

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 450 of 2008

Tilak Ram, S/o Jagnu Ram Sinha, aged about 36 years, R/o Village Haat Banjari, Thana-Chhuria, District- Rajnandgaun, (C.G.) ---- **Applicant**

Versus

State of Chhattisgarh through District Magistrate, Dist. Rajnandgaun, (C.G.) ---- **Respondent**

For Applicant	: Shri Sunil Sahu, Advocate on behalf of Shri Samir Singh, Advocate
For State/Respondent	: Shri I. Lakra, G.A.

Hon'ble Smt. Justice Vimla Singh Kapoor

Order On Board

01/02/2019

On 09.12.2006 while being on patrolling duty the Excise Sub-Inspector (PW-4) along with his staff members had found the applicant in possession of 47 quarters of golden master whiskey contained in a carton. The said liquor was seized under Ex-P2 in presence of the witnesses. FIR Ex-P1 was registered and after completion of investigation the charge-sheet was filed against the accused/applicant under Section 34 (A) of the Excise Act.

2. Having seen the material on record learned Trial Court found the accused/applicant guilty u/s 34 (A) of the Excise Act and sentenced him to undergo simple imprisonment for 1 month and pay fine of Rs. 5000/- plus default stipulation. In appeal, the findings recorded by the Trial Court have been confirmed as a whole. Hence this Revision Petition.

3. After arguing for sometime, counsel for the applicant made a prayer that he would not press in the conviction part of the judgment impugned and his only emphasis would be on the sentence part thereof only. He submits that looking to the fact that the incident had taken place

in the year 2006 and the accused/applicant has already remained in jail for 8 days, it would be in the interest of justice if the sentence imposed on him is reduced to the period already undergone. State counsel, however, lends support to the judgment impugned being just and proper and based on the material collected by the prosecution.

4. This court has gone through the material available on record with utmost care. It emerges from the evidence of the witnesses that on the date of incident PW-4 along with his associates had apprehended the accused/applicant with 47 quarters of liquor which was seized under Ex-P2 in presence of the witnesses. On experience based examination coupled with chemical treatment the articles so seized were confirmed to be the foreign whiskey liquor which is evident from Ex-P4. PW-2 - the witness to seizure has affirmatively stated that the police had seized liquor from the possession of the applicant and he had signed the relevant papers on being asked by the police that the article so seized was liquor. PW-4 though an official of police department has categorically stated that on the date of incident he had apprehended the accused/applicant and seized 47 quarters of liquor from his possession under Ex-P-2 in the presence of two witnesses. Of course, PW-4 is a police official yet his evidence cannot be discarded on this sole ground particularly when he does not appear to have exaggerated his version. Moreover, important independent witness (PW-2) has also stood by his version from beginning to end that in his presence the seizure was made and he was asked to put his signature on the seizure memo.

5. Having thus analyzed the matter it can safely be said that the prosecution has proved its case beyond reasonable doubt and so also both the courts below have slapped conviction detailed above. It is maintained accordingly.

6. As regards sentence, keeping in mind the incident had taken place in the year 2006 and thereby more than 13 years have passed by, this Court deems it just and proper not to disturb the already settled family life of the accused/applicant by sending him to jail. Thus it is directed that the sentence imposed on the accused/applicant is reduced to the period already undergone which comes to 8 days in this case. Order accordingly.

7. In view of the observations made above, the revision stands allowed.

Sd/-

(Vimla Singh Kapoor)

Judge

Jyotishi/Pawan