HIGH COURT OF TRIPURA
AGARTALA

Crl. Rev. P No.62 of 2017

Shri Nirmal Das
son of Shri Nikash Lal Das
village : Bampur
P.S.: Birganj
Sub-division: Amarpur
District :Gomati Tripura

……Petitioner(s)

Versus

The State of Tripura.

…….Respondent(s)

For the Petitioner(s) : Mr. Mr. S.Lodh, Adv.

For the Respondent(s) : Mr. S.Ghosh, Addl. PP

Date of hearing : 19.10.2020

Date of delivery of Judgment & order : 17.11.2020

Whether fit for reporting :

Yes	No
	√

B E F O R E

HON'BLE MR. JUSTICE S.G.CHATTOPADHYAY

Judgment & Order

[**1**] By means of this criminal revision petition, filed under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (*Cr.P.C. hereinafter*), the convict petitioner has challenged the judgment and order dated 04.08.2017 passed by the learned Sessions Judge,

Gomati Judicial District, Udaipur in Crl. Appeal 17(1) of 2016 whereby the learned Sessions Judge affirmed his conviction under Section 332 IPC while reducing his sentence to RI for one year and fine of Rs.1,000/- with default stipulation from RI for two years and fine of Rs.1,000/- with default stipulation passed by the learned Judicial Magistrate, First class, Amarpur by judgment and order dated 02.03.2016 in case No. PRC 165 of 2014. Conviction of the petitioner under Section 353 IPC and his conviction and sentence under Section 45 of Tripura Excise Act, 1987 and the conviction of the other 03(three) accused under Section 332 and 353 IPC and their sentence under Section 332 IPC were also set aside by the learned Sessions Judge under the impugned judgment passed by him.

[**2**] The prosecution story, briefly stated, is that Shri Shyamal Das, Assistant sub-inspector of police of Birganj Police Station of Amarpur lodged a suo moto complaint with the Officer-in-charge of his police station on 21.12.2014, alleging, inter alia, that when he along with his accompanying staff was carrying out search in the house of the convict petitioner for recovery of illicit country liquor, the convict petitioner and his house inmates started assaulting the complainant and his

accompanying staff with deadly weapons viz. dao, lathi, etc. for preventing them from discharging their duty. As a result of the attack, they received injuries. They could, however, seize approximately 20 litter country liquor from the house of the convict petitioner.

[**3**] Based on this information, Birganj P.S. Case No.71 of 2014 dated 21.12.2014 under Sections 353, 333 and 120B IPC was registered against the convict petitioner and 03 other accused and the investigation of the case was taken up.

[**4**] Samar Das, Sub-inspector of police of Birganj police station carried out the whole investigation of the case and having completed his investigation, he submitted challan No.55 of 2014 under Sections 353, 332 and 120B IPC against the 4 FIR named accused including the convict petitioner. The Sub-divisional Judicial Magistrate, Amarpur took cognizance of offence punishable under Sections 353, 332 and 120B IPC. The trial commenced with the framing of charges under Sections 353, 332 and 120B IPC and Section 45 of Tripura Excise Act against the convict petitioner and charges under Section Sections 353, 332 and 120B IPC against the other 03(three) accused. They pleaded not guilty to the charges and claimed trial.

HIGH COURT OF TRIPURA
सत्यमेव जयते

[**5**] During trial, 16 witnesses were examined and 06 documents (Exbt.1- Exbt.6/2) were exhibited on behalf of the prosecution. Statement of the accused was then recorded under Section 313 Cr.P.C. who pleaded innocence and claimed that the charges were foisted on him.

[**6**] At the conclusion of trial, the learned trial court by his said judgment and order dated 02.03.2016 held each of the accused including the convict petitioner guilty and convicted and sentenced them which is as under:

> **"34. The convict Nirmal Das, Nikesh Lal Das, Smt. Pranati Das and Smt. Laxmi Rani Das have been found guilty for committing offence punishable under Section 353/332 and further convict Nirmal Das has been found guilty Under 45 of the Tripura Excise Act. Section 332 comes into play when accused voluntarily causes hurt to deter public servant from his duty and Section 353 comes into play when accused caused assault or criminal force to deter public servant from discharge of his duty. Section 45 of the Tripura Excise Act comes in to play when accused found guilty for selling of illegal country made liquor.**
>
> **35. That being so, I find that the ingredients of Section 353, IPC is the part of ingredients of Penal Section 332 IPC. Both the Panel Sections require force or violence to be used by accused persons against public servant. Thus, in view of Section 71, IPC the convict cannot be punished under Section 353 IPC when he is found guilty for committing an offence punishable under Section 332, IPC and hence I refrain myself from awarding any**

sentence under Section 353 IPC. But Section 45 of Tripura Excise Act is a specific offence and not related to any other offence of IPC. Hence, I will propose proper sentence for the accused Nirmal Das apart from conviction under section 332 IPC.

