

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 55 of 2013**

- Harishchandra Dewangan S/o Ramadhar Dewangan aged about 55 years, R/o Konde Power House, Ward No. -17, Rajhara, P.S. Dondi, District-Durg, Chhattisgarh.

---- Applicant**Versus**

- State Of Chhattisgarh, Through : District Magistrate Durg, P.S. Rajhara, District Durg, Chhattisgarh.

---- Respondent

For Applicant	:	Mr. B.P. Singh, Advocate.
For Respondent/State	:	Ms. Akshra Amit, PL.

Hon'ble Smt. Justice Rajani Dubey**Order On Board****16/09/2019**

1. The present revision arises out of the impugned judgment of conviction and order of sentence dated 16.01.2013 passed by the learned Additional Sessions Judge, Balod District Durg, in Cr. Appeal No. 328/2011 whereby, the learned appellate Court below has affirmed the conviction and modified the sentence of the accused/applicant as awarded by the learned Judicial Magistrate First Class, Dalliraj Hara District Durg, vide its judgment dated 15.09.2011 in Criminal Case No. 230/2011 for the offence punishable under Section 34(1)(A) of C.G. Excise Act and sentenced him to undergo R.I. for 6 months and to pay fine of Rs. 10,000/- plus default stipulation.

2. It is the case of the prosecution that, on the basis of the secret information received by informant, police personnel searched and seized 12 quarters of country-made illicit liquor, 1 bottle country-made liquor and 1 bottle country-made masala from the possession of applicant. Based on that, after completion of investigation, charge sheet was filed and charge was framed against

accused/applicant under Section 34(1)(A) of NDPS Act .

3. So as to hold the accused/applicant guilty, the prosecution has examined as many as 04 witnesses. Statement of the accused/applicant was also recorded under Section 313 of the Cr.P.C. in which he denied the circumstances appearing against him and pleaded innocence and false implication in the case.

4. After hearing the parties, vide impugned judgment of conviction and order of sentence dated 15.09.2011, learned Judicial Magistrate has convicted and sentenced the accused/applicant for the offence punishable under Section 34(1)(A) of C.G. Excise Act and sentenced him to undergo R.I. for 1 year and to pay fine of Rs. 10,000/- plus default stipulation. This order was appealed by the applicant and in the appeal, learned Appellate Court has affirmed the conviction and modified the sentence of the applicant which is mentioned in para 1 of this order. Hence, the present revision.

5. Heard counsel for the parties and perused the material on record including the impugned judgment.

6. Counsel for the applicant submits that he is not pressing this revision as 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 09 years have rolled by since then. The applicant is aged about 64 years and has already remained in jail for more than 3 months and no useful purpose would be served in again sending him to jail, therefore, in the interest of justice, it would be appropriate if the sentence imposed upon him may be reduced to the period already undergone by him.

7. Learned counsel for the State has no objection to this proposition.

8. Having gone through the material on record and the

evidence of the witnesses T.S. Navrang (PW-1), who is Sub-inspector of P.S. Rajhara stated that he received information about the illegal sale of liquor by the applicant and seized aforesaid illicit liquor from the possession of applicant, Smt. Kusumlata (PW-2), Deepak Wankhede (PW-3), & Bahel (PW-4), established the involvement of the accused/applicant in the crime in question. This Court does not see any illegality in the findings recorded by both the Courts below as regards conviction it is hereby maintained.

9. As regards sentence, looking to the age of the applicant, keeping in view the facts that incident had taken place in the year 2011, and further that the applicant had already remained in jail for more than 03 months, therefore, his sentence is liable to be reduced to the period already undergone by him.

10. In view of the above consideration, the revision is partly allowed. While maintaining the conviction of the applicant, he is sentenced to the period already undergone by him. The applicant is on bail. His bail bond will stand discharged.

Sd/-
(Rajani Dubey)
JUDGE