

CRR 3308 of 2006

In the matter of : Gour Mondal

Mr. Soumik Ganguly ... for the petitioner

Mr. N. P. Agarwala
Mr. P. Bose ... for the State

This application under Section 482 of the Code of Criminal Procedure challenges the judgement passed by the learned Additional Sessions Judge, F.T.C. at Bankura affirming the judgement and order of conviction and sentence passed by learned Chief Judicial Magistrate, Bankura on 21.4.2005.

Briefly stated on 12.6.2002 at about 11 AM a raid was held by the Excise Department in the house of Gour Mondal of Agaya village. During this search Excise Officers recovered ten tin containers of fermented wash containing in total 150 ltrs and recovered thirty tin containers of molasses. Mr. Gour Mondal failed to justify his possession. The articles were seized under seizure list. The S.I. of Excise department took sample at random from ten containers of fragmented wash kept the same in two bottles and also took samples of molasses from thirty containers. Thereafter the fragmented wash were destroyed at the place of occurrence. The accused person was arrested, the sample bottle was sent for chemical examination and positive report was received. Prosecution examined four witnesses while Anadi Mahanti was examined as D.W. 1.

Learned Trial Court after considering the evidence on record was pleased to hold that charge under Section 46(A)(b) of

the Excise Act was proved against the accused person beyond doubt and he was sentenced to suffer simple imprisonment for six months and to pay a fine of Rs.500/-. The accused made an unsuccessful attempt by filing Criminal Appeal No. 16 of 2005.

Mr. Ganguli, learned counsel representing the petitioner has drawn my attention to the testimony of P.W. 2 who happens to be a neighbor and while admitting the signature of the seizure list Exhibit 1 / 2 the said witness stated that fragmented wash not was recovered from the possession of Gour Mondal. Prosecution report was not filed after obtaining the report from the chemical examiner. It was stated by P.W. 1, the S.I. of Excise Department who seized the fragmented wash that he collected sample in two bottles but there is no evidence to show that the bottles were duly sealed or levelled. These infirmities undoubtedly make the prosecution case doubtful and paves the avenue for the accused petitioner to have benefit of doubt. In my humble opinion charge has not been proved beyond doubt.

Having considered the gravity of offence as well as the mental anxiety the petitioner is enduring for last twenty one years, I am inclined to quash the judgement of the learned Appellate Court passed in Criminal Appeal No. 16 of 2005.

With this observation, the revisional application along with application, if any, stands disposed of.

Let a copy of the order be sent down to the learned Trial Court for information and necessary action.

(Siddhartha Roy Chowdhury, J.)