.G. Excise Act and sentence him to undergo RI for one year and to pay fine of Rs. 25,000/- with default stipulation.

2. Brief facts of the case are that, on 24.01.2010, when SHO of Police Station Kotwali was on patrolling, at that time, he received the information from the informant that in the Sehal Hotel, illegal liquor is kept and the owner of the Hotel is selling the same. So, on the basis of the information, Thana Police made search of his Hotel and seized 155 quarters of Goa Whiskey from the

possession of the applicant. Thereafter, FIR was registered against the applicant and after completion of investigation charge-sheet was filed and charge was framed under Section 34(2)(1) of the C.G. Excise Act.

3. So as to prove the guilt of the accused/applicant, the prosecution has examined 5 witnesses. Statement of the accused/applicant was also recorded under Section 313 of Cr.P.C. in which he denied the charges leveled against him and pleaded innocence and false implication in the case.

4. After hearing the parties vide judgment of conviction of sentence dated 15.03.2010, learned Judicial Magistrate, Abmikapur, has convicted the accused/applicant under Section 34(2)(1) C.G. Excise Act and sentenced him to undergo R.I. for one year and to pay fine of Rs. 25,000/- plus default stipulation. This order was appealed by the appellant and in the appeal learned Appellate Court has confirmed the conviction and sentence of the Applicant. Hence, the present revision.

5. Learned counsel for the applicant submits that the impugned judgment of conviction and sentence is contrary to law and material available on record, which deserve to be set aside. The learned trial Court has failed see that Kanhaiya Minj (PW-1), Ashok Kumar Toppo (PW-2), Kishori (PW-3), Abhijeet Sarkar (PW-4) turned Hostile and they have not supported the prosecution case. He further submitted that the learned Courts below have committed gross error of law in convicting the applicant only on the basis of the evidence of K.K. Nag (PW-5), who was the lodger of FIR as well as the Investigation Officer of the case. It is settled principle of law that the complainant cannot

investigate the matter. He added that the seizure is not proved so the learned Courts below committed error in convicting the applicant. Lastly, counsel for the applicant submits that incident took place in the year 2010, the applicant is aged about 50 years and he was in jail about two months. And, therefore, he may be sentenced to undergo R.I. for the period already undergone by him.

6. On the other hand, learned counsel for the State supports the judgment of conviction and order of sentence.

7. I have heard learned counsel appearing for both the parties and perused the material available on record including the impugned judgment.

8. Before the trial Court, Kanhaiya Minj (PW-1), Ashok Kumar Toppo (PW-2), Kishori (PW-3), Abhijeet Sarkar (PW-4) turned hostile and they have not supported the prosecution case, but K.K. Nag (PW-5), Investigating Officer, had only supported his investigation and stated that only 10 bottles of liquor (10 quarter Goa Whiskey) were sent for the chemical analysis, which is also evident from Ex. P/7A. Accused/applicant has admitted this document. Thus, it is proved beyond reasonable doubt that 10 quarters of seized liquor was Goa Whiskey. It is well settled position of law that concerned authorities must sent entire of seized quantity or sufficient quantity therefrom by way of sample for analysis.

7. In the matter of ***Parwej Alam v. State of Chhattisgarh [CRR No. 242/06]*** & Judgment of MP High Court in the matter of ***Babulal v. State of MP [2006(1) MPLJ 317]***, wherein it has been held as under :-

*“The next contention of the learned counsel for the accused/applicant is that the prosecution has failed to establish beyond doubt that the bulk of the material said to have been seized from the accused/applicant is liquor. He stressed that the quantity put to test by the Excise Sub Inspector out of the quantity in question has not been sufficient, consequently the bulk in question is not proved to be liquor and thus the applicant deserves acquittal. In this respect PW-5 Vivek Chauhan has deposed that at the relevant time he seized from the accused vide Ex. P/2-C, 288 quarter bottles of Whisky, 350 quarter bottles of plain liquor and 20 bottles of plain liquor each of 750 ML. The seizure memo shows that they were placed in container (KATTIS0 PW-5 has also deposed that he did not remember whether he sent the entire bulk seized for test to excise SI or sent how much to him. I further find that PW-1 B.L. Jonvar the Excise SI as per his assertion in his statement, had received one bottle of plain liquor and three or four quarter bottles of English and plain liquor. On their test he opined them as liquor vide reports Ex. P/1 and Ex. P/2. As per statement of PW-5 Vivek Chauhan and the seizure memo Ex.P/2-C total quantity of material in question is 129 bulk liters, therefore, the quantity put to test out of the above being comparatively very meager the above reports cannot be attached any conclusiveness. They being the only basis for proving the liquor in question to be liquor when under the circumstances they are bereft of probative value the Courts below went perverse to find the accused/applicant guilty of illegally possessing liquor, not understanding the direction of the Hon'ble Apex Court laid down in **Gaunter Edwin Kircher Vs. State of Goa, 1993 Cri. L.J. 1485** in this respect, though with reference*

to narcotic law, that concerned authorities must send entire of seized quantity or sufficient quantity therefrom by way of samples for analysis.”

8. K.K. Nag (PW-5), Investigating Officer, in his cross-examination, has remained firm and nothing could be elicited to discredit his testimony on the point that bulk of liquor was not seized from the possession of applicant. However, total quantity (155 quarters of liquor) was not proved to be that of Goa Whiskey as only 10 quarters therefrom were sent for the chemical analysis, rather the prosecution was under obligation to send entire seized quantity. The incident is of the year 2010 and the amendment was incorporated in the Excise Act after the conviction of the applicant. Therefore, the conviction of the applicant under Section 34(2)(1) of C.G. Excise Act could not be sustained under the law and, is liable to be altered to Section 34(1)(1) of C.G. Excise Act.

09. In view of above consideration, this Court inclined to partly allow the revision. The conviction of the applicant under Section 34(2)(1) of C.G. Excise Act is altered to that under Section 34(1)(1) of C.G. Excise Act, and looking to the overall material on record, and that the applicant has undergone more than two months imprisonment, is awarded sentence for the period already undergone by him. However, the fine imposed upon him shall remain intact. The applicant is reported to be on bail. His bail bond shall stand discharged.

Sd/-
(Rajani Dubey)
JUDGE