36. Thus, after hearing the convict as well as Learned Advocates of both side and the nature of the offence, I think if RI for two(02) years under Section 332 for each and to pay a fine of Rs.1000/-(one thousand)only, i.d., to SI for 20(Twenty) days for each is awarded for convicts that would meet the ends of justice. Again, I think if RI for three(03) month and to pay a fine of Rs.1000/-only, i.d., to SI for 15(Fifteen) days is awarded under section 45 of Tripura Excise Act for convict Nirmal Das that would meet the ends of justice.

37. Accordingly, the convict Nirmal Das, Nikash Lal Das, Smt. Pranati Das and Smt. Laxmi Rani Das are sentenced to suffer RI for two (2) years under Section 332 and to pay a fine of Rs.1000/- (one thousand) only, i.d., to SI for 20 (Twenty)days for each.

Convict Nirmal Das is further sentenced to suffer RI for three (3) month and to pay a fine of Rs.1000/-only, i.d., to SI for 15 (Fifteen)days.

For convict Nirmal Das sentence will run consecutively."

[**7**] In appeal, the learned Sessions Judge by the impugned judgment dated 04.08.2017, affirmed the conviction of the petitioner under Section 332 IPC while reducing his sentence for the offence and setting aside his conviction and sentence from the charge under Section 45 of the Tripura Excise Act. The learned

Sessions Judge also set aside the conviction and sentence of the other 03(three) accused by his judgment which is as under:

> **"Now, therefore, the appeal is partly allowed.**
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> **The conviction and the sentence of the appellants namely Sri Nikash Lal Das, Smti Pranati Das and Smti Laxmi Shil (Das) under Section 332 IPC are hereby set aside and they are set at liberty. Their bail bond liability is discharged.**
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> **Conviction and sentence of Sri Nirmal Das under section 45 T.E.Act are also hereby set aside but his conviction under section 332, IPC is affirmed. The appellant Nirmal Das comes from a semiliterate section of schedule caste community and by profession he has stated to be a day labour. Considering his such ground, his sentence is partly modified. Nirmal Das will suffer rigorous imprisonment for 1 (one) year and will pay fine of Rs.1,000/- and in default to pay the fine will suffer further simple sentence of 15 days, under section 332, IPC. The custodial detention, if any, during investigation and trial shall be set off from his substantive sentence of imprisonment."**

[**8**] Challenging the said judgment of the learned Sessions Judge, it is submitted on behalf of the convict petitioner that the learned Sessions Judge erroneously affirmed the conviction and sentence of the convict petitioner without appreciating the evidence. Mr. S.Lodh, learned counsel appearing for the petitioner argued that with regard to identification of the convict petitioner, the witnesses gave contradictory statements at the trial.

Moreover, the petitioner was not previously known to them. Therefore, T.I parade should have been conducted by the investigating agency to establish the identity of the convict petitioner. According to learned counsel, no T.I. parade having been done, identification of the accused by the witnesses first time during trial should not have been accepted by the trial court. It is submitted that the learned Sessions Judge did not appreciate this fact while upholding the conviction of the petitioner. Further submission on behalf of the petitioner is that no evidence was led at the trial with regard to the secret information allegedly received at the police station to the effect that the petitioner was selling illicit country liquor at his home. It was submitted by Mr.Lodh, learned counsel that no G.D. entry was proved in this regard to establish the fact that the police team actually went to the house of the petitioner to carry out search operation in his house for recovery of illicit liquor. It was also argued by Mr. Lodh, learned counsel of the petitioner that Samar Das, PW-16, was himself a member of the police team which conducted anti liquor raid in the house of the petitioner and became a victim of the alleged assault. Therefore, he should not have been entrusted with the investigation of the case. Further submission on behalf of the petitioner is

HIGH COURT OF TRIPURA
सत्यमेव जयते

that even though the incident allegedly occurred within the vicinity of the market area, no independent witness other than the official witnesses was examined by the prosecution at the trial which cast doubt about the veracity of the case. Learned counsel, therefore, urged the court for setting aside the said judgment of the learned Sessions Judge with regard to the conviction and sentence of the petitioner.

[**9**] Conversely, Mr. S.Ghosh, learned Addl. PP, argued that case against the petitioner was proved beyond reasonable shadow of doubt in the trial court. As a result, the learned trial judge rightly convicted the petitioner under Section 332 IPC which was affirmed in appeal. It was further argued by learned counsel that the petitioner committed a serious offence by obstructing and assaulting public servants in the discharge of their official duty. According to him, learned Sessions Judge after considering the entire facts and circumstances upheld his conviction and sentenced him appropriately for the offence which does not call for any interference in appeal.

[**10**] To reiterate the facts, 16 witnesses were examined on behalf of the prosecution. Among them, PW-1 is the first informant who lodged the suo moto FIR at his police station. Therefore, his statement at the trial is very

relevant. The PW stated that during the anti liquor raid in the house of the petitioner, 20 liters country liquor in 4 containers was recovered and the petitioner could not produce any license to establish that he was in lawful possession of the said item. When the PW along with his accompanying staff was preparing the seizure list the petitioner along with others attacked them as a result of which the PW received injury in his right hand and he was hospitalized. The petitioner was detained while others fled away.

