

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 695 of 2014**

- Dau Kurre S/o . Chhattu Kurre Aged About 50 Years R/o. Vill. Rasouta, P.S. Pamgarh, Civil And Rev. Distt. Janjgir-Champa C.G.

---- Applicant**Versus**

- State Of Chhattisgarh Through Sho,p.S. P.S. Pamgarh, Distt. Janjgir-Champa C.G.

---- Respondent

For Applicants	: Shri C.P.Lahrey, Advocate
For Respondent/State	: Shri Wasim Miyan, PL

Hon'ble Smt. Justice Rajani Dubey**Order On Board****12/07/2019**

Present revision arises out of the impugned order dated 17.09.14 passed by the learned First Additional Sessions Judge Janjgir-Champa in Cr.A. No. 182/2010 whereby the learned appellate court has dismissed the appeal of applicant arising out of the order dated 24.11.2010 passed by the learned Judicial Magistrate First Class, Pamgarh, district Janjgir-Champa in Cr. Case No. 390/2010 for the offence punishable under Section 34(1)(A) of the Excise Act and sentenced to undergo RI for three months and fine of Rs. 5,000/- plus default stipulation.

2. Brief facts of the case are that Sub Inspector of police station Pamgarh received information through the informant that the applicant

was found in exclusive and conscious possession of liquor in his shop. On receiving said information, police party raided the shop, arrested the accused/applicant and seized 4 bottles of white whisky (180 ml. Each), 9 bottles and 8 bottles of PM whisky, 7 bottles of topgun special whisky, six bottles of 180 ml. whisky and 5000 Beer bottles from his shop. After completion of investigation, charge sheet was filed and charges were framed against the accused/applicant under Section 34 (1)(A) of the Excise Act.

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

4. After hearing the parties, vide impugned judgment dated 24.11.2010, learned Judicial Magistrate First Class has convicted the accused/applicant under Section 34 (1)(A) of the Excise Act and sentenced him to undergo RI for three months and to pay fine of Rs. 5,000/- plus default stipulation. This order was appealed by the applicant and in the appeal, learned appellate court has confirmed the conviction and sentence of the applicant. Hence, the present revision.

5. Counsel for the applicant submits that the judgment of both the courts below is bad in law as well as facts available on record. Both the courts below have failed to appreciate that the liquor which was alleged to be seized from the possession of the applicant, was duty paid liquor so the conviction of the applicant is bad in the eye of law. Lastly, learned counsel for the applicant submits that the actual detention

period has already been undergone by the applicant. Counsel for the accused/applicant submits that both the Courts below have fallen into a serious error in convicting the accused/applicant under [Section 34](#) (1) (a) of the [Excise Act](#) and that the findings so recorded are contrary to the evidence led by the prosecution.

6. On the other hand, State counsel supports the judgment and submits that after due appreciation of prosecution evidence, the learned Courts below have found the offence proved against the applicant, hence no interference is required to be made in this revision.

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

8. Having gone through the material on record and the evidence of the witnesses including PW-1,2,3 and 4 which establishes the involvement of the accused/applicant in the crime in question. I am of the view that no error has been committed by learned Courts below in recording the guilt of the petitioner as mentioned hereinafter and in convicting him for offence punishable under Section 34(1)(A) of the Excise Act and sentenced to undergo rigorous imprisonment for six months and fine of Rs.5,000/- with default stipulation. Being so, it is hereby maintained. As the applicant has already undergone the entire sentence, no further order is required. Revision is accordingly, dismissed.

Sd/-
(Rajani Dubey)
Judge