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HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 375 of 2008

Dashmati W/o Jairam, aged about 30 years, R/o Village Rajur P.S. Parapa, District Bastar, CG. **---- Applicant**

Versus

State of Chhattisgarh through Police Station Kotwali, Jagdalpur, District Bastar, CG. **---- Respondent**

For Applicant	: Smt. Rajkumari Yadav, Advocate on behalf of Shri Manoj Mishra, Advocate
For State/Respondent	: Shri Raghvendra Verma, G.A.

Hon'ble Smt. Justice Vimla Singh Kapoor

Order On Board

02/04/2019

As per the case of prosecution the excise sub-inspector (PW-4) while being on patrolling duty had found 23 ½ liter of mahua liquor contained a jerrycan. After drawing sample, the same was sent for examination and the report Ex. P-1 drawn on the basis of tasting, smelling and dipping the litmus paper it was found to be the illegally distilled liquor. After completion of procedural formalities, the *challan* was filed against the accused/applicant under Section 34 (1) (a) excise Act.

2. Learned Magistrate on the basis of material on record found the accused/applicant guilty under Section 34 (1) (a) excise Act and sentenced her to undergo simple imprisonment for 1 month and pay fine of Rs. 5000/- plus default stipulation vide judgment dated 03.04.2008 passed in criminal case No. 51/2008. Learned lower appellate Court also confirmed the said order as a whole vide judgment impugned dated 07.06.2008 passed in criminal appeal No. 30/2008.

3. Counsel for the accused/applicant submits that the procedural formalities such as the drawing the samples, sending the same for chemical examination etc., as required under the law have not been complied with and

therefore, her conviction under Section 34 (1) (a) excise Act is bad in law. He further submits that as the independent witnesses have not supported the seizure, the judgment impugned cannot be sustained. State counsel however supports the judgment impugned.

4. Kamal (PW-2) has supported the case of the prosecution stating that in his presence the police had made certain seizure but he was not aware as to what was in-fact seized from the accused/applicant. Subsequently, she has stated that on being inquired, the accused/applicant had informed that the bag with her contained liquor. Excise sub-inspector (PW-4) has fully supported the case of the prosecution stating as to the manner in which the seizure of liquor was made from the accused/applicant and no license for the same was produced by her. Of course, the independent witnesses have not stood by the prosecution yet the Excise sub-inspector (PW-4) who found the accused/applicant in possession of 23 ½ liters of liquor has been very categorical in supporting the case of the prosecution. The procedural formalities appear to have been fully complied as required under the law and therefore, his testimony cannot be disbelieved. Furthermore, the accused/applicant has not produced any license etc, to posses any such substance. No illegality in the findings of the Court below holding the accused/applicant guilty under Section 34 (1) (a) Excise Act is visible to this Court. Her conviction is therefore maintained.

5. However, considering the fact that the incident had taken place in the year 2007, that the accused/applicant is a poor lady and that she has already remained in jail for about a week, this Court feels it in the interest of justice to reduce the sentence imposed on her to the period already undergone. Order accordingly.

6. Revision allowed in part.

Sd/-

(Vimla Singh Kapoor)

Judge

Jyotishi/Pawan