In his cross examination, the PW categorically stated that SI Samar Das and other police officials also went for the anti liquor raid. He could not say under whose instruction he left the police station for conducting the anti liquor raid in the house of the accused. He could not also say whether any information was recorded in the general diary of the police station in this regard prior to their departure for the raid. The PW also stated in cross examination that when he lodged the FIR at the police station, he did not have any injury report. It was stated by the PW that it was evening when they conducted the raid in the house of the petitioner and they did not call any neighbor of the petitioner to accompany them during the raid.

HIGH COURT OF TRIPURA

[**11**] Statement of PW2 reveals that as an ASI of police he also accompanied PW1 to the search operation in the house of the petitioner where they were attacked by the petitioner and others. It was stated by the PW that the petitioner was detained while others fled away.

[**12**] Same is the statement of PW3, PW4, PW5, PW6, PW7, PW8, PW9, PW10, PW11, PW12, PW13 and PW15 who were all police constables and who accompanied the first informant [PW1] to the house of the petitioner to carry out the anti liquor operation. All of them said in the same tune that 20 litters country liquor was recovered from the premises of the house of the petitioner. When the seizure was being made, petitioner Nirmal Das and his family members attacked them.

[**13**] About the injuries allegedly suffered by the informant and his accompanying police staff, the medical officer namely Dr.Prasenjit Sarkar, who was examined as PW14 told at the trial that he found tenderness in the right thigh of PW3 and PW4 and found slight injury probably caused by a blunt object in the body of PW1 and PW12.

[**14**] PW16 carried out the investigation of the case. He told at the trial that the statement of the witnesses and

the materials collected during investigation having made out the offence against the FIR named accused persons including the petitioner, he filed a charge sheet against them. The PW was subjected to a very lengthy cross examination. He told in cross that though he went upto Bampur market, he did not go to the spot where the search operation was carried out. His attention was drawn to the FIR statement wherein it was stated that he led the police team to the house of the petitioner during the anti liquor raid. The PW denied his presence at the house of the petitioner during the raid. It was stated by him in his cross examination that members of the police team were assaulted in the court yard of the house of the petitioner. He also stated that he did not ascertain during his investigation exactly from where the alleged country liquor was seized in the house of the petitioner. The PW denied that his investigation was perfunctory and he submitted the charge sheet mechanically.

[**15**] For application of Section 332 IPC, it has to be proved that the petitioner voluntarily caused hurt to the members of the police team to deter them from discharging their duty as public servant who allegedly conducted raid in his house to prevent him from selling illicit liquor. In the instant case, even though there is no

doubt about the fact that the members of the said police team were all public servants, the prosecution case with regard to their assault and hurt appears to be very doubtful. The first informant PW1 who is a responsible police officer of the rank of Assistant Sub-Inspector of police categorically stated in his written FIR that SI Samar Das, PW16, was with them when they conducted the search operation in the house of the petitioner. He made similar statement in his cross examination whereas, Samar Das [PW16] stated that he accompanied the police team upto Bampur market. He did not proceed thereafter and he was not present when the alleged occurrence took place in the house of the petitioner. This is a serious contradiction which casts doubt about the prosecution case. There is another aspect of the case which has also raised serious doubt about the veracity of the prosecution case against the petitioner. It has surfaced that when the alleged search operation was being carried out in the house of the petitioner, all other house inmates except the accused petitioner fled from the house and the petitioner was alone. Evidently, there were as many as 14 members in the police team including two armed Assistant Sub-Inspectors of police, whereas, the accused was alone when the alleged search operation was being

HIGH COURT OF TRIPURA
सत्यमेव जयते

conducted. In such a situation, it was quite unlikely that the petitioner alone would be able to put a resistance to such a huge team of police consisting of 14 members by means of physically overpowering them. Moreover, prosecution could not produce any GD entry to prove that there was prior information with the police station to the effect that the accused petitioner had stored illicit liquor in his house for sale and pursuant to such information they left the police station for search operation in the house of the petitioner. Besides, the appellate court acquitted the accused petitioner from the charge of Section 45, Tripura Excise Act on the ground that after the alleged seizure of illicit liquor from the possession of the petitioner, police did not inform the district collector about such seizure within 24 hours in terms of the statute. The whole transaction thus appears to be very doubtful and the benefit of such doubt must be given to the petitioner.

HIGH COURT OF TRIPURA
सत्यमेव जयते

[**16**] For the foregoing reasons, the instant criminal revision petition is allowed and the said judgment and order dated 04.08.2017 of the learned Sessions Judge impugned before this court, is quashed and set aside. The accused petitioner stands acquitted of the charges labeled

against him. Since he is on bail, his bail petition stands discharged.

The petition is thus disposed of.

Send back the LC Records.

JUDGE

HIGH COURT OF TRIPURA
सत्यमेव जयते

Saikat Sarma, P.A