

(2018) 10 CHH CK 0047

In the Chhattisgarh High Court

Case No : Criminal Revision No. 112 of 2005

Dinesh Sonkar Son of Girdhari Lal @APPELLANT@Hash State of Chhattisgarh

Date of Decision : 23-10-2018

Acts Referred:

Central Excise Act, 1944 — Section 34(1)(a)

Citation : (2018) 10 CHH CK 0047

Hon'ble Judges : Vimla Singh Kapoor, J

Bench : Single Bench

Advocate : Rajat Agrawal, Gary Mukhopadhyaya

Final Decision : Dismissed

Judgement

1. By this revision petition the applicant has assailed the judgment dated 15.02.2005 passed by Additional Sessions Judge, Rajnandgaon in Criminal

Appeal No. 91/2004 affirming the judgment dated 14.09.2004 passed by Chief Judicial Magistrate, Rajnandgaon in Criminal Case No. 437/2004

convicting the accused/applicant under Section 34 (1) (a) of the Excise Act and sentencing him to undergo rigorous imprisonment for one year and

pay fine of Rs. 25,000/-, in default of payment of fine to undergo further rigorous imprisonment for 06 months.

2. Facts of the case in short are that on 21.03.2004, acting upon a secrete information regarding possession and sale of illicit liquor by the

accused/applicant, the Sub Inspector, Crime Branch along with his associates raided the spot, took the accused/applicant in custody and seized a cash

of Rs. 1,200/-, 439 quarters of country made plain liquor, 115 quarters of country made masala liquor and 25 halves of masala liquor (total being 109

liters) under Ex. P-1. Thereafter, Dehati Nailisi (Ex.P-2) came to be recorded and as the territorial jurisdiction of the offence was Police station

Dongargaon, the case was forwarded therefor where the offence under Section 34 (1) (a) of the Excise Act was registered against the accused/applicant.

3. After examining the material available on record and the evidence of the witnesses the trial Court convicted the accused/applicant under Section 34

(1) (a) of the Excise Act. The findings recorded by the trial Court have subsequently been confirmed by the lower Appellate Court by the judgment impugned and it is that which is under challenge in this revision.

4. Counsel for the accused/applicant submits that both the Courts below have fallen into a serious error in convicting the accused/applicant under Section 34 (1) (a) of the Excise Act and that the findings so recorded are contrary to the evidence led by the prosecution. He further submits that as the prosecution could not prove its case beyond reasonable doubt, the judgment impugned is liable to be set aside.

5. On the other hand, counsel for the respondent/State supports the judgment impugned and submits that the findings recorded by the both the Courts below convicting the accused/applicant as shown above, are strictly in accordance with law and there is no infirmity in the same.

6. Heard counsel for the parties and perused the evidence on record.

7. Bhurva Ram (PW-1) and Hiranman (PW-2) "the witnesses to seizure though have denied the seizure of liquor yet they have admitted their

signature on the seizure memo (Ex.P-1). They have however clearly stated that bottles of liquor contained in bags were found in the house of the

accused/applicant and the police had told them regarding its seizure. Sanjay Pundhir (PW-3) "Sub Inspector, Crime Branch has stated that on

receiving a secrete information, house of the accused/applicant was raided by him along with his team-mates and 440 quarters of country made liquor

and 115 quarters of country made masala liquor contained in plastic bags and an amount of Rs. 1,200/- - the sale proceeds of liquor, were seized under

Ex. P-1 in presence of the witnesses.

Cross-examination of this witness too contains the same version as does the examination-in-chief. K.R. Taran (PW-4) "the Excise Sub Inspector

has stated that he had vast experience of examining the intoxicants and on the basis of that experience he has opined under Ex. P-4 that the article

produced before him was plain and masala liquor. He has further stated that the

substance was in the taste of spirit and its colour did not change even after the litmus paper was dipped into. While narrating his experience in the cross-examination, he has stated that he underwent necessary training in the field of intoxicants substances at Gwalior and had examined articles on being instructed by the Station House Officer of police station, Dongargaon.

8. This Court has perused the material available on record with every possible care and caution, and on doing so, it is crystal clear that on the date of incident the accused/applicant was found in possession of 109 liters of intoxicant in the form of liquor. The record does not indicate that the accused/applicant was having any licence etc. to show that he was, in any manner, authorized to possess such an article with him. Apart from the witnesses of police and excise department, two independent witnesses (PW-1 and PW-2) have also lent support to the case of the prosecution stating that the liquor was found in the house of the accused/applicant and the police had informed them regarding its seizure having been made. Prosecution has thus succeeded in proving its case beyond all reasonable doubt and being so the findings recorded by both the Courts below convicting the accused/applicant under Section 34 (1) (a) of the Excise Act being based on proper appreciation of the evidence on record, do not call for any interference by this Court. Even the sentence awarded by the Courts below appears to be just and proper looking to the quantity of the intoxicant seized from the possession of the accused/applicant which comes to 109 liters.

9. In the result, the revision being without any substance is liable to be dismissed and it is dismissed as such with the judgment impugned being affirmed hereby. From the record, it is evident the accused/applicant has not completed the minimum jail sentence of one year prescribed for the offence and it falls shorter by some days, therefore, let him be sent to jail for completing the same. Order dated 09.03.2005 granting bail to the accused/applicant shows that this Court had directed him to deposit 50% of the fine amount which comes to Rs. 12,500/-. Meaning thereby, as the applicant has deposited Rs. 12,500/- out of the total being Rs. 25,000/-, let the remaining half amounting to Rs. 12,500/- is yet to be deposited by him.

Let it be done accordingly.

10. Revision dismissed.