

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 682 of 2006

Order reserved on 26.02.2019

Order pronounced on 08.03.2019

Chentan Lal Sahu S/o Bisali Ram Sahu, aged about 30 years, R/o Village Jhura Nawagaon, Tahsil – Kurud, District Dhamtari, CG.

---- Applicant

Versus

State of Chhattisgarh, through Station House Officer Police Station – Kurud, District Dhamtari, CG.

---- Respondent

For Applicant	: Shri Sachin Nidhi, Advocate
For State/Respondent	: Shri Aman Kesharwani, PL

Hon'ble Smt. Justice Vimla Singh Kapoor

C.A.V Order

Acting upon a secret information, Sub-Inspector namely Bharti Markam (PW-5) had raided the house of the accused/applicant on 16.08.2003 and found 160 quarters of plain liquor stashed therein. After completing the requisite formalities, said liquor was seized in presence of the witnesses and an offence under Section 34 (1) of Excise Act was registered against the accused/applicant. On investigation being completed, *challan* was filed, charge was framed, trial started and the accused/applicant stood convicted by the Chief Judicial Magistrate, Dhamtari vide judgment dated 17.01.2006 under Section 34 (1) of Excise Act. Sentence imposed on him by the trial Court was RI for one year with payment of fine of Rs.25,000/-, plus default stipulation. Vide judgment impugned dated 07.11.2006 also, the

findings recorded by the Magistrate have been confirmed. Hence this revision.

2. Counsel for the applicant submits that though the seizure witnesses have not supported the case of the prosecution and have been declared hostile yet both the Courts below have committed a grave legal error in convicting and sentencing the accused/applicant as mentioned above. He submits that the judgment impugned being contrary to the evidence on record is liable to be struck down.

3. State counsel submits that the prosecution has proved its case by leading cogent and clinching evidence, the judgment impugned cannot be said to suffer from any legal flaw.

4. From perusal of the evidence on record, it remains undisputed that 160 quarters of plain liquor each containing 180 Milliliter, were found in the house of the accused/applicant which was subsequently seized in presence of the witnesses being PW-2 and PW-3. Though PW-2 and PW-3 have been declared hostile yet they have admitted their signature on the seizure memo. They have not even stated that any kind of threat was put to them by anyone forcing them to put their signature on the seizure memo. It is nowhere stated by the accused/applicant or any of his witnesses that the house where the liquor was found stashed, did not belong to him. Thus it can safely be inferred that the house from where the seizure of liquor was effected was in possession and occupation of the accused/applicant. As far as question of PW-2 and PW-3 having been declared hostile is concerned, the record shows that being the resident of the same village, they might not have chosen to speak against the accused/applicant who was the inhabitant of the same village. Moreover, on the

basis of experience and the litmus paper test done by PW-1 the article seized from the house of the accused/applicant was found to be plain liquor which is evident from report (Ex.P-1). Merely on the ground that PW-5 was a police official, her evidence cannot be disbelieved and discarded particularly when the accused/applicant has utterly failed to state anything like that.

5. Thus in view of what has been discussed above this Court is of the opinion that the findings recorded by both the Courts below are strictly in accordance with law and the evidence adduced by the prosecution. No illegality in the well reasoned findings under challenge is attributable. Being so, no interference with the same is required to be made and thereby the revision is held to be without any substance.

6. Accordingly, dismissal follows with affirmation of the judgment impugned.

Sd/-

(Vimla Singh Kapoor)
Judge

Jyotishi/Pawan