

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.703 of 2013

Lallan Yadav, S/o Natha Yadav, age 40 years, R/o J.P. Nagar, Camp II, Bhilai,
Tahsil and District Durg, Chhattisgarh

---- Applicant

versus

State of Chhattisgarh through District Magistrate, Durg, Chhattisgarh

--- Respondent

For Applicant	:	Shri Uttam Pandey, Advocate
For Respondent	:	Smt. Smriti Shrivastava, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

4.4.2019

1. By the judgment dated 9.5.2013 passed in Criminal Case No.209 of 2007, the Chief Judicial Magistrate, Durg convicted the Applicant for an offence punishable under Section 34(1)(a)(2) of the Chhattisgarh Excise Act and sentenced him with rigorous imprisonment for 1 year and fine of Rs.25,000/- with default stipulation. An appeal, being Criminal Appeal No.98 of 2013 was preferred by the Applicant against the said judgment of conviction and sentence. The 6th Additional Sessions Judge, Durg, vide judgment dated 18.7.2013, affirmed the conviction of the Applicant, but reduced the sentence to the period already undergone by him. The Appellate Court also affirmed the fine sentence.
2. Facts, in brief, are that on the date of incident, Excise Sub-Inspector Lav Kumar Mishra (PW1) searched the Scooter bearing registration No.CIL 4338 being driven by the Applicant and seized 48 bottles of country-made liquor each bottle containing 180 ml. liquor which was kept in a bag over the foot-rest of the scooter. Thereafter, he recorded statement (Ex.P5) of the Applicant and on

the basis of the said statement, he also searched the house of the Applicant and vide Ex.P7 he seized from there total 123 bottles of country-made liquor kept in 3 bags. On completion of the investigation, a charge-sheet was filed before the Chief Judicial Magistrate. The Trial Court and the Appellate Court convicted and sentenced the Applicant as mentioned in the first paragraph of this order. Hence, this revision by the Applicant.

3. Learned Counsel appearing for the Applicant submits that both the seizure witnesses have not supported the case of the prosecution, but, despite that, both the Courts below have relied upon the suspicious statement of the Investigating Officer of the case Lav Kumar Mishra (PW1). As per the seizure memo (Ex.P2), which relates to 48 bottles of liquor, recovery was made at 4:10 p.m., but, surprisingly, as contained in Ex.P3, liquor has been examined prior to that, i.e., at 3:55 p.m. Likewise, as per seizure memo (Ex.P7), at 5:35 p.m., some liquor was seized from the house of the Applicant. But, as per examination report (Ex.P8), that liquor was examined prior to that, i.e., at 5:20 p.m. Thus, from the documents submitted by the prosecution itself, it appears that entire documents were prepared by the Investigating Officer of the case at a time. Therefore, his testimony ought to have been got corroborated by the independent witnesses. It is further submitted that as per the seizure memo (Ex.P7), some liquor was seized from the house of the Applicant, but that house was in exclusive possession of the Applicant or he was owner of the said house, there is no documentary evidence available on record. In his statement, the Investigating Officer of the case has categorically admitted that when he had gone to the said house, at that time,

wife and children of the Applicant were also present there. In these circumstances, the liquor, which was seized from the said house, was of exclusive possession of the Applicant is not established. But, both the Courts below have ignored these facts.

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. It is not in dispute that both the independent witnesses have not supported the case of the prosecution and the prosecution case is only based on the statement of Investigating Officer Lav Kumar Mishra (PW1). As per his statement and the documents prepared by him, first, as mentioned in the seizure memo (Ex.P2), he seized 48 bottles of liquor from possession of the Applicant at 4:10 p.m. From perusal of the examination report (Ex.P3), examination of 4 bottles was done by the Investigating Officer at 3:55 p.m. Likewise, second seizure, i.e., Ex.P7 was made at 5:35 p.m., but, as contained in the examination report (Ex.P8), that seized liquor was examined at 5:20 p.m. Thus, from the above, it seems that all the aforesaid documents were prepared by the Investigating Officer at a time and that too not at the spot. In these circumstances, corroboration of the statement of the Investigating Officer by the statements of independent witnesses was necessary. Apart from this, the second seizure was made from the house allegedly owned and possessed by the Applicant. There is no documentary evidence available on record to show that the said house was owned or was in exclusive possession of the Applicant. It is

admitted by the Investigating Officer that at the time of search of the said house, wife and children of the Applicant were also present in the house. In these circumstances, it is also clear that the liquor seized from the house was in exclusive possession of the Applicant is not established. But, both the Courts below have ignored the above facts. Therefore, their findings of conviction are contrary to the evidence available on record and thus the same are held to be perverse.

7. Consequently, the revision is allowed. The impugned judgment of conviction and sentence is set aside. The Applicant is acquitted of the charge framed against him.
8. 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