

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 1398 of 2019

Sunil Singh S/o Sarwan Singh, Aged About 37 Years R/o Village Chandoli (Mahua Bikha), PS Kasna, District Aurangabad (Bihar)., District : Aurangabad, Bihar.

---- Applicant

Versus

State Of Chhattisgarh Through The District Magistrate, Balodabazar, District Balodabazar Bhatapara Chhattisgarh.

---- Respondent

AND

CRR No. 1399 of 2019

Laxmikant S/o Shri Nutan Patel, Aged About 25 Years R/o Village Sohagpur, PS Bhatapara, District Balodabazar Bhatapara Chhattisgarh

---- Applicant

Versus

State Of Chhattisgarh Through The District Magistrate, Balodabazar District Balodabazar Bhatapara Chhattisgarh.

---- Respondent

For Applicant/s	: Smt. Aditi Singhvi, Advocate on behalf of Ms. Supriya Upasana, Advocate.
For Respondent/ State	: Shri Shrikant Kaushik, P.L.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

06-02-2020

1. Both the revision petitions are being decided by this common order which have been brought being aggrieved by the judgment dated 4.11.2019 passed in Criminal Appeal No. 73 of 2019 upholding the judgment and conviction of sentence passed by the trial Court.

2. On 7.9.2014 at about 12:45 pm, the villagers of village Raikona had stopped the vehicle bearing registration No.C.G.04-DH-4584, in which the liquor like material was present. It was informed by the villagers to the police, that the persons present in the vehicle were intending to make sale of the said liquor like material. G.K. Singh, ASI (PW-3) arrived on the spot. He served the notice under Section 91 of the Cr.P.C to the applicant in both the cases and one another to inform about the authority of the possession of the liquor, to which they replied in negative. Subsequent to which, he lodged an unregistered FIR Ex.P/10, registering offence under Section 34(2) of the Chhattisgarh Excise Act. Seizure of vehicle No. C.G.-04 DH-4584 was made from the possession of applicant -Laxmikanth vide Ex. P/1, seizure of 6.6 liters of country liquor was made from one co-accused – Guddu Singh and similarly, seizure of 6.8 bulk liters of country liquor was seized from Sunil Singh. The articles seized were taken in possession by the Investigating Officer and samples were sent for examination to the S.P. Acharya (ASI), Excise Sub-Inspector (PW-4), who has in his report confirmed that the articles seized in bottles contained country liquor. After completion of investigation, the applicant in both the cases were charge-sheeted.
3. Learned trial Court framed the charges under Section 34(2) of the Chhattisgarh Excise Act. On completion of trial, the judgment dated 22.6.2019 was passed in which the applicant in both the cases were held guilty for the offence under Section 34(2) of the Chhattisgarh Excise Act and sentenced with rigorous imprisonment of one year alongwith fine of Rs.25,000/- each with default stipulation. The appeal filed before the Court of Sessions Judge, Baloda Bazar has been dismissed by the impugned order.
4. It is submitted by counsel for the applicants that although the

independent witnesses of search and seizure have supported the prosecution case, but there are serious discrepancies present in the investigation of the case itself on the basis of which, the applicants are entitled for acquittal in this case. Firstly, there is no evidence regarding the chain established to show, that the articles that were seized from the possession of the applicants were kept intact in sealed condition up till they were sent for examination by the Excise Sub-Inspector. Secondly, S.P. Acharya, Excise Sub-Inspector (PW-4) admitted that the contents of the bottles were liquor can be certified only after chemical examination by an expert. Therefore, there is no such evidence on the basis of which, it can be held that the material seized from the applicants was definitely liquor and intoxicating substance. It is further submitted on behalf of applicant – Laxmikant that according to seizure memo Ex.P/1 and the statement of the witnesses it was only vehicle which was seized from the possession of this applicant, therefore, his conviction in this case for having possession of illicit liquor is totally without any basis, therefore, his conviction in this case is bad in law, however, discrepancies are present and the conviction of both the applicants are bad in law.

5. Learned State counsel opposes the submissions made in this respect and submits that the prosecution has proved its case beyond reasonable doubt. The Investigating Officer as well as the independent witnesses of search and seizure have supported the prosecution case, therefore, no ground is made out for acquittal of the applicants. Hence, both the revision petitions be dismissed.
6. Heard both counsel for the parties and perused the material available on record.
7. On perusal of the evidence present in the record of the trial Court, it is

found that G.K. Singh, ASI, (PW-3) who has conducted the investigation stated about the recovery and seizure of the articles from the possession of both the applicants which has been supported by the independent witnesses, namely, Ganesh Ram (PW-1) and Jagat Ram (PW-2). Similarly, S.P. Acharya, Excise Sub-Inspector (PW-4) has proved by his evidence that the contents of the bottles which were seized from the possession of these applicants were countrymade liquor. Statements of these witnesses have remained unrebutted.

8. As regards, the arguments raised on behalf of the applicants, the Investigating Officer has given a statement regarding the procedure adopted by him. It has not been challenged by putting question in the cross-examination. Similarly, the statement of S.P. Acharya, Excise Sub-Inspector (PW-4) has not been challenged in that regard, that he himself is not an expert to test and report regarding the material being liquor or not. Therefore, I do not find any discrepancies which may be taken into consideration at this stage of revision. As regards, the arguments submitted on behalf of applicant – Laxmikant that he was not in a specific possession of liquor, there is evidence present that applicant – Laxmikant was the driver of the said vehicle in which the illicit liquor was found loaded, which implies the applicant was engaged in transport of such liquor.
9. Section 34(1)(a) of the Chhattisgarh Excise Act very clearly mentions that whoever manufactures, transports, imports, exports collects or possesses any intoxicant is liable for punishment under the Chhattisgarh Excise Act and Section 34(2) of the Chhattisgarh Excise Act is a provision of aggravated offence where the content of the liquor found is exceeding 5 bulk liters. Therefore, even though there is no seizure of liquor from applicant – Laxmikant but the evidence shows that

he was engaged in transport of the same. Hence, on the basis of these considerations, I am of this view there is no substance in both the revision petitions. Hence, both the revision petitions are dismissed.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Nimmi