NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 334 of 2006

Order reserved on 25.02.2019

Order delivered on 27.03.2019

Yashwant Kumar S/o. Khorbahara, Aged about 25 years, Resident of Shivpara, Murrum Khadan Supela, Bhilai, Thana Supela, Tahsil and District Durg (C.G.)

---- **Applicant**

Versus

State Of Chhattisgarh, through District Magistrate Durg District Durg (C.G.)

---- Respondent

For Applicant : Mr. Santosh Bharat, Advocate

For Respondent : Mr. Aman Kesharwani, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

CAV Judgment

This revision is directed against the judgment dated 27.05.2006 passed by the Sessions Judge Durg District Durg in Criminal Appeal No. 14 of 2006, modifying the judgment of conviction and order of sentence dated 25.01.2006 passed by the Additional Chief Judicial Magistrate, Durg in Criminal Case No. 317/2003, convicting the accused/applicant under section 34(2) of the Excise Act and sentencing him to undergo rigorous imprisonment for 1 year and pay fine of Rs. 25,000/- with default stipulations.

2. Facts of the case, in short, are that on 10.10.2001, Sub Inspector Kavilash Tandon (PW-8) was on patrolling duty, he received a secret information regarding the accused/applicant selling illicit liquor from his house. Sub Inspector Kavilash Tandon along with his associates nabbed the applicant and on being searched, 432 quarter (77.760 bulk liters) of Goa Whiskey which were contained in different plastic bags and an amount of Rs. 740/- the sale proceeds of liquor were seized under Ex. P-2 from the house of the applicant. After effecting seizure and making arrest of the accused person and thus on completion of investigation charge sheet was laid under Section 34(2) 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(2) 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. Counsel for the accused/applicant does not press the conviction part of the judgment impugned. His main submission is as regards the sentence imposed on the accused/applicant to be reduced to the period already undergone as he has already remained in jail for some time and the incident had taken place many years ago.

5. On the other hand, counsel for the respondent/State supports the judgment impugned and submits that the findings recorded by the both the Courts below convicting the accused/applicant as shown above, are strictly in accordance with law and there is no infirmity in the same.

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

7. On analyzing the case put fourth by the prosecution and weighing the evidence adduced by it, it comes to the fore that on the date of incident acting upon a secret information the Sub Inspector Kavilash Tandon (PW-8) was raided by him along with his team-mates and 432 quarters (77.760 bulk liters) of Goa Whiskey which were contained in different plastic bags and an amount of Rs. 740/- the sale proceeds of liquor, was seized under Ex. P-2 in presence of the witnesses. Lav Kumar Mishra (PW-4) - the Excise Sub Inspector has stated that he had vast experience of examining the intoxicants and on the basis of that experience he has opined under Ex.P. 4 that the article produced before him was foreign liquor. He has further stated that the substance was in the taste of spirit and its colour did not change even after the litmus paper was dipped into.

8. This Court has perused the material available on record with every possible care and caution, and on doing so, it is crystal clear that on the date of incident the accused/applicant was found in possession of 432 quarters (77.760 bulk liters) of Goa whiskey contained in different plastic bags. The record does not indicate that the accused/applicant was having any licence etc. to show that he was, in any manner, authorized to possess such an article with him. The prosecution has thus succeeded in proving its case beyond all reasonable doubt and being so the findings recorded by both the Courts below convicting the accused/applicant under Section 34 (2) of the Excise Act being based on proper appreciation of the evidence on record, do not call for any interference by this Court. Even the sentence awarded by the Courts below appears to be just and proper looking to the quantity of the intoxicant seized from the possession of the accused/applicant which comes to 77.760 bulk liters.

9. In the result, the revision being without any substance is liable to be dismissed and it is dismissed as such with the judgment impugned being affirmed hereby.

Sd/-
(Vimla Singh Kapoor)
JUDGE

Santosh