

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 611 of 2009**

- Shiv Kumar, Aged 42 years, S/o Jivan Lal R/o Vill. Bodhari, Ps Chakarbhata, Tahsil Bilaspur, District Bilaspur (CG)

---- Applicant**Versus**

- State Of Chhattisgarh, Through Station House Officer, PS Chakarbhata, Tahsil Bilaspur District bilaspur (CG)

---- Respondent

For Applicant	: Shri Shashank Upadhyay, Advocate
For Respondent /State	: Shri Wasim Miyan, PL

Hon'ble Smt. Justice Rajani Dubey**Order On Board****13/09/2019**

This Criminal Revision under Section 397/401 of the Code of Criminal Procedure, 1973, hereinafter referred to "the Code", has been filed by the applicant against the Judgment dated 19.12.2009 passed in Criminal Appeal No. 98/2009 by learned Fourth Additional Sessions Judge, Bilaspur arising out of judgment of conviction and sentence passed by Judicial Magistrate First Class, Belha dated 11.11.2009, in Criminal Case No. 1613/2008, whereby the applicant was convicted under Section 34(1) (A) of the CG Excise Act and sentenced him to undergo rigorous imprisonment for 1 month and fine of Rs.5,000/-, with default stipulation.

2. Brief facts of the case are that on 17.05.08, ASI S.P.Chaturvedi

raided the shop of the applicant and seized 24 bottles of illicit liquor.

3. After filing of charge sheet against the applicant, charges were framed under Section 34(1) (A) of CG Excise Act against the present applicant, who abjured the guilt, therefore he was put to trial.

4. Learned trial Court found the applicant guilty for the offence punishable under Section 34(1)(A) of CG. Excise Act and convicted and sentenced as aforesaid, against which, the appeal has been preferred. Learned Appellate Court affirmed the conviction but has reduced the period of sentence from 3 months to 1 month and sentence awarded by learned trial Court, hence, this revision.

5. Counsel for the applicant submits that the order of the trial court as well as the appellate court is bad in the eye of law as well as the facts on record. He submits that there is no chemical analysis report committed before the trial court for adjudication. The trial court has erred in law while imposing the sentence. He submits that the appellate court has not appreciated the oral and documentary evidence.

6. Per contra, learned Panel Lawyer appearing for respondent/State has submitted 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. Having heard learned Panel Lawyer for the respondent/State at length, gone through the impugned judgments of learned Courts below and statements of prosecution witnesses, namely Ratan (PW-1),

S.P.Chaturvedi (PW-2) and C.H.Yadu (PW-3), I am of the view that no error has been committed by learned Courts below in recording the guilty of the applicant as mentioned hereinafter and in convicting him for offence punishable under Section 34(1) (A) of CG Excise Act and sentenced to undergo rigorous imprisonment for 1 month and fine of Rs.5,000/- with default stipulation.

8. However, it is settled principle of law that even though the independent witnesses in such type of cases for one reason or the other do not support the prosecution case, that cannot be an only ground to discard the prosecution case in toto. On the other hand, if the statements of the Investigating Officer relating to search and seizure are found to be cogent, reliable and trustworthy, the same can be acted upon to adjudicate the guilt of the accused. The Court will have to appreciate the relevant evidence in light of other evidence produced before the Court and determine whether the evidence of Investigating Officer is believable, after taking due care and caution while evaluating his evidence. Therefore, the conviction of the applicant is hereby maintained.

9. It is apparent from the perusal of the record that the applicant is reported to have undergone the jail sentence imposed on him. Revision thus, has no merits and the same is accordingly, dismissed.

Sd/-

(Rajani Dubey)
Judge