

(2015) 07 RAJ CK 0207

In the Rajasthan High Court

Case No : Criminal Misc. Petition No. 2303/2010

Bhanwar Singh Hada

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 14-07-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2015) 4 WLN 214

Hon'ble Judges : Prashant Kumar Agarwal, J.

Bench : Single Bench

Advocate : V.R. Bajwa, Advocate, for the Appellant; Jitendra Shrimali, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Prashant Kumar Agarwal, J.—Heard learned counsel for the parties. The accused-petitioner has filed this criminal misc. petition under Sec. 482 Cr.P.C. against the order dt. 9.11.2010 passed by the Additional Sessions Judge, Ramganj Mandi, District Kota in Criminal Revision Petition No. 8/2010 whereby the learned Revisional Court by dismissing the revision petition filed by the petitioner upheld and affirmed the order dt. 3.3.2010 passed by the Judicial Magistrate, Ramganjmandi, Kota in Criminal Case No. 89/2010 whereby the learned trial Court took cognizance against the petitioner for the offence under Sec. 19/54 of the Rajasthan Excise Act, 1956 (hereinafter referred to as the Act).

2. Brief relevant facts for the disposal of this petition are that F.I.R. No. 89/2009 for the aforesaid offence came to be registered against the petitioner at Police Station Morak, District Kota on 6.5.2009 on the premise that huge quantity of illicit liquor was recovered from a house belonging to father of the petitioner and just before aforesaid house was raided by the police party petitioner was standing outside it and he fled away from there as soon as he saw the police party. It is an admitted fact that the liquor in question was recovered and seized in absence of the petitioner. Although initially involvement of the petitioner was

found in the incident, but during the course of further investigation it was found that at the relevant time the aforesaid house was in the possession of co-accused-Shri Mukesh Bairwa as a tenant from father of petitioner on the basis of a rent deed dt. 13.11.2008. On the basis of this finding, petitioner was exonerated by the Investigating Agency itself and charge-sheet for the aforesaid offence was filed only against Shri Mukesh Bairwa, but learned trial Court disagreeing with the conclusion of the Investigating Agency vide impugned order dt. 3.3.2010 took cognizance against petitioner also, which was challenged by way of the aforesaid revision petition but without any success.

3. It was submitted on behalf of the petitioner that even if for the sake of arguments the allegations levelled in the F.I.R. and the evidence collected during investigation is taken at its face value and treated to be true and correct in entirety even then at the most it is revealed that just before aforesaid house was raided and recovery of liquor was made, petitioner was standing outside the house and he fled away from there on seeing the raiding party, but merely by that reason even prima facie it cannot be said that the petitioner was in conscious possession or even possession of the recovered liquor. It was further submitted that for an offence to be made out under Sec. 19/54 of the Act, it is to be shown that the illicit liquor was found in possession of the accused, but in the present case the most essential ingredient to constitute the aforesaid offence is completely absent. It was also submitted that when Investigating Agency on the basis of evidence collected during investigation has specifically found that at the relevant time aforesaid house was in possession of co-accused-Shri Mukesh Bairwa as a tenant, there was no question of possession on the part of the petitioner but the learned trial Court merely on the basis of presence of the petitioner outside the house just before the house was raided and recovery was made, has taken cognizance against him and learned Revisional Court also did not consider the question of possession in a correct perspective.

4. On the other hand, it was submitted by the learned Public Prosecutor that at the stage of taking cognizance for an offence against an accused only prima facie has to be seen whether sufficient grounds are available to take cognizance and in the present case the aforesaid conduct of the petitioner is sufficient to take cognizance against him.

5. On consideration of submissions made on behalf of the respective parties and the material made available for perusal as well as the evidence collected during investigation, which has been placed on record by way of copy of the charge-sheet, I am of the view that essential ingredients to constitute the aforesaid offence are not available even prima facie and illegality and perversity has been committed by the learned Courts below requiring interference by this Court under Sec. 482 Cr.P.C. It cannot be disputed that offence under Sec. 19/54 of the Act can be made out only when it is shown that illicit liquor was found in the conscious possession of the accused. In the present case, at the most, it has been shown that just before aforesaid house was raided and illicit liquor was

recovered, petitioner was standing outside it and he fled away from there as soon as he saw the raiding party. In my view merely by that reason it cannot be held that the house in question and recovered liquor was in conscious possession or even in possession of the petitioner more particularly in view of the fact that on further investigation on the basis of oral and documentary evidence it was specifically found by the Investigating Agency that at the relevant time the aforesaid house was in possession of co-accused-Shri Mukesh Bairwa as a tenant on behalf of the father of petitioner on the basis of a rent deed. Consequently, the misc. petition is allowed. The impugned order dt. 9.11.2010 passed by the Additional Sessions Judge, Ramganj Mandi, District Kota in Criminal Revision Petition No. 8/2010 and the order dt. 3.3.2010 passed by the Judicial Magistrate, Ramganjmandi, Kota in Criminal Case No. 89/2010 are quashed and set aside and consequent thereupon all the criminal proceedings taken against the petitioner in respect of F.I.R. No. 89/2009 registered at Police Station Morak, District Kota are also quashed and set aside.