

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 361 of 2008

Chandrawati, Aged about 24 years, W/o. Mohan, R/o. Marwahi,
P.S. Marwahi, District Bilaspur (C.G.)

---- **Applicant**

Versus

State Of Chhattisgarh, Through Excise Circle Pendra, District
Bilaspur (C.G.)

---- **Respondent**

For Applicant : Mr. Vinod Kumar Tekam, Advocate
For Respondent : Mr. Raghvendra Verma, PL

Hon'ble Smt. Justice Vimla Singh Kapoor

09.04.2019

This revision is directed against the judgment dated 05.05.2008 passed by the Additional Sessions Judge Pendra Road District Bilaspur in Criminal Appeal No. 24 of 2008, affirming the judgment of conviction and order of sentence dated 18.03.2008 passed by the Judicial Magistrate, First Class Pendra Road in Criminal Case No. 654/2005, convicting the accused/applicant under section 34(1) (A) & (F) of the Excise Act and sentencing her to undergo rigorous imprisonment for 6 months and pay fine of Rs. 5,000/- with default stipulations.

2. Facts of the case, in short, are that on 17.09.2005 Excise Sub Inspector received a secret information from the informant

regarding the accused/applicant was illegally distilling country made liquor in her home. He along with his associates nabbed the applicant and on being searched 300 ML country made liquor in a plastic jar and 12 KG fermented Mahuwa (Lahan) stored in earthen pot along with apparatus for brewing liquor under (Ex.P-1) was seized from the applicant. After effecting seizure and making arrest of the accused thus on completion of investigation charge sheet was laid under Section 34(1)(A) & (F) of the Excise Act.

3. After examining the material available on record and the evidence of the witnesses the trial Court convicted the accused/applicant under Section 34(1)(A) & (F) of the Excise Act. The findings recorded by the trial Court have subsequently been confirmed by the lower Appellate Court by the judgment impugned and it is that which is under challenge in this revision.

4. Conviction is not being pressed on merit and the sole prayer made by the counsel for the applicant is confined to reduction of sentence imposed on the accused/applicant to the period already undergone on account of the fact that the case is quite old and the accused/applicant has already remained in jail for some time.

5. State counsel however, supports the findings recorded by the both the Courts below.

6. Heard counsel for the parties and perused the evidence on record.

7. Dinesh Kumar (PW-3) is the witness of Panchanam Ex.P-2 supporting the case of the prosecution has stated that on the date of incident house of the accused/applicant was searched, 1 and ½ Kg of Mahua pass kept in an earthen pot was seized. However, as regards arrest of the applicant in his presence, PW-1 has been declared hostile. He has admitted that he was to the spot along with the excise people and had put signature on the papers. C.S. Yadu (PW-2) has also stated that on receiving an information he rushed to the spot and search was made in the presence of the witnesses though without warrant, 300 MI country made liquor in a plastic jar and 12 KG fermented Mahuwa (Lahan) stored in earthen pot along with apparatus for brewing liquor under (Ex.P-1) was seized. Defence has not led any evidence that there was any licence, permit or pass for possessing the liquor seized from her possession.

8. Close scrutiny of the material available on record including the evidence of the witnesses in particular that of Dinesh Kumar (PW-3) and C.S. Yadu (PW-2) goes to show that 300 MI country made liquor in a plastic jar and 12 KG fermented Mahuwa (Lahan) stored in earthen pot along with the instruments required for its manufacture were seized from the exclusive possession of the accused/applicant who has even been unable to produce any material to demonstrate that his act was permitted by any law or rules. Both the Courts below, therefore, have been fully justified in convicting and sentencing the

accused/applicant as mentioned above, and no illegality or infirmity is noticeable in the judgment impugned.

9. As regards sentence, keeping in view the fact that the incident had taken place in the year 2005, that the accused/applicant has already remained in jail for a period of 1 month and further that by now she must be leading a well settled life saddled with innumerable responsibilities, this Court thinks it proper to reduce the sentence imposed on her to the period already undergone.

10. With the above, the revision stands allowed in part.

Sd/-

(Vimla Singh Kapoor)
JUDGE

Santosh