

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO.292 OF 2005

- 1) Udhav Raghunath Kharat,
Age-35 years, Occu:Agriculture,
R/o-Bhavan, Tq-Sillod,
Dist-Aurangabad,
- 2) Keshav Chintaman Bhaisare,
Age-30 years, Occu:Agriculture,
R/o-Bhavan, Tq-Sillid,
Dist-Aurangabad.

...APPLICANTS

VERSUS

The State of Maharashtra,
Through Wadod Bazar Police Station,
Tq-Phulambri, Dist-Aurangabad.

...RESPONDENT

...

Mr.D.P. Palodkar Advocate for Applicants.
Mr.S.P. Sonpawale, A.P.P. for Respondent.

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CORAM: V.M. DESHPANDE, J.

DATE : 1ST APRIL, 2019

ORAL JUDGMENT :

1. This is a Revision Application

challenging the Judgment and Order of conviction passed by the learned Judicial Magistrate, First Class, Sillod, dated 24th December, 2003 in S.C.C. No.1998 of 2000, whereby the learned Magistrate convicted the present Applicants for the offence punishable under Section 66(1)(b) of the Bombay Prohibition Act, and they were directed to undergo simple imprisonment for three months and to pay a fine of Rs.500/-, and in default, simple imprisonment for one month, together with the Judgment and order passed by the learned 1st Ad-hoc Additional Sessions Judge, Aurangabad, dismissing the appeal filed on behalf of the Applicants, i.e. Criminal Appeal No.21 of 2004, confirming the Judgment and order of conviction passed by the Court below.

2. I heard Shri D.P. Palodkar, the learned counsel for the Applicants and Shri Sonpawale, the learned Additional Public Prosecutor for the

State. Also perused the entire record and proceedings, which were called at the time of admission of the Revision Application.

3. The prosecution case starts on the report lodged by Walmikrao Yamajirao Borde (PW-4). The First Information Report is at Exhibit-14. PW-4 Walmikrao is Assistant Police Inspector and was in-charge of Beat No.1 of police station Wadod Bazar. On 4th August, 2000, he along with police constable Rathod (PW-2) and others went to Sillod in connection with enquiry of motor accident. There, they got secret information that at Raj Dhaba and Restaurant, the Applicants are possessing illegally the liquor and bear and trading the same. Resultantly, they made a raid in presence of panchas and seized the liquor worth Rs.6030/-, under seizure panchnama (Exhibit-12).

4. After completion of the investigation,

challan was presented, and before the learned Magistrate the prosecution has examined in all four witnesses. PW-1 Bhaurao Gawande has turned hostile, though he admitted his signature on Exhibit-12. PW-2 is Kalyan Rathod, a police constable, who was part and parcel of raiding party. PW-3 is Narayan Tathe, a panch, who has also turned hostile, however admitted his signature on Exhibit-12, panchnama. PW-4 is the investigating officer.

5. The Courts below were absolutely right in recording a finding that merely because panch witnesses have turned hostile, that does not erase the evidence of the police personnels. In the present case, the question is, as to whether the Applicants were in conscious possession of the contraband.

6. Even according to the prosecution,

Applicant No.2 was working as a waiter in the Dhaba. Thus, he was merely a servant and by no stretch of imagination it could be said that he was in conscious possession of the contraband.

7. The evidence of Walmik (PW-4), the investigating officer would show that Applicant No.1 Uddhav was running hotel on rent. However, no pains were taken during the course of the investigation to show that Applicant No.1 Uddhav was in possession of the premises as lessee, which were raided. The investigating officer has candidly admitted that he has not filed any document along with the charge-sheet, to show that Applicant No.1 was the owner, leave apart, he has admitted that he has not filed any document on the record. This particular assumes importance, since according to the investigating officer, prior to making raid they gave their search, however, no panchnama to that effect was drawn by the

investigating officer. Further, the raid was a chance raid, since the investigating officer visited Sillod in connection with enquiry in a motor accident case.

8. Since the prosecution has utterly failed to prove that Applicant No.1 was the owner of the premises and/or was in settled possession as a lessee where Dhaba was run, in my view, the conscious possession of the contraband is not at all proved by the prosecution. These points are not considered properly by the Courts below. The learned Judge of the trial Court has observed that, accused No.1 did not deny that he was owner of the said hotel at the relevant time. However, when accused No.1 was examined under Section 313 of the Code of Criminal Procedure, Question No.4 shows that he denied that he was owner of Raj Dhaba. These aspects were not considered in proper perspective by both the Courts below. Resultantly,

this Court is required to exercise revisional jurisdiction to correct the mistake that crept in the proceedings of both the Courts below. Resultantly, I pass following order:-

O R D E R

(I) The Criminal Revision Application is allowed.

(II) The Judgment and order passed by the learned Judicial Magistrate First Class, Sillod, in S.C.C. No.1998 of 2000, dated 24th December, 2003, convicting and sentencing the Applicants for the offence punishable under Section 66(1)(b) of the Bombay Prohibition Act, is quashed and set aside.

(III) The Judgment and order passed by learned 1st Ad-hoc Additional Sessions

Judge, Aurangabad in Criminal Appeal No.21 of 2004, dated 8th September, 2005, confirming the Judgment and order of conviction and sentence passed by the learned Judicial Magistrate, by dismissing the appeal, is quashed and set aside.

(IV) Both the Applicants are acquitted for the offence punishable under Section 66(1)(b) of the Bombay Prohibition Act.

(V) Both the Applicants who are on bail, their bail bonds stand cancelled.

(VI) Rule is made absolute in above terms. The Criminal Revision Application stands disposed of, accordingly.

[V.M. DESHPANDE, J.]