NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 392 of 2013

- Goverdhan Kewat, S/o Kunwar Nishad, aged about 25 years, R/o village Bade-Medhpar, P.S. Hirri, Civil and Revenue District Bilaspur (C.G.)

---- Applicant

Versus

- State of Chhattisgarh, Through the District Magistrate, Bilaspur

---- Respondent

For Applicant	:	Mr. Ravindra Agrawal, Adv.
For Respondent	:	Mr. Rahul Mishra, Dy. G.A.

Hon'ble Smt. Justice Rajani Dubey

C.A.V. Order

15.07.2019

1. The present revision arises out of the impugned judgment of conviction and order of sentence dated 27.06.2013 passed by Second Additional Judge to the Court of First Additional Sessions Judge, Bilaspur in Criminal Appeal No. 96/2013 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 25.02.2013 in Criminal Case No. 58/2013 for the offence under Section 34(1)(a) of the C.G. Excise Act and sentence him to undergo RI for six months and to pay fine of Rs. 10,000 with default stipulation.

2. Brief facts of the case are that on 06.01.2013, upon receiving secret information, Police staff of Hirri Police Station

seized two bottles country-made liquor made of 'Mahua' from the possession of the applicant. The seized liquor was sent for analysis to Excise Sub-Inspector Ajay Dhruve (PW-4), who opined that the seized liquor was country-made liquor made of 'Mahua'. After completion of investigation, the applicant was prosecuted under Section 34(1)(a) of 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 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 25.02.2013, 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 six months and to pay fine of Rs. 10,000 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 opposes the conviction of applicant on the ground that prosecution has not laid any cogent evidence to establish that the liquor was seized from the conscious possession of the applicant. There was no material to show that after affecting the seizure, the liquor was sealed. Learned counsel for the applicant has pressed this revision on additional ground of non-compliance of Section 57 and 57(a) of the Act. It was contended that non-compliance of Section 57 and

57(a) of the Act vitiates the prosecution. Reliance is placed on the decisions of this Court in the matter of ***Suresh Kumar vs. State of Chhattisgarh [2006 (3)(C.G.L.J.) 259], State of MP vs. Mangu [976 MP Weekly Note 283] & Babulal vs. State of MP [2006(1) M.P.L.J. 317].***

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

7. Having considered the rival submissions and on perusal the material on record, in my considered opinion, the Revision deserves to be allowed for the following reasons.

(I) The Hon'ble Supreme Court in 1967 CRLJ 651 has held that wherein liquor is capable of chemical analysis and not subjected to such chemical analysis such physical tests as applied in this case by the Excise Sub-Inspector are not sufficient to hold the seized liquid to be liquor. It is not disputed that no such chemical test has been held in this case.

(II) The testimony of Head Constable Love Singh (PW-1) shows that there is no material on record to show that the seized country-made liquor was kept in safe custody at Police Station Malkhana. Register has also not been proved by the Prosecution.

(III) There is total non-compliance of Section 57 and 57(a) of the Act by prosecution, which vitiates the prosecution.

(IV) PW-1, Love Singh has deposed that at the relevant time he seized two bottles of country-made liquor from the accused but Ajay Dhruve (PW-4) stated that he received 650 ML liquid in sealed condition. As per the statement of Love Singh

(PW-1) and Seizure Memo (Ex-P/1) total quantity of material in question is two bottles of 650 ml. In the light of judgment of this Court in the matter of ***Parwej Alam v. State of Chhattisgarh [*1993 CRLJ 1485]** & Judgment of MP High Court in the matter of ***Babulal v. State of MP*** **[2006(1) MPLJ 317]**, wherein it has been held that concerned authorities must sent entire seized quantity are sufficient quantity therefrom by way of sample for analysis. The prosecution has failed to prove that applicant was in conscious possession of 2 bottles(650ml +650 ml) of country-made liquor made of Mahuwa.

8. On the basis of above, the conviction of the applicant under Section 34(1)(a) of C.G. Excise Act and the sentence awarded thereunder being wholly contrary to the law is liable to be set-aside in exercise of revisional Jurisdiction.

9. In the result this revision is allowed. Conviction of the applicant under Section 34(a) of C.G Excise Act and the sentence awarded thereunder is set-aside. Fine, if any paid, shall be refunded to the applicant.

Sd/-
(Rajani Dubey)
JUDGE

Vijay Sahu