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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.REV.P. 514/2022**

SUNIL

..... Petitioner

Through: Mr. Deepak Dahiya and Mr. Pankaj
Choudhary, Advs.

versus

THE STATE

..... Respondent

Through: Mr. Hemant Mehla, APP for State
and SI Udai Singh, PS Saket.

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Date of Decision: 21.07.2023.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

1. Present revision petition has been filed assailing the order dated 14.07.2022 passed by the Ld. Principal District and Sessions Judge, Saket Court, South, New Delhi in CA No. 88/17 titled *Sunil vs. State Govt. of NCT of Delhi*.
2. The Revisional Court vide the impugned order dated 14.07.2022 has dismissed the appeal holding that there is no infirmity in the judgement of conviction dated 22.02.2017 passed by the Ld. CMM. Thereby, upholding the conviction of the petitioner (appellant therein) under

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section 33 of the Delhi Excise Act as recorded by the learned CMM. However, learned Sessions Judge taking into account the age of the appellant and the circumstances, modified the order on sentence dated 03.03.2017 sentencing the petitioner for two years RI, to RI for six months with a fine of Rs.50,000/- and in default of payment of fine, a further SI for one month. Benefit under Section 428 Cr.P.C. was also extended to the petitioner.

3. The petitioner aggrieved of the impugned order passed by the Ld. Sessions Judge dismissing the appeal against conviction and sentence has invoked the revisional jurisdiction of this Court.
4. Learned counsel for the petitioner submits that it has come in the evidence of PW-2 that the recovery was conducted at a public place and there were many public persons. Learned counsel submits that however no public person was joined.
5. Learned counsel has further submitted that it has also come in the evidence of PW-1 that the seal was broken. It has also been submitted that there was a considerable delay in sending the samples to the FSL. Learned counsel submits that therefore the conviction is liable to be set aside.
6. Learned APP has vehemently opposed the petition on the ground that there is no illegality or infirmity in the order of the learned Trial Court as well as that of the learned Sessions Court. Learned APP further submits that in revisional jurisdiction the court can set aside the order only if there is any illegality or infirmity in the order of the learned



Trial Court or Sessions Court.

7. The scope of revisional jurisdiction is very limited. The Courts can exercise its revisional jurisdiction only if there is patent illegality, perversity, jurisdictional error, or an error apparent on the face of the record. In revisional jurisdiction, the Courts cannot substitute its opinion with that of the Courts below. Where two views are possible and the trial court has taken one view which is a plausible view, merely because another view is possible, the High Court should not interfere, and would be in error in interfering with the findings of the trial court in its revisional jurisdiction. High Courts cannot reappraise evidence and come to a different conclusion. The revisional jurisdiction operates within narrow contours and can be exercised only in exceptional cases where the interest of public justice so requires such an interference, to rectify a gross miscarriage of justice. In absence of any manifest error of law or procedural defects, the High Courts should refrain from interfering with the order of trial court in its revisional jurisdiction. The revisional court does not function as a court of appeal and the Court cannot reappreciate evidence. Revisional jurisdiction is normally exercised only in exceptional cases where there is a glaring defect in the procedure or there is a manifest error of law and consequently there has been a flagrant miscarriage of justice. The High Court cannot interfere with findings of fact of the learned trial Court which have been arrived at after due consideration and appreciation of evidence and material on record.



8. The law on this has been well settled by a catena of judgements of the Hon'ble Apex Court which have been followed time and again by this Court.
9. In **Kishan Rao v. Shankargouda**, (2018) 8 SCC 165, the Hon'ble Apex Court *inter alia* held as under:

“12. This Court has time and again examined the scope of Sections 397/401 CrPC and the ground for exercising the revisional jurisdiction by the High Court. In State of Kerala v. Puttumana Illath Jathavedan Namboodiri, (1999) 2 SCC 452, while considering the scope of the revisional jurisdiction of the High Court this Court has laid down the following: (SCC pp. 454-55, para 5)

“5. ... In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice. On scrutinising the impugned judgment of the High Court from the aforesaid standpoint, we have no hesitation to come to the conclusion that the High Court exceeded its jurisdiction in interfering with the conviction of the respondent by reappreciating the oral evidence. ...”

