

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 684 of 2008

Order reserved on 14.03.2019

Order pronounced on 02.05.2019

Gokul Yadav, S/o Derharam Yadav, aged about 45 years, R/o Village Khamarhdih, P.S. Bilha, District Bilaspur (CG)

---- Applicant

Versus

State of Chhattisgarh, through Station House Office, P.S. Bilha, District Bilaspur (CG)

---- Respondent

For Applicant	:	Shri G.S. Ahluwalia and Ms. Anjali Singh Chouhan, Advocates
For Respondent	:	Shri Raghvendra Verma, GA

Hon'ble Smt. Justice Vimla Singh Kapoor

C.A.V Order

Case put-forth by the prosecution goes to show that acting upon a complaint the Excise Sub Inspector (PW-3) went to the village of the the accused/applicant where on the disclosure made by PW-1 Lakhan Das and PW-2 Maniram 10 quarters of illicit liquor was found in his house. On being tasted, sniffed and on litmus paper test being done the said article was found to be country made liquor. Thereafter, in presence of PW-1 and PW-2 seizure of the same was effected under Ex. P-1, an offence was registered against him under Section 34 (1) (a) of the CG Excise Act and on completion of relevant procedural formalities, the challan was laid accordingly. Having faced the trial, the accused/applicant ultimately has been convicted under Section 34 (1) (a) of the Excise Act and sentenced to undergo simple imprisonment for

one month with fine of Rs.5,000/- vide judgment dated 18.09.2008 passed by JMFC, Bilaspur in Criminal Case No.157/2008. The findings recorded by learned Magistrate received affirmation in appeal also vide judgment impugned dated 13.10.2008 passed in Criminal Appeal No.90/2008. Hence, this revision.

2. Counsel for the accused/applicant submits that the findings recorded by both the Courts below are not in consonance with the evidence of the witnesses and, therefore, they are liable to be set aside. He submits that the article so seized has not even been put to chemical examination to arrive at the conclusion that it was nothing but liquor. According to him, the prosecution has not even proved that the house from where the liquor was seized was in exclusive possession of the accused/applicant.

3. State/counsel however supports the judgment impugned and submits that both the courts below have taken proper care in appreciating the evidence of the witnesses and, therefore, the judgment impugned cannot be said to be at fault warranting interference in this revision.

4. From the evidence of PW-1 and PW-2 who are the witnesses to seizure made under Ex.P-1 it is apparent that in their presence the Excise Sub Inspector seized the liquor from the house of which was in joint possession and occupation of the accused/applicant and is nephew. Further, the evidence of PW-3 who searched the house of the accused/applicant and seized 10 quarters of country made liquor also gets full corroboration from the statements of PW-1 and PW-2. PW-3 has also stated that on experience based examination done by tasting, sniffing and dipping the litmus paper into the article seized he formed an

opinion that it was country made liquor. The defence taken by the accused/applicant that on account of lodging a report of theft against PW-2 he has falsely spoken against him, does not convince the judicial mind of this Court particularly when the two independent seizure witnesses have categorically stated that from the house which was in joint possession of the accused/applicant and his nephew liquor was seized therefrom. Thus no illegality appears to be there in the well reasoned findings recorded by both the Courts below in holding the accused/applicant guilty as described above. Accordingly, the conviction of the accused/applicant is hereby maintained.

5. As regards sentence, keeping in view the fact that the incident had taken place in the year 2003 and since then more than 16 years have rolled by, and further that the accused/applicant has already remained in jail for four days, this Court does not see any reason in again sending him to jail at this stage. Being so, the sentence imposed on the accused/applicant is hereby reduced to the period already undergone. Sentence of fine is however left as it is.

6. In view of the aforesaid analysis, the revision is allowed in part.

Sd/-

(Vimla Singh Kapoor)

Judge