

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 25 of 2010**

1. Shiv Kumar Agrawal S/o Ghanshyam Lal Agrawal, aged about 40 years.
2. Bhagwan Das Agrawal, S/o Mishri Lal Agrawal, aged about 32 years. Both are R/o Side of the 56 Bhog Mithai Shop, Lakhen

---- Applicants**Versus**

1. State of Chhattisgarh, through District Magistrate, Raipur District-Raipur (C.G.)

---- Respondent

For Appellants	:	Shri Awadh Tripathi, Adv.
For Respondent/State	:	Shri Anand Verma, Dy.G.A.

Hon'ble Smt. Justice Rajani Dubey**Order On Board****01.03.2019**

1. The present revision arises out of the impugned judgment of conviction and order of sentence dated 11/01/2010 passed by 9th Additional Sessions Judge, (FTC) Raipur, in Cr. Appeal No. 103/2009 whereby, the learned appellate Court below has confirmed the conviction and sentence of the accused/applicants as awarded by the learned Chief Judicial Magistrate, Raipur, vide its judgment dated 10/09/2009 in Criminal Case No.433/2009 convicting appellants Shiv Kumar Agrawal and Bhagwan Das Agrawal under Section 34 (A) of the Excise Act and sentencing them to undergo R.I. for one year with fine of Rs.25,000/- each, and appellant Shiv Kumar Agrawal under Sections 3/181 and 130(3)/177 of the Motor Vehicle Act and sentenced him to pay fine of Rs.500/- and Rs.100/- respectively, with default stipulations.
2. Brief facts of the case are that on 14.04.2009 at about 8:14 AM, Constable Mangleshwar Singh of Crime Branch has searched the

vehicle (Maruti Van) bearing registration No. OR/05 M/234 and seized 20 cartoons of English Liquor Royal Master Whiskey from the possession of appellants and brought them to Police Station, Amanaka. Thereafter, FIR (Ex. P/5) registered under Section 34-A of the Excise Act against accused/applicants. After filing of the charge sheet, charges were framed by the trial Court against appellant Shiv Kumar Agrawal (A-1) under Section 34(A) of the Excise Act, Sections 3/181, 130(3)/177 of the Motor Vehicle Act and against appellant Bhagwan Das Agrawal under Section 34(A) of the Excise Act.

3. So as to hold the accused/applicants guilty, the prosecution has examined as many as 05 witnesses. Statements of the accused/applicants were also recorded under Section 313 of the Cr.P.C. in which they denied the charge leveled against them and pleaded innocence and false implication in the case.

4. After hearing the parties, vide impugned judgment of conviction and order of sentence dated 10/09/2009, learned Chief Judicial Magistrate has convicted the accused/applicants as mentioned above in para 1 of this order, which was affirmed by the learned appellate Court. Hence, the present revision.

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

6. Counsel for the applicants submits that he is not pressing the revision so far as it relates to the conviction part of the judgment and would confine his argument to the sentence part thereof only. According to him, the incident is said to have taken place in the year 2009, and thereby more than 10 years have rolled by since then. Appellant No. 1 and 2 are aged more than 60 years and 50 years respectively, they have already remained in jail for about five months and no useful purpose would be served in again sending them to jail, therefore, in the interest of justice, it would be appropriate if the sentence imposed on them may be reduced to the period already undergone by them.

7. Learned counsel for the State has no objection to this

preposition.

8. Having gone through the submission made, material on record and the evidence of the witnesses Mangleshwar Singh (PW-3), N.K. Tripathi (PW-4) and S.K. Jain (PW-5), involvement of the accused/applicants in the crime in question stands proved beyond reasonable doubt. This Court does not see any illegality in the findings recorded by both the Courts below as regards conviction of the appellants under Section 34 A Excise Act and Section 3/181 and 130(3)/171 of the Motor Vehicle Act.

9. As regards sentence, keeping in view the facts that incident had taken place in the year 2009, after that the appellants had already remained in jail for more than four months and no useful purpose would be served in again sending them to jail. Therefore, it would be appropriate in the interest of justice to sentence them to the period already undergone by him.

10. In view of above consideration, the revision is partly allowed. Appellants is reported to have remained in jail for a period of more than four months. While maintaining the conviction of the appellant, they are sentenced to the period already undergone by them.

Sd/-

(Rajani Dubey)
JUDGE