

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 256 of 2010

- Pankaj Kumar Namdeo, S/o Horilal Namdeo, aged about 32 years, R/o Near Bamlaipara Temple, Dhamtari, Police Station Dhamtari, District – Dhamtari, C.G.

---- Applicant

Versus

- State Of Chhattisgarh, Through the District Magistrate, Dhamtari, District – Dhamtari, C.G.

---- Respondent

For Applicant	:	Shri Amit Kumar Sahu, Adv.
For Respondent/State	:	Shri Suryakant Mishra, PL

Hon'ble Smt. Justice Rajani Dubey

Order On Board

29.03.2019

The present revision arises out of the impugned judgment of conviction and order of sentence dated 10.06.2010 passed by the Sessions Judge, Dhamtari, C.G. in Cr. Appeal No. 16/2010, whereby the learned appellate Court below while maintaining the conviction of the applicant modified the sentence awarded by the learned Chief Judicial Magistrate, Dhamtari, vide its judgment dated 26.02.2010 in Cr. Case No. 912/2009 for the offence under Section 34(1)(A) of the C.G. Excise Act and sentenced him to undergo RI for three months and to pay fine of Rs. 5,000/-, plus default stipulations.

2. Brief facts of the case are that on 17.12.2009, at about 8.00 p.m., acting on tip-off, during patrolling Police, Head Constable Dinesh Chandel of P.S. Dhamtari along with his staff searched and seized country made liquor from the possession of the accused/applicant.

Therefore, the FIR was lodged against the applicant and offence was registered under relevant section. After completion of investigation, charges were framed against the accused/applicant under Section 34(1)(A) of the C.G. Excise Act.

3. So as to prove the guilt of the accused/applicant, the prosecution has examined 4 witnesses. Statement of the accused/applicant was also recorded under Section 313 of the Cr.P.C. in which he denied the charges leveled against him and pleaded innocence and false implication in the case.

4. After hearing the parties, vide impugned judgment of conviction and order of sentence dated 26.02.2010, learned Chief Judicial Magistrate has convicted the accused/applicant under Section 34(1)(A) of the C.G. Excise Act and sentenced him to undergo RI for six months and to pay fine of Rs. 5,000/-, plus default stipulations. On appeal, the conviction has been maintained but the sentence awarded under 34(1)(A) of the C.G. Excise Act, has been reduced to three months and to pay fine of Rs.5000/-, with default stipulation. Hence, the present revision.

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

6. Counsel for the applicant submits that he is not pressing this revision as 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, he is aged about 42 years, the applicant has already remained in jail for about 11 days and no useful purpose would be served in again sending

him to jail. Therefore, it would be appropriate in the interest of justice if the sentence imposed upon him may be reduced to the period already undergone by him.

7. Learned State counsel has no objection to this preposition.

8. Having gone through the material on record and the evidence of the witnesses including B.P. Patel (PW-1) and Dinesh Chandel (PW-4) by whom the appellant was caught red handed, established the involvement of the accused/applicant in the crime in question. This Court does not see any illegality in the findings recorded by both the Court below as regards conviction of the applicant under Section 34(1) (A) of the C.G. Excise Act, being so it is hereby maintained.

9. As regards sentence, keeping in view the fact that the incident had taken place in the year 2009 and further that the applicant has already remained in jail for about eleven days, no useful purpose would be served in again sending him to jail.

10. In view of the above, the revision is partly allowed. While maintaining the conviction of the applicant, his jail sentence is reduced to the period already undergone by him. The applicant is reported to be on bail. His bail bond shall stand discharge.

Sd/-
(Rajani Dubey)
Judge