

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 263 of 2013**

- Smt. Padmani Jain, wife of Prakash Jain, aged about 40 years, Caste Kalar, resident of Gadhpura, Aantagarh, District North Bastar, Kanker, Chhattisgarh.

----Applicant**Versus**

- State of Chhattisgarh Through : The District Magistrate, Kanker, District North Bastar Kanker, Chhattisgarh.

---- Respondent

For Applicant	:	Shri Amit Kumar Sahu, Adv.
For Respondent/State	:	Ms. Akshara Amit, P.L.

Hon'ble Smt. Justice Rajani Dubey**Order on Board****03/10/2019**

01. This criminal revision is directed against the order dated 10.04.2013 passed by the learned Additional Sessions Judge, Bhanupratappur, District Uttar Bastar Kanker (C.G.), in Criminal Appeal No.30/2012, whereby the learned appellate Court affirmed the conviction and sentence of the applicant under Section 34(1)(a) of the Chhattisgarh Excise Act (for short 'the Act') as awarded on 28.09.2012 by the Judicial Magistrate First Class, Bhanupratappur, Uttar Bastar (Kanker), in Criminal Case No.537/2011.

02. Brief facts of the case are that on 19.03.2011, when Assistant Sub Inspector Dayalu Ram Sahu (PW/3) was on

patrolling duty of rural area along with his staff, near Bus Stant at Aantagarh, he received a secret information that the applicant is in possession of hand made Mahuwa illicit liquor for selling purpose. On the basis of said secret information, the police conducted raid in the house of applicant and seized liquor sale amount of Rs.50/- and 3.5 bulk liter of hand made Mahuwa liquor. On this basis, FIR (Ex.P/5) was registered by Dayalu Ram Sahu (PW/3) under Section 34(A) of the Act, and after completion of investigation, the charge sheet was filed against the accused/applicant.

03. Learned Magistrate having perused the material before it convicted the accused/applicant under Section 34(1)(a) of the Act and sentenced her to undergo R.I. for 6 months with fine of Rs.7,000/-, plus default stipulation. This order was appealed by the applicant and in the appeal, the learned Appellate Court has affirmed the conviction and sentence of the applicant as described above. Hence, the present revision.

04. Learned counsel for the submits that he is not pressing the revision so 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 2011 and thereby more than 8 years have rolled by since then. She is aged about 48 years. The applicant has already remained in jail for about 50 days, and no useful purpose would be served in again sending her

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

05. State counsel, however, supports the findings recorded by the Court below.

06. Heard learned counsel for the parties and perused the judgment impugned and the evidence available on record carefully.

07. From the evidence of Tikeshwari Dhruv (PW/1), Ramsai Gawade (PW/2) whose evidence is well corroborated by the evidence of Dayalu Ram Sahu (PW/3)-Investigating Officer and Tapan Kumar Soni (PW/4) - Excise Inspector, who examined the seized article and gave his report Ex.P/6 opining that the seized article is liquor which is made of Mahuwa, this Court is of the opinion that the conviction recorded by both the Courts below as described above is strictly on the basis of evidence on record and there is nothing worth interference with the same. Conviction is thus maintained.

08. As regards sentence, keeping in view the facts that the incident had taken place in the year 2011 and thereby 09 years have rolled by since then and further that the applicant has already remained in jail for more than 50 days. This Court is of the opinion that no useful purpose would be served in sending her back to jail at this stage and the ends of justice would be served if she is sentenced to the period already undergone by her.

09. In view of the aforesaid discussion, the revision is partly allowed. While maintaining the conviction of the applicant under Section 34(1)(a) of the C.G. Excise Act, she is sentenced to the period already undergone by her. The applicant is reported to be on bail. Her bail bonds shall stand discharged.

Sd/-

(Rajani Dubey)
JUDGE

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