

HIGH COURT OF CHHATTISGARH, BILASPUR

Cr.R. No. 1384 of 2019

1. Ashu Singh Kushwaha S/o Dharmendra Singh Aged About 25 Years R/o Nakapara Tongpal District - Sukma Chhattisgarh
2. Mahesh Nag S/o Lalit Nag Aged About 35 Years R/o Kanapara Village Marenga Police Station Tongpal District - Sukma Chhattisgarh

---- Petitioners

Versus

- State Of Chhattisgarh Through The District Magistrate Sukma And Police Station Tongpal, District - Sukma Chhattisgarh

---- Respondent

For Petitioners	: Mr. P.K. Tulsyan, Advocate.
For State/respondent	: Mr. Jitendra Shukla, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

22-11-2019

Heard.

1. This petition has been brought being aggrieved by the impugned judgment dated 18.10.2019 passed by Additional Sessions Judge, F.T.C. South Bastar, Dantewada, C.G. in Criminal Appeal No.4/2019 by which the applicants were convicted for offence under Section 34(2) of C.G. Excise Act and sentenced with R.I. for 3 years and fine of Rs.25,000/- with default stipulations.
2. According to prosecution case, on 09.04.2017, at about 9 pm a seizure of 1209.510 bulk liter English liquor was made from the possession of applicants. On that basis they were prosecuted before the trial Court. The learned Court of C.J.M., Sukma, District- Sukma, C.G. in Criminal Case No.108/2017 vide judgment dated 19.07.2017 acquitted the applicants from the charge against them. The appeal was preferred by the State in which the Appellate Court has reversed the judgment of the Lower Court and convicted the applicants as aforesaid. It is submitted that the learned Appellate Court has erroneously appreciated the evidence of the prosecution which is not believable and beyond

reasonable doubt against these applicants. The conviction is based only on the evidences of the Investigating Officer who is himself not believable because of the contradiction and omission made by him in his deposition. Therefore, it is prayed that conviction against the applicants be set aside.

3. Learned counsel for the State opposes the and submits that the case is based only on the evidence of the Investigating Officer, however, his evidence is totally believable. Further, it is a case of seizure of huge quantity of illicit foreign liquor, therefore, the applicants are not entitled for acquittal in this case.
4. Heard learned counsel for both the parties and perused the documents.
5. On perusal of the evidence present in the record on the trial court, it is found that the independent witnesses of search and seizure Lakhan Lal (P.W.-1), Pilwas Thakur (P.W.-4) are hostile witnesses, who have not at all supported the prosecution case. Another relevant witness Sukri Bai (P.W.-2) has also not supported the prosecution. Therefore, the only evidence that is present against the applicants is given by Inspector Prakash Kumar Rathore (P.W.-5), who has stated in his examination in chief that he raided the house of Sukri Bai (P.W.-2) where he found applicants present and from their possession he made the seizure of the illicit liquor.
6. In cross-examination, he has admitted that the seizure was made from the house of Sukri Bai on the basis of the statement given by Sukri Bai that the liquor was stored in her house by the applicants he has made the seizure accordingly. He has admitted in Ex.P-2, the seizure memo, the presence of applicant No.2 is not mentioned.
7. On considering the evidence of I.O., it is found that he has not explained this fact to the satisfaction of the Court, that when the house belongs to Sukri Bai (P.W.-2) they why he had to make the seizure of the illicit liquor

from the applicants. He has relied on the statement given by Sukri Bai to him that the liquor was stored by the applicants in her house whereas the Sukri Bai herself has totally denied and given a different statement. Hence, this is a contradiction or omission which cannot be disregarded. Hence, the statement of the I.O. cannot be said to be totally believable. Hence, on this basis I am of this opinion that the conviction against the applicants is not well-founded and the evidence or prosecution was not beyond reasonable doubt against him. Therefore, the petition is allowed. The impugned judgment of conviction and sentence against the applicants is set aside.

8. Accordingly, the petition stands disposed off.

Monika

Sd/-
(Rajendra Chandra Singh Samant)
Judge