

HIGH COURT OF CHHATTISGARH, BILASPUR**Order Reserved On 22.07.2019****Order Delivered On 27.08.2019****CRR No. 478 of 2010**

- Mahendra Kumar S/o Lalit Ram aged 25 years R/o. Village Poda, Police Station Chakarbhatta District Bilaspur (C.G.)

---- Applicant**Versus**

- State of Chhattisgarh through SHO, Police Station Chakarbhatta, District Bilaspur (C.G.)

---- Respondent

For Applicant	:	Mr. Akhtar Husain, Advocate
For Respondent	:	Mr. Wasim Miyan, PL

Hon'ble Smt. Justice Rajani Dubey**C.A.V. Order****27.08.2019**

1. The present revision arises out of the impugned judgment of conviction and order of sentence dated 13.09.2010 passed by Fifth Additional Sessions Judge, Bilaspur (C.G.) in Criminal Appeal Case No. 69/2010 whereby the learned Appellate Court below has confirmed the conviction and sentence of the applicant as awarded by the learned Judicial Magistrate First Class, Belha District- Bilaspur vide its judgment dated 22.07.2010 in Criminal Case No. 786/2008 for the offence under Section 34(1)(a) of the C.G. Excise Act and sentence him to undergo RI for three months and to pay fine of Rs. 5,000/- with default stipulation.

2. Brief facts of the case are that on 20.03.2008, upon receiving secret information, Assistant Sub-Inspector, Police Station, Chakarbhatta, raided at the Pump House of Jhadu Ram at Gram Podi,

and seized 10 liters of country-made liquor from the possession of the applicant, which was kept for selling. Thereafter, FIR was registered under Crime No. 82/2008. After completion of investigation, charge-sheet was filed and charge was framed against the applicant under Section 34(1)(a) of the C.G. Excise Act by the trial Court.

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 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 judgment of conviction of sentence dated 22.07.2010, learned Judicial Magistrate First Class, Behla, has convicted the accused/applicant under Section 34(1)(a) C.G. Excise Act and sentenced him to undergo R.I. for three months and to pay fine of Rs. 5,000/- plus default stipulation. This order was appealed by the appellant and in the appeal learned Appellate Court has confirmed the conviction and sentence of the Applicant. Hence, the present revision.

5. Learned counsel for the applicant submits that judgment of conviction and order of sentence passed by both the Courts below are arbitrary, illegal and contrary to law. The seizure witnesses Jatiram (PW-1) and Jantram (PW-2) have not supported the seizure memorandum and turned hostile. He further submits that both the Courts below failed to see that the liquor was seized from the pump house of one Jhaduram and not from the possession of applicant. Thus, the applicant ought to have acquitted.

6. On the other hand, learned counsel for the State supports the judgment of conviction and order of sentence.

7. I have heard learned counsel for the parties and perused the material on record.

8. From the evidence what transpired is that out of two seizure witnesses, one Jatinram (PW-1) turned hostile and another Jantram (PW-2) has admitted his signature on seizure memo. Furthermore,

C.N. Yadu (PW-3) has admitted in his cross-examination that neither the article was sent for forensic test nor chemical analysis report of seized article was produced.

9. In the light of judgment of this Court in the matter of ***Parwej Alam v. State of Chhattisgarh [CRR No. 242/06]*** & Judgment of MP High Court in the matter of ***Babulal v. State of MP [2006(1) MPLJ 317]***, wherein it has been held as under :-

“The next contention of the learned counsel for the accused/applicant is that the prosecution has failed to establish beyond doubt that the bulk of the material said to have been seized from the accused/applicant is liquor. He stressed that the quantity put to test by the Excise Sub Inspector out of the quantity in question has not been sufficient, consequently the bulk in question is not proved to be liquor and thus the applicant deserves acquittal. In this respect PW-5 Vivek Chauhan has deposed that at the relevant time he seized from the accused vide Ex. P/2-C, 288 quarter bottles of Whisky, 350 quarter bottles of plain liquor and 20 bottles of plain liquor each of 750 ML. The seizure memo shows that they were placed in container (KATTIS0 PW-5 has also deposed that he did not remember whether he sent the entire bulk seized for test to excise SI or sent how much to him. I further find that PW-1 B.L. Jonvar the Excise SI as per his assertion in his statement, had received one bottle of plain liquor and three or four quarter bottles of English and plain liquor. On their test he opined them as liquor vide reports Ex. P/1 and Ex. P/2. As per statement of PW-5 Vivek Chauhan and the seizure memo Ex.P/2-C total quantity of material in question is 129 bulk liters, therefore, the quantity put to test out of the above being comparatively very meager the above reports cannot be attached any

conclusiveness. They being the only basis for proving the liquor in question to be liquor when under the circumstances they are bereft of probative value the Courts below went perverse to find the accused/applicant guilty of illegally possessing liquor, not understanding the direction of the Hon'ble Apex Court laid down in Gaunter Edwin Kircher Vs. State of Goa, 1993 Cri. L.J. 1485 in this respect, though with reference to narcotic law, that concerned authorities must send entire of seized quantity or sufficient quantity therefrom by way of samples for analysis."

10. Not sending the seized article for forensic test and not supporting the seizure by seizure witness would, of course, fatal to the prosecution case.

11. That apart, the prosecution case is that the liquor was seized from the pump house of one Jhaduram, in spite of that, Jhaduram was neither made an accused nor witness to substantiate its case.

12. From the overall material and in view of judgment of this Court in the matter of *Parwej (Supra)* & judgment of High Court of M.P. in the matter of *Babulal (Supra)*, the present prosecution has not been able to prove the charges leveled against applicant beyond reasonable doubt.

11. Accordingly, the revision is allowed. The impugned judgment of conviction and order of sentence is set-aside and the applicant is acquitted of the charges leveled against him. The applicant is on bail and his bail bond shall discharged.

Sd/-
(Rajani Dubey)
JUDGE