

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 97 of 2010**

- Raju Sharma S/o Ghanshyam Sharma, Age 28 years, R/o bus Stand Charoda, P.S. Bhilai – 3, Tehsil – Patan, district Durg, Chhattisgarh.

---- Applicant**Versus**

1. State of Chhattisgarh, through District Magistrate, Durg

---- Respondent

For Appellant	:	Shri Uttam Pandey, Adv.
For Respondent/State	:	Shri Suryakant Mishra, PL

Hon'ble Smt. Justice Rajani Dubey**Order On Board****29.03.2019**

1. The present revision arises out of the impugned judgment of conviction and order of sentence dated 04/02/2010 passed by 12th Additional Sessions Judge, (FTC) Durg, in Cr. Appeal No. 39/2008 whereby, the learned appellate Court below has confirmed the conviction and sentence of the accused/applicant as awarded by the learned Chief Judicial Magistrate, Durg, vide its judgment dated 06/05/2008 in Criminal Case No. 7228/2005 for the offence under Section 34 (1) (a) (2) Excise Act and sentenced him and other co-accused to undergo R.I. for one year with fine of Rs.25,000/- plus default stipulations.

2. Brief facts of the case are that Shri S.K. Pandey, Sub-Inspector G.R.P., Bhilai, received a secret information about illegal liquor. Acting on tip-off, Sub-Inspector S.K. Pandey with his police party raided the Tempo No. M.B.T. - 8097, accused person and seized 28 boxes of foreign liquor from the possession of appellant. FIR was lodged against accused/applicant. Accordingly, After completion of investigation,

charge-sheet was filed and charges were framed against the accused/applicant under Section 147 Railway Act and 34 (1) (a) (2) Excise Act.

3. So as to hold the accused/applicant guilty, the prosecution has examined as many as 07 witnesses. Statement of the accused/applicant was also recorded under Section 313 of the Cr.P.C. in which he denied the charge leveled against him and pleaded innocence and false implication in the case.

4. After hearing the parties, vide impugned judgment of conviction and order of sentence dated 06/05/2008, learned Chief Judicial Magistrate has convicted and sentenced the applicant and co-accused for the offence under Section 34 (1) (a) (2) Excise Act for RI for one year and to pay fine of Rs 25,000/- in default of fine three months of simple imprisonment. This order was appealed by the applicant and in the appeal, Learned Appellate Court has confirmed the conviction and sentence of the appellant. Hence, the present revision.

5. Heard learned counsel for the parties and perused the material on record including the impugned judgment.

6. Counsel for the applicants submits that he is not pressing the revision so far as it relates to the conviction part of the judgment and would confine his argument to the sentence part thereof only. According to him, the incident is said to have taken place in the year 2001, and thereby more than 18 years have rolled by since then. He is aged about more than 40 years. The applicant has already remained in jail for three and a half months, and no useful purpose would be served in again sending him to jail, therefore, in the interest of justice, it would be appropriate if the sentence imposed upon him may be reduced to the period already undergone by him.

7. Learned counsel for the State has no objection to this preposition.

8. Having gone through the material on record and the evidence of the witnesses Gayadhar Mishra (PW-1), Vijay Kumar (PW-3) Rampal

Singh (PW-4), S.K. Sahu (PW-5), Yogendra Pandey (PW-6) and Brahma Dev Pandey (PW-7) involvement of the accused/applicant in the crime in question stands proved beyond reasonable doubt. This Court does not see any illegality in the findings recorded by both the Courts below as regards conviction of the appellants under Section 34 (1) (a) (2) Excise Act.

9. As regards sentence, keeping in view the facts that incident had taken place in the year 2001 (before amendment in Excise Act), and further that the appellant had already remained in jail for three and a half months. His sentence is reduced to the period already undergone by him.

10. In view of the above consideration, the revision is partly allowed. While maintaining the conviction of the applicant under Section 34 (1) (a) (2) of Excise Act, he is sentenced to the period already undergone by him.

Sd/-

(Rajani Dubey)
JUDGE