

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 628 of 2010

Kashiram S/o Manglu Satnami, aged about 43 years, R/o Village Lokband, Police Station Kota, District Bilaspur, CG. ---- **Applicant**
Versus

State of Chhattisgarh through Station House Officer, Police Station Kota, District Bilaspur, CG. ---- **Respondent**

For Applicant	: Shri Dharmesh Shrivastava, Advocate
For State/Respondent	: Shri Aman Kesharwani, PL

Hon'ble Smt. Justice Vimla Singh Kapoor

Order On Board

03/04/2019

Case of the prosecution, in brief, is that on 04.10.2008 acting upon a secrete information that the accused/applicant was in a illegal possession of the liquor, inspector D.S. Diwan (PW-4) along with his staff members namely Anant Kuwar (PW-2) and Shakharam (PW-3) raided his house and found 40 quarters of country made liquor kept there. The same was seized under seizure memo Ex. P-2. After being seized, the liquor was sent to Excise Sub-inspector (PW-1) for being examined and on examination the same was found to be the country made liquor vide Ex. P-1. Thereafter, the offence under Section 34 (1) (a) of the Excise Act was registered against the accused/applicant vide report Ex. P-3. After investigation *challan* was filed under the same section.

2. Learned Magistrate on the basis of material on record found the accused/applicant guilty under Section 34 (1) (a) Excise Act and sentenced him to undergo RI for 3 months and pay fine of Rs. 5000/- plus default stipulation vide judgment dated 28.07.2010 passed in criminal case No. 724/2008. Learned lower appellate Court also confirmed the said order as a whole vide judgment impugned dated 26.11.2010 passed in criminal appeal No. 75/2010.

3. Counsel for the accused/applicant submits that while convicting the accused/applicant under Section 34 (1) (a) Excise Act both the Courts below have not appreciated the evidence of the witnesses properly. He submits that in the absence of the opinion of the expert as to whether the seized article was liquor, the finding of conviction has been recorded which is not proper. He further submits that though the seizure witnesses have not been supported the case of the prosecution yet the accused/applicant has been convicted by the Courts below and being so the judgment impugned is liable to be set aside. State counsel however supports the judgment impugned.

4. From perusal of evidence of the witnesses in particular PW-1, PW-2 and PW-3 it is apparent that the accused/applicant was found in possession of 40 quarters of country made liquor. PW-1 has also clarified that on the experience based analysis, the article sent to him for examination was found to be country made liquor. Though the chemical examination has not been done in this case yet the experience based analysis done by PW-1 is sufficient for convicting the accused/applicant under Section 34 (1) (a) Excise Act. In this view of the matter, no illegality or infirmity is noticeable in the conviction part of the judgment impugned. His conviction is therefore maintained.

5. As far as sentence part of the judgment impugned is concerned, looking to the fact that the incident had taken place in the year 2008 and also keeping in mind the fact that the accused/applicant has remained in jail for 05 days, this Court is of the opinion that no useful purpose would be served in again sending him to jail. Accordingly, the sentence imposed on him is reduced to the period already undergone.

6. Revision allowed in part.

Sd/-

(Vimla Singh Kapoor)

Judge