

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.6 of 2013

Shiv Kumar Nishad, S/o Mittooram Nishad, aged about 40 years, Caste Kenwat, R/o Malda, Post Office and Police Station Nandghat, Tahsil Nawagarh, District Bemetara, Chhattisgarh

---- Applicant

versus

State of Chhattisgarh through Police Station Nandghat, Tahsil Nawagarh, District Bemetara, Chhattisgarh

--- Respondent

For Applicant	:	Shri Sudhir Verma, Advocate
For Respondent	:	Shri V.K. Agrawal, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

2.4.2019

1. By the judgment dated 29.9.2012 passed in Criminal Case No.145 of 2012, the Chief Judicial Magistrate, Bemetara convicted the Applicant/accused under Section 34(2) of the Chhattisgarh Excise Act and sentenced him to undergo rigorous imprisonment for 1 year and to pay fine of Rs.25,000/-. The Additional Sessions Judge, Bemetara, in appeal, being Criminal Appeal No.66 of 2012, vide judgment dated 23.11.2012, altering the conviction and sentence of the Applicant/accused, convicted him under Section 34(1)(a) of the Chhattisgarh Excise Act and sentenced with the period already undergone by him and with fine of Rs.5,000/- only with default stipulation.
2. Facts of the case, in brief, are that on 21.2.2012, on information received from an informant, Head Constable Suresh Singh (PW3) searched the vehicle TVS XL being driven by the Applicant/accused. In search, he found that illegal liquor of 40 bottles (quarters) of Goa Special Whiskey, each bottle containing

180 ml. Liquor, were kept in a white plastic manure bag on the vehicle of the Applicant and he had no paper with him for keeping the said illegal liquor. The liquor was seized from the Applicant. After return to the police station, FIR was registered by Head Constable Suresh Singh (PW3). On completion of the investigation, a charge-sheet was filed. After trial and appeal, the Applicant was convicted and sentenced as mentioned in the first paragraph of this order. Hence, this revision.

3. Learned Counsel appearing for the Applicant submits that there is no material available on record against the Applicant, but both the Courts below have convicted and sentenced him. As per the prosecution story, the Applicant was carrying liquor on TVS two-wheeler vehicle, but as deposed by the seizure witnesses, the police officials had brought the Applicant before the seizure witnesses in a van. Apart from this, as contended by the prosecution, the liquor was seized in 40 bottles each bottle containing 180 ml. of liquor, but as per the examination report of the liquor, the liquor was received for examination in a green plastic bag having quantity of 5 quarters only. Therefore, it is not established that the liquor which was examined was the seized liquor.
4. Learned Counsel appearing for the State supports the impugned judgment.
5. I have heard Learned Counsel appearing for the parties and perused the records with due care.
6. Before the Trial Court, the Investigating Officer of the case in hand, i.e., Head Constable Suresh Singh (PW3) has deposed that on the

date of incident, on the basis of information received from an informant, he stopped the TVS XL two-wheeler vehicle being driven by the Applicant. At that time, the Applicant was having 40 bottles of Goa Special liquor in a white plastic manure bag over the said TVS vehicle. He seized the liquor from the possession of the Applicant. Though both the seizure witnesses, namely, Harihar Prasad (PW1) and Bhuvanlal (PW2) have supported the above seizure, both have categorically admitted the fact that when they were sitting in the panchayat building, the police officials had brought the Applicant with liquor before them in a van. Both these seizure witnesses have also admitted the fact that they were not aware that from where the liquor was brought and where the Applicant was caught. Investigating Officer Suresh Singh (PW3) has also admitted this fact in his cross-examination and has categorically admitted that the above two seizure witnesses had not gone with him to the spot. The Applicant was first caught and thereafter the seizure witnesses were called to the spot. From the above admission made by the Investigating Officer himself, it is clear that against the seizure shown to be made in presence of the seizure witnesses a contrary statement has been made by the Investigating Officer himself in the Court. Apart from this, as stated by Investigating Officer Suresh Singh (PW3), he seized 40 bottles of liquor each bottle containing 180 ml. of liquor and all the bottles were in sealed condition. As stated by Excise Sub-Inspector L.K. Choubey (PW4), the quantity of the liquor brought to him for examination was 5 quarters only and that was kept in a polythene bag. Investigating Officer Suresh Singh (PW3) has not explained in his examination that why the sealed bottle of liquor was not sent for examination and why the sealed bottle of liquor was opened

and thereafter the liquor was sent for examination in a polythene bag. In these circumstances, it is suspicious that the seized liquor itself was sent for examination.

7. Therefore, the findings of conviction arrived at by the Courts below are contrary to the evidence available on record. From the evidence adduced by the prosecution, recovery of the liquor from the Applicant is beyond reasonable doubt and the examination of the liquor was made from the seized liquor itself is also suspicious. From the aforesaid discussion, I find that the Applicant is entitled to get benefit of doubt.
8. Consequently, the revision is allowed. The conviction and sentence imposed upon the Applicant are set aside. He is acquitted of the charge framed against him.
9. Records of the Courts below be sent back along with a copy of this order for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
Judge