

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 234 of 2010

Order reserved on 07.01.2019

Order pronounced on 18.03.2019

Ramashraya Khatik, S/o Ramlal Khatik, aged about 48 years, R/o Village Dubchhola, P.S. & Tahsil Khadgaon, District Korea(C.G.)
---- Applicant

Versus

The State of Chhattisgarh through District Magistrate, Korea, District Korea(C.G.)
--- Respondent

For Applicant : Shri N.K. Chatterjee, Advocate

For State/Respondent : Ms. M. Asha, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

C.A.V. Order

By the judgment impugned dated 05.05.2010 passed by learned Additional Session Judge, Manendragarh, District Korea in Criminal Appeal No.91/2009, the findings recorded by learned Judicial Magistrate First Class, Chirmiri on 19.11.2009 in Criminal Case No.992/2009 convicting the accused/applicant under Section 34(1)(A) of C.G. Excise Act and sentencing him to undergo simple imprisonment for 6 months with payment of fine of Rs.6000/- coupled with default stipulation have been affirmed.

2. It is alleged that on 27.07.2002 when Station House Officer along with his subordinate had raided the hotel of the accused/applicant, 21 bottles of illicit Beer was found therein. After recording Dehati Nalsi (Ex. P-3) on the spot the Station House Officer came back to the Police Station where FIR (Ex. P-4) was reduced to writing under Section 34(1)(A) of the Excise Act. Seizure of liquor was made under Ex. P-1 and subsequently it was sent to Excise Sub Inspector (PW-3) for examination who after seeing, sniffing and tasting and also by dipping the litmus paper in it arrived at the conclusion that it was Beer. All this was done under Ex. P-2. After completion of investigation the *challan* was filed, trial commenced

and ultimately the accused/applicant stood convicted for the offence described hereinabove vide judgment dated 19.11.2009 passed in Criminal Case No.992/2009. The findings recorded by learned Magistrate received affirmation in appeal vide judgment impugned dated 5th May, 2010 passed in Criminal Appeal 91/2009. Hence this revision.

3. Counsel for the accused/applicant submits that the prosecution has failed to establish its case beyond reasonable doubt that the accused/applicant was found in possession of illicit liquor known as Beer. It is for the reason that though the seizure witnesses (PW-1 & PW-2) have admitted their signature on the seizure memo (Ex. P-1), they have categorically stated that no such article like Beer was seized from the accused/applicant in their presence. He further submits that even the article so seized was not subjected to chemical examination and, therefore, this cannot be said that it was Beer. He submits that only on the basis of statement of Investigating Officer the conviction recorded by both the Courts below cannot be sustained in the eye of law.

4. On the other hand, counsel for the respondent/State submits that the findings recorded by both the Courts below are strictly based on due appreciation of the evidence of witnesses and, therefore, no illegality or infirmity can be said to be there in the same warranting any interference therewith.

5. Heard counsel for the parties and perused the material on record.

6. Of course, the seizure witnesses PW-1 & PW-2 have not supported the case of the prosecution yet they have admitted their signature on the seizure memo (Ex. P-1). Furthermore, PW-1 & PW-2 happened to be of the same village where the accused/applicant did reside and, therefore, it cannot be expected of them that they would open their mouth against the people of their own village, and probably for this reason they might have chosen not to support the case of the prosecution in order to save them

from the rigor of law. Moreover, if the statement of PW-4 who undertook the entire investigation is seen it is apparent that all the procedural formalities were followed after finding the accused/applicant in possession of illicit Beer. He has categorically stated that after effecting seizure it was sent for examination to PW-3 and ultimately vide report (Ex.P-2) given by him it was found that the articles so seized was nothing else but liquor. The accused/applicant did not place anything on record on the basis of which it could be said that he has been falsely implicated by PW-4 because no previous dispute existing between them has been brought to the fore by the accused/applicant in his defence. There is no prohibition that on the basis of statement of the Investigating Officer conviction of the accused/applicant under Section 34 (1) (A) of the Excise Act cannot follow, rather the legal position holding the field speaks unequivocally that if the independent witnesses turn hostile, the conviction can be based on the basis of Investigation Officer himself provided it inspires confidence of the Court and does not display any falsehood or otherwise.

7. In this case the statement of the Investigating Officer (PW-4) and as also PW-3 who did the experience based examination of the article so seized and ultimately found it to be liquor, appears to be fully trustworthy and does not suffer from any falsehood. Being so, there is no reason for this Court to take a different view to the one taken by both the Courts below while convicting and sentencing the accused/applicant as described above. Therefore, this Court approves the well reasoned findings recorded by both the Courts below holding the accused/applicant guilty under Section 34 (1) (A) of the C.G. Excise Act. Accordingly, the present revision petition being devoid of any substance is liable to be and is hereby dismissed.

Sd/-

(Vimla Singh Kapoor)
Judge