13. Another judgment which has also been referred to and relied on by the High Court is the judgment of this Court in



Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke, (2015) 3 SCC 123. This Court held that the High Court in exercise of revisional jurisdiction shall not interfere with the order of the Magistrate unless it is perverse or wholly unreasonable or there is non-consideration of any relevant material, the order cannot be set aside merely on the ground that another view is possible. Following has been laid down in para 14: (SCC p. 135)

“14. ... Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non-consideration of any relevant material or there is palpable misreading of records, the Revisional Court is not justified in setting aside the order, merely because another view is possible. The Revisional Court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to do justice in accordance with the principles of criminal jurisprudence. The revisional power of the court under Sections 397 to 401 CrPC is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with decision in exercise of their revisional jurisdiction.”

10. In **Amit Kapoor v. Ramesh Chander**, (2012) 9 SCC 460, the Hon’ble Supreme Court held as under:

“20. The jurisdiction of the court under Section 397 can be exercised so as to examine the correctness, legality or propriety of an order passed by the trial court or the inferior court, as the case may be. Though the section does not specifically use the expression “prevent abuse of process of any court or otherwise to secure the ends of justice”, the jurisdiction under Section 397 is a very limited one. The



legality, propriety or correctness of an order passed by a court is the very foundation of exercise of jurisdiction under Section 397 but ultimately it also requires justice to be done. The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily.....”

11. Further, a Coordinate Bench of this Court in **Taron Mohan vs. State & Anr.**, (2021) SCC OnLine Del 312, relying on the settled principles with respect to interference of this Court under its revisional jurisdiction under section 397 CrPC has *inter alia* held as under:

“9. The scope of interference in a revision petition is extremely narrow. It is well settled that Section 397 CrPC gives the High Courts or the Sessions Courts jurisdiction to consider the correctness, legality or propriety of any finding inter se an order and as to the regularity of the proceedings of any inferior court. It is also well settled that while considering the legality, propriety or correctness of a finding or a conclusion, normally the revising court does not dwell at length upon the facts and evidence of the case. A court in revision considers the material only to satisfy itself about the legality and propriety of the findings, sentence and order and refrains from substituting its own conclusion on an elaborate consideration of evidence.”

12. It is thus settled law that the revisional jurisdiction can be invoked only if there is any illegality, infirmity or perversity in the order of the learned Trial Court. It is also settled that evidence cannot be reappreciated by the Revisional Court. This Court cannot substitute the view of the learned Trial Court with its own merely because another attractive view is possible.



13. The contentions raised by the petitioner herein have already been considered and addressed by the Ld. Sessions Court in the order impugned. Ld. Sessions Court after appreciating the evidence and material on record held that there was no discrepancy in the findings recorded by the Ld. Trial Court regarding the recovery of liquor from the possession of the petitioner at the spot. With respect to the delay in sending the samples to the FSL, the Ld. Court held that the same is not relevant as there was no tampering with the samples while in the Malkhana or as reported by the FSL. Ld. Court held that merely because certain case property got damaged while in the Malkhana would not cause a dent in the case of the prosecution. With respect to the contention that the seal was broken, Ld. Court opined that the same does not cause a doubt to the recovery which was affected on the spot. As regards the association of public witnesses being mandatory to establish such recovery, Ld. Sessions Judge having relied on cases of this court and the Hon'ble Apex Court acknowledged that associating public persons in criminal cases is hard as public are generally reluctant to go through with the process of investigation and trial. Ld. Sessions Judge therefore after considering all the points raised by the petitioner passed an order dismissing the appeal and upholding the conviction of the petitioner under section 33 Delhi Excise Act. Ld. Court however adopted a lenient view in sentencing the petitioner and modified the order on sentence from RI for two years with fine, to RI for six months along with fine, considering the age of the petitioner and the mitigating



factors.

14. Thus, from a perusal of the impugned order it is manifestly clear that there is no illegality, perversity, or infirmity, which necessitates the interference of this Court. The order of the learned Sessions Judge is a well-reasoned order after having appreciated evidence and material on record. The opinion thus cannot be substituted. Hence, the order dated 14.07.2022 is upheld. The present petition is dismissed.
15. Copy of order be sent to the learned Trial Court.
16. Petitioner is directed to surrender before the learned Trial Court to undergo the remaining sentence within two weeks.

DINESH KUMAR SHARMA, J

JULY 21, 2023/AR