

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 62 of 2014

Balkrishan Sharma S/o. Goverdhan Prasad Sharma, aged 45 years, R/o. Village Kapsda, Police Station Kumhari, Tahsil Damdha, District Durg, Civil and Revenue District Durg (CG)

----**Applicant**

Versus

State of Chhattisgarh through Station House Officer, Excise Officer, Bhilai, District Durg (C.G.)

---- **Respondent**

For Applicant : Mr. Malay Shrivastava, Advocate
For Respondent/ State : Mr. Sameer Sharma, Dy. G. A.

Hon'ble Smt. Justice Vimla Singh Kapoor

Order on Board passed on 21.01.2021

Certificate dated 22.06.2020 issued by Chhattisgarh Government shows that the accused/applicant died on 12.05.2020. Though the accused/applicant died during the pendency of this revision yet in the light of the order passed by the Hon'ble Apex Court in the matter of **Pranab Kumar Mitra vs. State of WB** reported in **AIR 1959 SC 144**, this Court proceeds to decide this case on its merits.

2. Case of the prosecution, in brief, is that on the intervening night of 16-17.05.2000, Luv Kumar Mishra (PW-3), Excise Sub Inspector was on duty, he received a secret information regarding the accused/applicant was having illicit liquor in his residential house. This witness went to the house of the applicant without

search warrant along with other employees of the Excise Department and nabbed the applicant. On being searched, he found 100 boxes containing 48 bottles per box of 180 ML from the house of the applicant. Seizure memo Ex.P-3 was prepared before PW-1. After effecting seizure and making arrest of the accused thus on completion of investigation charge sheet was laid under Section 34(2) of the Excise Act.

3. By the judgment dated 17.06.2013 learned trial Court convicted the accused/applicant under Section 34(2) of the Excise Act and imposed the sentence of RI for two years and to pay fine of Rs. 25,000/- plus default stipulation. Learned lower appellate Court also confirmed the findings recorded by learned Magistrate in its entirety. Hence, this revision.

4. Learned counsel for the applicant submits that the impugned judgment of conviction and sentence passed by both the Court 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 statement of the prosecution witnesses. He further submits that the Courts below have not marshalled the evidence in its true and proper perspective. Hence, he prays that this revision be allowed and the appellant be acquitted in respect of the offence punishable under Section 43920 of the Excise Act.

5. Per contra, learned counsel for the State has submitted that after due appreciation of prosecution evidence, the learned Courts below have rightly found the offence proved against the

applicant, hence no interference is required to be made in this revision.

6. Heard counsel for the parties and perused the evidence on record.

7. Though the independent witness being (PW-1) Premlal Tiwari and (PW-2) Dwarika Prasad Sahu have not specifically supported the case of the prosecution yet their signature are very much there on the seizure memo (EX.P-3). 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 100 boxes of Director Special Whiskey under Ex.P-3) was seized in the presence of the witness without having any license etc. permitting him to do so. No previous enmity between the accused and the officials of the Excise 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(2) 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.

8. Revision therefore being without any substance is liable to be dismissed and it is dismissed as such.

Sd/-
(Vimla Singh Kapoor)
JUDGE