

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL REVISION APPLICATION NO. 106 OF 2020

Shri Parmanand s/o Jainarayan Jaiswal,
Aged 50 years, Occupation – Business,
R/o Ward No.3, Bazar Wadi, Mardi,
Tahsil – Maregaon, District – Yavatmal.

.... **APPLICANT**

VERSUS

State of Maharashtra,
through its Inspector, State Excise
Department, Nagpur Division, Nagpur.

.... **NON-APPLICANT**

Mr. R.D. Bhuibhar, Counsel for the applicant,
Mr. N.R. Rode, Addl.P.P. for the non-applicant/State.

CORAM : ROHIT B. DEO, J.
DATED : 26th JULY, 2021

ORAL JUDGMENT :

Heard.

2. **Admit.** With consent, the revision application is finally heard.

3. The applicant-accused is convicted under Section 65(e) of the Maharashtra Prohibition Act ("Act" for short) vide judgment dated 22-8-2013 rendered by the learned Judicial Magistrate First Class,

Maregoan in Summary Criminal Case 340/2012 and is sentenced to pay fine of Rs.25,000/-.

4. The accusation is that PW 3-Prashant Gotmare, then assigned to Flying Squad of State Excise Department, Nagpur raided the house of the applicant on 31-1-2012 and seized country and foreign liquor worth Rs.1,00,436/-.

5. The prosecution examined two panchas as PW 1-Ananta and PW 2-Gajanan and Inspector Prashant Gotmare was examined as PW 3. PW 4-Anand, Constable carried the sample to the Chemical Analyzer.

6. The learned Magistrate noted that PW 1-Ananta did not support the case of the prosecution. However, the evidence of the other panch PW 2-Gajanan and Inspector Prashant Gotmare was found sufficient to bring home the charge. On the basis of appreciation of evidence, the learned Magistrate convicted and sentenced the applicant as afore-noted.

7. The applicant preferred Criminal Appeal 40/2013 which is dismissed by the learned Additional Sessions Judge, Kelapur, District Yavatmal vide judgment dated 15-9-2020. The appellate Court has

broadly agreed with the findings reached by the learned Magistrate.

8. The learned Counsel Mr. R.D. Bhuibhar for the applicant, at the very outset, submitted that in view of the limited scope of revisional jurisdiction, he would make an attempt to show that the findings of fact recorded are perverse.

9. Mr. R.D. Bhuibhar would submit that PW 1-Ananta was declared hostile and PW 2-Gajanan, the other panch, gave certain admissions in the cross-examination disclaiming knowledge of the contents of the panchanama.

10. I have scrutinized the record carefully in the context of the submission that the findings of fact suffer from errors bordering on perversity.

11. It is well settled that the factum of seizure can be proved by the evidence of the Investigating Officer notwithstanding that the panchas do not support the prosecution. The testimony of PW 3-Prashant Gotmare, Inspector is confidence inspiring and I have no reason to doubt his credibility. Moreover, while PW 2-Gajanan may have given an admission of ignorance of the contents, he has deposed that the

liquor was seized in his presence. Be that as it may, the submission canvassed by Mr. R.D. Bhuihar, as a fact, invites me to undertake the exercise of appreciation of evidence, and I am not inclined to oblige in exercise of revisional jurisdiction.

12. I do not see such error muchless perversity to warrant interference in exercise of revisional jurisdiction.

13. The revision is dismissed.

JUDGE

adgokar