



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

CRIMINAL REVISION APPLICATION NO. 45 OF 2023

APPLICANT

Dilip Jagan Valthare,
Aged about 41 years, Occu: Labour,
R/o Gondumari, Tah. Sakoli, District
Bhandara.

-VERSUS-

NON-APPLICANT

The State of Maharashtra, through
Police Station officer, Police Station,
Sakoli, Bhandara.

Mr. M.N. Ali, counsel for applicant.
Mrs. Sneha Dhote, APP for non-applicant/State.

CORAM : **URMILA JOSHI-PHALKE, J.**
DATE : **26/02/2025**

ORAL JUDGMENT :

1. Heard.
2. **Admit.** Heard finally with the consent of learned counsels appearing for the parties.
3. The applicant is assailing the judgment dated 17/01/2019 rendered by the learned Judicial Magistrate First Class, Sakoli, in S.C.C. No. 328/2016, whereby the applicant is

convicted for the offence punishable under Section 65(e) of the Maharashtra Prohibition Act, 2005, and sentenced to suffer rigorous imprisonment for three years and fine of Rs. 25,000/-, in default, rigorous imprisonment for six months.

4. The applicant challenged the judgment of conviction in Criminal Appeal No. 06/2019, which was dismissed by the learned Sessions Judge, Bhandara, vide judgment dated 06/02/2023. The accusations against the present applicant is that the police head constable, Madhav Parshuramkar, attached to Sakoli Police Station on 13/07/2016, and on receipt of secret information, when he effected a raid at the house of the accused along with the panch witnesses, he found three bottles of country liquor of 180 ml. each without any licence or permit kept in the kitchen room of the house of the accused. The Police Officials seized the said bottles and prepared the seizure and spot panchanama. The offence was registered against the applicant vide crime No. 6053/2016. The opinion of the Forensic Science Laboratory was sought in respect of the country liquor, and after the completion of the investigation, the charge-sheet was filed.

5. The particulars of the crime were informed to the

accused, and the plea was recorded by the learned Judicial Magistrate First Class vide Exhibit-9. As the applicant pleaded not guilty and claimed to be tried, the prosecution has examined in all six witnesses. Learned Judicial Magistrate First Class heard the six witnesses, and after appreciation of the evidence, convicted the applicant as aforestated.

6. Heard learned counsel for the applicant, who submitted that though it is alleged that the applicant was found in possession of the three bottles, he was not present in the house. A false raid recorded, and despite no recovery of the alleged bottles, a false recovery was shown. It is further submitted that the evidence of the prosecution is not sufficient to convict the present applicant, but both the Courts have not appreciated the evidence in proper perspective. Alternatively, it is prayed that the benefit of the Probation of the Offenders Act be extended to the present applicant.

7. Learned APP strongly opposed the said contention and submitted that after appreciating the evidence, as the applicant was found in conscious possession of the said bottles, the trial Court as well as the appellate Court has convicted the present

applicant. The CA report of the seized property shows the positive analysis, confirming about the illegal possession of country liquor by the accused, and therefore, no interference is called for.

8. Considering the request of the learned counsel for the applicant, the report from the Probation Officer was called, which is favourable to the present applicant. It is specifically mentioned by the Probation Officer that the benefit of the Probation of the Probation of Offenders Act can be extended to the present applicant.

9. On the appreciation of the evidence and the documents on record, the accusation which is made against the accused appears to be proved, as the conscious possession of the three liquor bottles by the present applicant is established by the prosecution based on the testimony of six witnesses.

10. The prosecution witness No.1 - Umesh Asaram Ukey has stated that he is acquainted with the accused; however, he stated that he has only put his signature on the panchanama. The prosecution witness No. 2 similarly stated that his only signatures have obtained on the panchanama however, the evidence of prosecution witness Nos. 4, 5 and 6 discloses about the conscious

possession of the liquor bottles in the possession of the present applicant.

11. I have perused the material on record, and there is no reason to disagree with the finding of fact recorded concurrently. In my considered view, the punishment is extremely harsh. It does not appear that the applicant was involved in illegal liquor trade. The liquor which the applicant possessed is more likely to be for his personal consumption than for sale.

12. Considering the facts and the report of the probation officer concerned was called. The Probation Officer has recommended the grant of probation. The incident occurred on 12/08/2016. The applicant has a family to support the wife and three children. Considering that the applicant has no criminal antecedents and his involvement is not in criminal activities. Subsequent to the said incident, he can be afforded an opportunity for reform.

13. While maintaining the conviction, the sentence of imprisonment and payment of fine is set aside, and instead the applicant deserves to be released on probation. In view of that, I proceed to pass the following order;

- a] The criminal revision application is **partly allowed**.
- b] It is directed that the applicant shall remain under the supervision of the concerned Probation Officer for the next one year.
- c] The sentence of imprisonment and payment of fine is set aside, and the applicant is released on probation.
- d] The applicant shall furnish a bond to permanently reside within the territorial jurisdiction of District Probation Officer, Bhandara, and to furnish his phone number and permanent address.
- e] The applicant shall further undertake not to be involved in any criminal or otherwise undesirable activities.

14. The revision application is allowed partly in the aforestated terms.

[URMILA JOSHI-PHALKE, J.]