

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.367 of 2008

Lakhan Lal Sahu S/o. Kirtan, aged about 22 years, R/o. Salkhan,
P.S. Sheorinarayan, District Janjgir Champa (CG)

---- Applicant

Versus

State of Chhattisgarh, Through Excise Circle, Sheorinarayan,
District Janjgir Champa (CG)

---- Respondent

For Applicant : Mr. H.S. Patel, Advocate

For Respondent : Mrs. Smriti Shrivastava, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

Order on Board on 18.02.2021

Case of the prosecution in brief is that on 01.01.2007 Excise Sub Inspector R.S. Rathore (PW-1) was on duty at village Sakhlan with the staff, he received a secret information regarding the accused/applicant was involved in selling of illicit country made liquor from his hotel. He along with his associates nabbed the applicant and on being searched 22 quarters of *masala* country made liquor and 18 quarters of country made liquor were seized from his hotel. After effecting seizure and making arrest of the accused thus on completion of investigation charge sheet was laid under Section 34(1)(a) of the Excise Act.

2. By the judgment dated 09.04.2008 learned trial Court convicted the accused/applicant under Section 34(1)(a) of the Excise Act and imposed the sentence of RI for 6 months and to

pay fine of Rs. 5000/- plus default stipulation. Learned Lower Appellate Court vide judgment impugned dated 31.05.2008 passed in Criminal Appeal No. 33/2008 modified the sentence to the extent of R.I. for one month and fine of Rs.5000/-, plus default stipulation. Hence this revision.

3. Learned counsel for the applicant submits that the impugned judgments of conviction and sentence passed by both the Courts below are contrary to facts and circumstances of the case and are liable to be set aside. There are lots of contradictions and omissions in the statements of the prosecution witnesses, hence, he prays that this revision be allowed and the petitioner be acquitted in respect of the offence punishable under Section 34(1)(a) of the Excise Act. State counsel, however, supports the judgment impugned.

4. Heard learned counsel for the parties and perused the judgment impugned and the evidence available on record carefully.

5. Though the independent witness being (PW-2) Sundarlal Sahu and Bhusan Kashyap (PW-2) have not specifically supported the case of the prosecution yet their signature are very much there on the seizure memo (EX.P-2). No doubt, R.S. Rathore (PW-1), who is interested witness and of Excise Department has supported the case of prosecution and stated that the said liquors had been seized from the hotel and possession of the applicant.

6. However, it is settled principle of law that even though the independent witnesses in such type of cases for one reason or the other do not support the prosecution case, that cannot be an only ground to discard the prosecution case in toto. On the other hand, if the statements of the Investigating Officer relating to search and seizure are found to be cogent, reliable and trustworthy, the same can be acted upon to adjudicate the guilt of the accused. The Court will have to appreciate the relevant evidence in light of other evidence produced before the Court and determine whether the evidence of Investigating Officer is believable, after taking due care and caution while evaluating his evidence. From perusal of statement of Investigating Officer, which is supported by the seized articles (Ex.P-2), it reflects that his statement is not suffering from any such contradictions on the basis of which it can be said that his statement is not believable. Therefore, the conviction of the applicant is hereby maintained.

7. As regards sentence, the report received from the Superintendent of Jail, Janjgir District Janjgir Champa, dated 09.02.2021 shows that the applicant had been in detention for one month and thus completed the entire jail sentence imposed on him and released from jail on 30.06.2008, therefore, no observation regarding the sentence part is required to be made by this Court.

8. In view of what has been discussed as above, the revision being without any substance is liable to be dismissed and is hereby dismissed as such.

Sd/-

(Vimla Singh Kapoor)

JUDGE

santosh