

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 630 of 2013

Naresh Kumar Gupta, aged about 45 years, S/o. Bindaprasad Gupta,
R/o. Rajiv Nagar Basantpur, Police Station Basantpur, Civil and
Revenue District Rajnandgaon (CG)

----**Applicant**

Versus

State of Chhattisgarh through PS Basantpur District Rajnandgaon
(C.G.)

---- **Respondent**

For Applicant : Mr. Shalvik Tiwari, Advocate

For Respondent/ State : Mr. Sameer Sharma, Dy. Govt. Advocate

Hon'ble Smt. Justice Vimla Singh Kapoor

Order on Board passed on 05.02.2021

Facts of the case, in short, are that on 06.09.2011 Assistant Sub Inspector B. R. Sinha (PW-4) was on patrolling duty with Head constables, he received a secret information from the informant regarding the accused/applicant was involved in selling of illicit country made liquor. He along with his associates nabbed the applicant and on being searched 8.640 liters of country made liquor 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(2) of the Excise Act.

2. By the judgment dated 6.09.2011 learned trial Court convicted the accused/applicant under Section 34(2) of the Excise Act and imposed the sentence of RI for one year 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.

3. There is a certificate dated 11.12.2020 which shows that the accused/applicant herein died on 11.06.2020 i.e. during the pendency of this revision. However, this Court has to decide the case on its own merits, in view of the order passed by the Constitution Bench of Supreme Court in the matter of **Pranab Kumar Mitra v. State of WB reported in AIR 1959 SC 144.**

4. Learned counsel for the applicant submits that the judgment of conviction and order of sentence passed by the trial Court is arbitrary, illegal and contrary to the evidence collected by the prosecution. He submits that no independent witnesses have not supported the case of the prosecution and have turned hostile. State counsel, however, supports the judgment impugned.

5. Though the independent witnesses being (PW-2) Naresh Rajak and (PW-3) Ganesh Divar have not specifically supported the case of the prosecution yet their signature are very much there on the seizure memo (EX.P-2). It is sufficient to show that the house where from liquor has been seized belonged to the applicant. 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 8.640 liters of country made liquor was seized from the possession of the applicant. 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(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.

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

Sd/-
(Vimla Singh Kapoor)
JUDGE

Santosh