

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 35 of 2010

- Vijay Kumar Netam, S/o Shri Shyam Singh, aged about 26 years, R/o Singanpur, P.S. Keshkal, District – Bastar, Chhattisgarh

---- Applicant

Versus

- State of Chhattisgarh, Through Excise Circle, Keshkal, District - Bastar, Chhattisgarh

---- Respondent

For Applicant	:	Shri Rajendra Tripathi, Adv.
For Respondent/State	:	Shri Anant Bajpai, PL

Hon'ble Smt. Justice Rajani Dubey

Order On Board

29.07.2019

The present revision arises out of the impugned judgment of conviction and order of sentence dated 15.01.2010, passed by the learned Additional Sessions Judge(FTC), Kondagaon, Bastar in Cr. Appeal No. 01/2009 whereby the learned appellate Court below while maintaining the conviction of the applicant modified the sentence awarded by the learned Judicial Magistrate First Class, Keshkal, vide its judgment dated 19.02.2009 in Cr. Case No. 167/2009 for the offence under Section 34(1)(A) of the Chhattisgarh Excise Act and sentenced him to undergo RI for one month along with fine of Rs. 5,000/-, with default stipulation.

2. Brief facts of the case are that on 03.02.2008, on the basis of information received from the informant, Assistant Sub-Inspector raided the Dhaba of the applicant and seized 12 quarter (pav) Grand Columbia

Whisky from the Dhaba of the applicant. The liquor was found to be country made foreign liquor. Thereafter, the FIR was registered against the applicant. After filing of the charge sheet, the trial Court framed charges against the accused/applicant under Section 34(1)(A) of the Chhattisgarh Excise Act.

3. So as to prove the guilt of the accused/applicant, the prosecution has examined 03 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 his innocence and false implication in the case.

4. After hearing the parties, vide impugned judgment and order dated 19.02.2008, learned Magistrate has convicted the accused/applicant for the offence under Section 34(1)(A) of the Chhattisgarh Excise Act and sentenced him to undergo RI for three months along with fine of Rs. 5,000/-, with default stipulation. On appeal, the conviction has been maintained but the sentence awarded under Section 34(1)(A) of the Chhattisgarh Excise Act has been reduced to one month and to pay fine of Rs.5,000/-, with default stipulation. Hence, the present revision.

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

6. Counsel for the applicant submits that he is not pressing the revision as 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 2008 and thereby more than 11 years have rolled by since then, he is aged more than about 40 years, the applicant has already remained in jail for about more than 10 days, no useful purpose would be served in again sending him to jail, therefore, it would be in the interest of justice if the sentence

imposed on him may be reduced to the period already undergone by him.

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

8. Having gone through the material on record and the evidence of the witnesses including Vrindavan Saroj(PW-1) and J.L. Markam(PW-2) establishes the involvement of the accused/applicant in the crime in question. This Court does not see any illegality in the findings recorded by both the Courts below as regards conviction of the applicant under Section 34(1) (A) of the Chhattisgarh Excise Act, being so it is hereby maintained.

9. Taking into consideration the aforesaid material aspects of the case and the fact that the incident had taken place in the year 2008 and further considering that the applicant has already remained in jail for about more than ten days, the revision is partly allowed. Conviction part of the impugned judgment is maintained. Applicant is reported to have remained in jail for a period of more than ten days, his sentence is reduced to the period already undergone by him. The applicant is reported to be on bail. His bail bonds stand discharged.

10. Revision thus partly succeeds.

Sd/-
(Rajani Dubey)
Judge