NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 280 of 2010

Kampotar S/o. Parimal Singh Thakur, aged about 31 years, R/o. Village Andola, Police Station Kosir, Tahsil Sarangarh, District Raigarh (CG)

----**Applicant**

Versus

State of Chhattisgarh through District Magistrate, Raigarh, Police Station Kosir, District Raigarh (C.G.)

---- **Respondent**

For Applicant : Mr. Rajesh Kumar Sharma, Advocate

For Respondent/ State : Mr. Sameer Sharma, Dy. Govt. Advocate

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Hon'ble Smt. Justice Vimla Singh Kapoor

Order on Board passed on 15.12.2020

Facts of the case, in short, are that on 15.5.2009 Head Constable Rajnikant Mishra (PW-4) was on patrolling duty with the staff, he received a secret information regarding the accused/applicant was involved in selling of illicit country made liquor. He along with his associates nabbed the applicant and on being searched 10 quarter of country made liquor was seized from him. After effecting seizure and making arrest of the accused thus on completion of investigation charge sheet was laid under Section 34(1)(K) of the Excise Act.

2. By the judgment dated 14.11.2009 learned trial Court convicted the accused/applicant under Section 34(1)(K) of the Excise Act and imposed the sentence of RI for two months and to pay fine of Rs. 5000/- plus default stipulation. In appeal, the

sentence part of the impunged judgment passed by the trial court has been modified. Hence, this revision.

3. Learned counsel for the applicant submits that the judgment of conviction and order of sentence passed by the trial Court is arbitrary, illegal and contrary to the evidence collected by the prosecution. As a last resort counsel for the applicant submits that if this Court does not interfere with the conviction part of the judgment impugned at least the sentence imposed on him may be reduced to the period already undergone.

4. State counsel, however, supports the judgement impugned.

5. Though the independent witness being (PW-1) Khikdas and (PW-2) Bachcha Das have not specifically supported the case of the prosecution yet their signature are very much there on the seizure memo (EX.P-1). It has also not come in their evidence that their signature were obtained perforce. As regards the other witnesses, who were the member of the team while nabbing the accused and making seizure of liquor have clearly stated that on the date of incident the accused/applicant was found in possession of 10 quarters of 180 ML country made liquor without having any license etc. permitting him to do so. No previous enmity between the accused and the police witnesses has been shown to make it possible the implication of the accused in a false case. Thus, the involvement of the accused/applicant under Section 34(1)(K) of the Excise Act is fully manifest from the evidence on record, and therefore, the conviction as recorded by the Courts below is here maintained.

6. However, looking to the fact that the incident had taken place in the year 2009 and thereby more than 12 years have passed by, and further that the accused/applicant has already remained inside for more than 8 days, this Court thinks it proper to reduce the sentence imposed on him to the period already undergone, so that his already settled family life is not landed to crises. Order accoridngly.

7. Revision allowed in part.

Sd/-
(Vimla Singh Kapoor)
JUDGE

Santosh