

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 631 of 2009

Baleshwar S/o. Dashrath Lohar, aged about 40 years, occupation Agriculturist, R/o. Village Charpara, Bariyon, police Chowki Bariyon, P.S. Dhaurpur, District Sarguja (CG)

---- **Applicant**

Versus

State of Chhattisgarh, Through District Magistrate, Sarguja (Ambikapur) (C.G.)

---- **Respondent**

For Applicant : Mr. Hariom Rai, Advocate on behalf of
Mr. Jitendra Shrivastava, Advocate
For Respondent : Mr. Sameer Sharma, Dy. Govt. Advocate

Hon'ble Smt. Justice Vimla Singh Kapoor

Order on Board on 07.01.2021

Facts of the case, in short, are that on 27.02.2007 Head Constable Rameshwar Singh (PW-7) was on duty, he received a secret information regarding the accused/applicant was selling illicit country made liquor. He along with his associates nabbed the applicant and on being searched 5 liters of country made liquor (Ex.P-1) 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)(a) of the Excise Act.

2. By the judgment dated 12.06.2009 learned trial Court convicted the accused/applicant under Section 34(1)(a) of the Excise Act and imposed the sentence of RI for six months and to pay fine of Rs. 5000/- plus default stipulation. In appeal, the

conviction recorded by the trial Court has been affirmed. Hence, this revision.

3. Counsel for the applicant submits that the judgment of conviction and order of sentence passed by 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 judgment impugned.

5. Though the independent witness being (PW-1) Gorakhnath Dubey and (PW-2) Shivnarayan have not specifically supported the case of the prosecution yet their signatures 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 5 liters of 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)(a) of the Excise Act is fully manifest from the evidence on record, and therefore, the conviction as recorded by the court below is hereby maintained.

6. However, looking to the fact that the incident had taken place in the year 2007 and thereby more than 14 years have passed by, and further that the accused/applicant has already remained inside for more than 12 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 accordingly.

7. Revision allowed in part.

Sd/-
(Vimla Singh Kapoor)
JUDGE

Jyotishi/ Santosh