

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 334 of 2005

Order reserved on 29.03.2019

Order pronounced on 04.12.2019

Vikash Shukla, aged about 25 years, son of Shri R.P. Shukla, resident of Pawan Vihar, Civil Line, Raipur, CG.

---- Applicant

Versus

The State of Chhattisgarh, through the Police Station Civil Lines, Raipur, CG.

---- Respondent

For Applicant : Shri Sushil Dubey, Advocate

For State/ Respondent : Shri Raghvendra Verma, GA

Hon'ble Smt. Justice Vimla Singh Kapoor

C.A.V Order

By this revision petition the applicant has assailed the judgment dated 28.07.2005 passed by Additional Sessions Judge, (FTC) Raipur, in Criminal Appeal No. 191/03 affirming the judgment dated 19.06.2003 passed by Judicial Magistrate First Class, Raipur in Criminal Case No. 201/02 convicting the accused/applicant under Section 34 (2) of the Excise Act and sentencing him to undergo RI for one year and pay fine of Rs. 25,000/-, plus default stipulation.

2. Facts of the case, in short, are that on 18.06.2001 at about 1 AM, acting upon a secrete information regarding illicit liquor being transported by the accused/applicant in a matador, Assistant Sub Inspector (PW-3) laid a barricading and when the accused/applicant tried to run away by avoiding the barricades, the matador bearing registration No. MP 23 DA/260 was chased and caught near railway crossing which was being driven by the accused/applicant who

disclosed his name being asked by PW-3. On vehicle being checked 2304 quarters of royal master whiskey worth Rs.69120 /- was found therein, seizure of the same was made under Ex.P-1 in presence of two witnesses. On being chemically examined, the sample made to the laboratory under Ex.P-3 was found to be India made whiskey foreign liquor vide report Ex.P-5. After completion of investigation charge-sheet was filed against the accused/applicant 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 (2) of the Excise Act and sentenced him to the term mentioned above. The findings recorded by the trial Court have subsequently been confirmed by the lower Appellate Court by the judgment impugned dated 28.07.2005 and it is that which is under challenge in this revision.

4. Counsel for the accused/applicant submits that both the Courts below have fallen into a serious error in convicting the accused/applicant under Section 34 (2) of the Excise Act and that the findings so recorded are contrary to the evidence led by the prosecution. He further submits that as the prosecution could not prove its case beyond reasonable doubt, the judgment impugned is liable to be set aside.

5. On the other hand, counsel for the respondent/State supports the judgment impugned and submits that the findings recorded by both the Courts below convicting the accused/applicant as shown above, are strictly in accordance with law and there is no infirmity in the same.

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

7. After considering the material on record including the evidence on record this Court is of the considered opinion that the accused/applicant was found in possession of 2304 quarter of whiskey contained in 48 cartons kept in the matador being driven by none else but the accused/applicant. Though PW-1 and PW-2 – the witnesses to seizure have not supported the case of the prosecution and chose to turned hostile yet the evidence of PW-3, PW-4 and PW-5 clearly support the case of the prosecution and merely that they are people hailing from the police and excise department, their testimony cannot be discarded. The accused/applicant from whom seizure of huge quantity of India made whiskey was made, has not been able to produce any licence authorising him to transport the said liquor. Ex.P-5 also opines that the samples sent for chemical examination were found to be India made whiskey. This apart the accused/applicant has not taken a defence that there was any previous enmity between him and PW-3 and for that he has been roped in a false case. In these circumstances this Court does not see any illegality in the judgment impugned being based on PW-3, PW-4 and PW-5 as the testimony is fully consistent.

8. No illegality seems to be there in the judgment impugned warranting any interference by this Court and being so the revision being without any substance is hereby dismissed.

Sd/-

(Vimla Singh Kapoor)

Judge

Jyotishi/Pawan