

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 251 of 2010

Anil Advani S/o. Otumal Advani, Aged about 35 years, R/o. Village Chakarbhata Camp, District Bilaspur (C.G.)

---- **Applicant**

Versus

State Of Chhattisgarh, Through Police Station Chakarbhata District Bilaspur (C.G.)

---- **Respondent**

For Applicant : Mr. K.K. Khatri, Advocate

For Respondent : Mr. Aman Kesharwani, PL

Hon'ble Smt. Justice Vimla Singh Kapoor

26.03.2019

This revision is directed against the judgment dated 28.05.2010 passed by the Additional Sessions Judge Bilaspur in Criminal Appeal No. 34 of 2010, affirming the judgment of conviction and order of sentence dated 22.03.2010 passed by the Judicial Magistrate, First Class Bilha in Criminal Case No. 310/2009, convicting the accused/applicant under section 34(1) (A) of the Excise Act and sentencing him to undergo rigorous imprisonment for 3 months and pay fine of Rs. 5,000/- with default stipulations.

2. Facts of the case, in short, are that on 09.05.2009 Head Constable of Police Station Chakarbhata was on patrolling duty,

he received a secret information regarding the accused/applicant selling illicit liquor in the vegetable market. He along with his associates nabbed the applicant and on being searched one carton of Goa Whiskey under (Ex.P-1) was seized from him. After effecting seizure and making arrest of the accused thus on completion of investigation charge sheet was laid under Section 34(1)(A) 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(1)(A) 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. Conviction is not being pressed on merit and the sole prayer made by the counsel for the applicant is confined to reduction of sentence imposed on the accused/applicant to the period already undergone on account of the fact that the case is quite old and the accused/applicant has already remained in jail for some time.

5. State counsel however, supports the findings recorded by the both the Courts below.

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

7. Shiv Kumar Chandra (PW-1) - Head constable, has stated that on receiving a secrete information, the accused/applicant was raided by him along with his team-mates and one carton of

Goa Whiskey under (Ex.P-1) was seized from him in the presence of the witness and registered FIR (Ex.P-2) against him. C.H. Yadu (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. 6 that the article produced before him was English 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. 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 one Carton of Goa Whiskey. 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. 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 (1)(A) of the Excise Act being based on proper appreciation of the evidence on record, do not call for any interference by this Court.

8. As regards sentence, keeping in view the fact that the incident had taken place in the year 2009, that the accused/applicant has already remained in jail for a period of 1 month and further that by now he must be leading a well settled life saddled with innumerable responsibilities, this Court thinks it

proper to reduce the sentence imposed on him to the period already undergone.

9. With the above, the revision stands allowed in part.

Sd/-

(Vimla Singh Kapoor)

JUDGE

Santosh