

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 2 of 2010

Order reserved on 18.03.2021

Order pronounced on 11.06.2021

1. Dhiraj Sharma, S/o Shri Ramkumar Sharma, aged about 23 years, R/o Infront of Nagar Panchayat, Pithoura, Tahsil & District Mahasamund (CG).
2. Lokesh Kumar Dongre, S/o Tansingh Dongre, aged about 20 years, R/o Ranisagarpara, PS Pithoura, District Mahasamund (CG)

---- Applicants.

Versus

State of Chhattisgarh through the District Magistrate, Mahasamund,
District Mahasamund (CG)

--- Respondent.

For Applicant/s	: Mr. Shivendu Pandya, Advocate
For State/Respondent	: Mr. Sameer Sharma, Dy. GA.

Hon'ble Smt. Justice Vimla Singh Kapoor

C.A.V. Order

On 20.08.2009 at about 6 PM Assistant Sub Inspector J.L. Sahu (PW-6) received a secret information to the effect that the accused/applicants herein were carrying liquor on a motorcycle for sale. After entering the information in the *Rojnamcha Sanha* he proceeded to the spot, laid barricading and on seeing two persons coming thereto on motorcycle, they were stopped and an enquiry was made. On enquiry, the rider of the motorcycle disclosed his name to be Dhiraj Sharma whereas the pillion rider as Lokesh Kumar Dongre, both the accused herein.

2. From a bag bearing an impression of Manikchand Gutka 96 quarters and from the other one 45 quarters of Royal Master Whiskey was kept in between rider and pillion rider were found. On further enquiry the accused/applicants admitted the contents of the bag to be liquor and that they were carrying the same for sale. The total quantity of the liquor was found to be more than 25 bulk liters. Though the liquor was sent to the laboratory for chemical examination, the report remained awaited. However, on experience based and litmus paper based examination of the

liquor being done, the same was opined to be nothing else but the foreign made liquor as the pungent smell emanated therefrom. After investigation, the *challan* was filed and the charge was framed under Section 34 (2) of the CG Excise Act.

3. Learned Magistrate vide judgment dated 04.11.2009 passed in Criminal Case No.443/2009 held the accused/applicants guilty under Section 34 (2) of the Excise Act and sentenced each of them to undergo RI for one year with fine of Rs.25,000/-. On appeal being preferred, the finding of learned Magistrate came to be upheld in its entirety vide judgment impugned dated 01.01.2010 passed in Criminal Appeal No.119/2009. Hence this revision.

4. Learned counsel for the accused/applicants submits that though the number of contradictions and omissions were galore in the evidence adduced by the prosecution, both the Courts below have ignored the same and recorded an abrupt finding of conviction against the accused/applicants. He submits that most of the witnesses hailing from the Department cannot be held to be trustworthy for convicting the accused/applicants, and being so the accused/applicants are entitled for acquittal.

5. On the other hand, counsel for the respondent/State supports the judgment impugned and submits that both the Courts below have been fully justified in making a threadbare survey of the evidence adduced by the prosecution and eventually holding the accused/applicants guilty under Section 34 (2) of the Excise Act and being so there is no room for any interference with the well reasoned finding recorded by both the Courts below. Though the seizure witnesses being PW-1 and PW-2 have not supported the case of the prosecution yet the evidence of J.L. Sahu (PW-6) who acting upon the secret information reached the spot, laid barricading and stopped the accused/applicants, has categorically stated

that in two bags kept on the motorcycle in between rider and pillion rider more than 25 liters of liquor was been seized and accused/applicants also admitted the same for being taken for sale. L.K. Choubey (PW-5), the Excise Sub Inspector who did experience based examination of the liquor has categorically stated that on account of the pungent smell coming out from the contents of the bottles he opined the same to be the foreign made liquor. The defence has not attributed any old standing enmity between the accused/applicants and PW-6 to chalk out the possibility of false implication of the accused/applicants at his hands. Since the defence has not done anything like this, there is no scope for any doubt in the investigation carried out by PW-6 which resulted in seizure of more than 25 bulk liters of foreign made liquor. This Court does not find any substance in the argument of the counsel for the accused/applicants that the Courts below have not taken into account the evidence of the witnesses in proper perspective, rather on being subjected to close scrutiny, the testimony of PW-6 turned out to be fully realistic and reliable as such.

6. In aforesaid view of the matter, this Court does not wish to interfere with the well written concurrent finding recorded by the two Courts below holding the accused/applicants guilty under Section 34 (2) of the Excise Act. In this view of the matter the revision fails and dismissed as such by upholding the judgment impugned.

Sd/-
(Vimla Singh Kapoor)

Judge