
(2014) 04 MP CK 0045

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 1254 of 2007

Gautam Kuchbandiya

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 29-04-2014

Acts Referred:

Madhya Pradesh Excise Act, 1915 — Section 34(1)(A), 34(A)(1)(ka)

Citation : (2014) 04 MP CK 0045

Hon'ble Judges : Subhash Kakade, J

Bench : Single Bench

Advocate : Kunal Dubey, Advocate for the Appellant; Alok Tapikar, Panel Lawyer, Advocate for the Respondent

Judgement

Subhash Kakade, J.—This revision has been preferred by the applicant being aggrieved by the judgment of conviction and order of sentence dated 29.06.2007, passed by learned Second Additional Sessions Judge, Hoshangabad, in Criminal Appeal No. 78/2006, whereby affirming the judgment of conviction and order of sentence passed by Judicial Magistrate First Class, Seonimalwa, District Hoshangabad, dated 29.09.2006, for the offences punishable under Sections 34(1)(A) and 49(A)(1) of M.P. Excise Act and sentenced to undergo one month and 6 months rigorous imprisonment and fine of Rs. 1,000/- and Rs. 1,000/- on each count respectively.

2. The prosecution story in brief is that on 21.11.2001 the applicant on the handle of his cycle carrying two polythene bags. On being suspected by the S.I. Excise the applicant was stopped and two jerry cans were taken out of the polythene bags, which is in possession of the applicant contained illicit liquor. After adopting due procedure the applicant was charge-sheeted.

3. The learned Trial Judge on the basis of the evidence placed on record found the charges to be proved and eventually convicted the applicant and passed the order of sentence mentioned herein above.

4. Shri Kunal Dubey, learned counsel for the applicant had taken me through the entire evidence and submitted that the learned Courts below have committed error in holding the applicant guilty under Sections 34(1)(A) and 49(A)(1) of M.P. Excise Act. There are material contradictions, omissions in depositions of interested prosecution witnesses. In view of the aforesaid, it is prayed that revision be allowed and conviction and sentence recorded by the learned trial Court may be set aside.

5. Per contra, Shri Alok Tapikar, Panel Lawyer for the respondent-State has submitted that after due appreciation of prosecution evidence, the learned trial Court has found the offence proved against the applicants, which requires no interference.

6. Having heard the learned counsel for the parties, having gone through the judgments passed by the Courts below and statements of the prosecution witnesses particularly leader of the raiding party I.O. S.K. Dave (PW/3) his aids Constable Shobharam (PW/2), the Court is of the view that no error said to have been committed by the learned courts below in recording guilt of the petitioner herein and in convicting him for the offence punishable under Sections 34(A)(1) (ka) & 49(ka)(1) of the Excise Act on the basis of evidence of the aforesaid witnesses.

7. Though, independent witness Shaikh Yakub (PW/1) was declared hostile, but the learned Courts below rightly come to the conclusion that the testimonies of PW/3 and PW/2 are of sterling quality and can be basis for conviction of the petitioner and cannot be brush aside on this simple reason that these are the interested witnesses as they are employees of the prosecution. No interference, therefore, is called for by this Court against the said finding of learned Courts below.

8. Other discrepancies which have been highlighted do not really earn the status of contraction to make the evidence of these witnesses impeachable, incredible or not beyond reproach. There is no justification, rhyme or reason that these witnesses would implicate the petitioner unless they have any enmity with the petitioner. They had no axe to grind against the petitioner.

9. The present revision, therefore, is liable to be dismissed on its merits.

10. Now, the question arises as to how a balance should be struck and maintained in regard to the sentence.

11. More than 13 years has been elapsed from the date of seizure i.e. 21/11/2001. It is pertinent to mention here that 30 years old petitioner was under custody from the date of seizure till 03.12.2011 i.e., 13 days. He was bail out by the learned Appellate Court on 26/10/2006 and after conviction vide impugned judgment dated 29/06/2007 he was again brought under the custody and was released on bail by this Court order dated 24/08/2007 i.e. 56 days. This way the petitioner has already served 72 days against actual imprisonment as he

was punished for R.I. of six months i.e. 180 days.

12. Considering all above facts and circumstances of the case, also taking into consideration the inordinate delay of 13 years in final disposal of the case, I am of the considered opinion that in the instant case the most appropriate sentence should be that the petitioner should be sentenced for the period already undergone by him, namely 72 days against the actual imprisonment as he was punished for R.I. of six months i.e. 180 days.

13. In the result, the revision is allowed to the extent indicated above and the sentence is modified accordingly.