

(2019) 08 MP CK 0102

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 3526 Of 2019

Mahaveer Singh S/O Shivpal Singh

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 22-08-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 397

Madhya Pradesh Excise Act, 1915 — Section 34(2)

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 35, 54

Citation : (2019) 08 MP CK 0102

Hon'ble Judges : Shailendra Shukla, J

Bench : Single Bench

Advocate : R.R. Trivedi, A.K. Yadav

Judgement

1. This order seeks to dispose of the criminal revision filed under Section 397 of Cr.P.C., which has been preferred against the Appellate Court's judgement pronounced on 11.07.2019 in Cr. Appeal No.76/2019, affirming the conviction and sentence dated 14.05.2019 passed by the Chief Judicial Magistrate, Rajgarh in Criminal Case No.07/2019. Vide these judgements, applicant has been sentenced to 1 year RI with fine of Rs.25,000/- and in default, to suffer additional 9 months RI under Section 34(2) of the M. P. Excise Act.

2. The prosecution story in short was that on 18.12.2018, Praveen Jaat, ASI at Police Station Karanwas, District Rajgarh on being tipped off by an informant, proceeded to the spot near Amar Palace Hotel along with the raiding party and started checking vehicles. When the vehicle as per the description of informant arrived, the same was intercepted. It was Mahindra Vento vehicle bearing registration number MP09 CM 4173. When dicky of the vehicle was got opened, it was found to have contained 20 sealed boxes. On enquiry, applicant Mahaveer Singh stated that he was carrying the liquor and admitted that he did not possess transit pass. On opening the boxes, it was found that the same contained 50 quarters of country plain liquor with each quarter of 180 ml. liquor.

The total quantity of the liquor was found to be 180 bulk litres. The vehicle was seized, applicant was arrested and seal chit was appended on the seized goods.

3. The accused was brought to the police station and Criminal Case No.255/2018 was registered and after investigation, charge-sheet was filed. The accused was read over the particulars of the offence under Section 34(2) of the M. P. Excise Act. The applicant abjured his guilt and trial ensued.

4. The prosecution has examined eight witnesses in all and after considering the evidence, the Trial Court convicted and sentenced the applicant, which has been affirmed by the Appellate Court.

5. In the criminal revision, learned counsel for the applicant has referred to the judgement of the Apex Court in the case of Mohanlal vs. State of Punjab delivered on 16.08.2012 in Cr. Appeal No.1880/2011, in which it has been held that the Investigating Officer and the informant is the same person, then the possibility of fair investigation is clouded because the possibility of bias or predetermined conclusion cannot be ruled out and therefore, in view of such tainted investigation, accused be given the benefit of doubt deserves to be acquitted.

6. Learned counsel for the applicant has also orally submitted that the Investigating Officer had not opened all the boxes but only four of the boxes were opened and it is not ascertained as to whether the boxes which were not opened also contained liquor. He has further pointed out that no chemical analysis of the seized liquor was made and revision is thus sought to be allowed and the accused be acquitted.

7. The question before this Court is whether in view of the grounds contained in the revision application so also the submissions of the learned counsel for the applicant, the applicant ought to have been acquitted and incase application is rejected, whether the quantum of sentence is excessive and needs to be reduced.

8. The first question is whether in view of case of Mohanlal (supra), investigation can be considered to be tainted and whether revision deserves to be allowed on this point only.

9. The judgement in the case of Mohanlal (supra) was perused. In the said judgement, it has been stated that informant and the Investigating Officer must not be the same person. This was a case pertaining to recovery of contraband under the provisions of the NDPS Act. The Court observed that under the NDPS Act, there are provisions under Sections 35 and 54 which pertains to reverse burden of proof which fastens additional liability upon the accused against whom the presumption arises.

The Apex Court has remarked that the informant and the investigator must not be the same person. This requirement is more imperative in laws carrying a reverse burden of proof. Thus, one can see that the Full Bench judgement of the Apex Court in the case of Mohanlal (supra) has emphasised on adherence to

principles more importantly in NDPS cases.

10. In a case pertaining to Excise Act, where there is no provision for reverse burden of proof, directions given in the case of Mohanlal (*supra*) cannot be considered to be applicable *mutatis mutandis*. However, the evidence of such investigator needs to be examined with careful consciousness and discreteness so as to rule out any possibility of bias.

11. In the matter in hand, there are two other accompanying police personnel, who have been examined and who have supported the prosecution story and these are, Raje Khan (PW-2) and Ramkaran (PW-3). These apart, independent witness Arvind (PW-4) has also corroborated the story.

12. The evidence of Praveen Jaat (PW-6) was perused. He has exhibited seizure of liquor as Exhibit-P/2. The seizure memo of vehicle Vento is Exhibit-P/6. The seizure memo is Exhibit-P/3. He submits that he had received the information and has exhibited Ravangisanha, which is Exhibit-P/8 and the Vapisisanha, which is Exhibit-P/9. The place of incident is near Amar Palace Hotel. He states in para-8 of his cross-examination that after proceeding from the police station, it took around 20 to 22 minutes to arrive at the hotel. This witness further states that he on searching the vehicle found 20 boxes of country plain liquor in the dicky of the vehicle.

13. Raje Khan (PW-2) was the Constable at Police Station Karanwas. He states that he had accompanied ASI Shri Jat and on the basis of the information received, they waited near Amar Palace Hotel and saw Vento car coming which was stopped and was found to be containing 20 boxes of country plain liquor and the car driver who came out was Mahaveer Singh and he did not have any license for possessing the liquor. There are no major contradictions in his cross-examination regarding these submissions made by him. The same stands for Ramakaran (PW-3) as well.

14. These police witnesses apart, an independent witness namely, Arvind (PW-4) has also been examined. He states that on the date of the incident, the witness was taking tea in tea-shop and when police personnel from Karanwas Police Station came to him and told him that vehicle is about to arrive which contained illegal liquor. The witness states that he went to the spot accompanied with the police personnel and saw Vento car arriving which was stopped by the police. There was only one person in the vehicle, who was driving the same and his name was Mahaveer Singh and on checking the car, it was found to contain 20 boxes of country plain liquor. Signature of the witness can be seen in the arrest memo, which is Exhibit-P/3 from A to A part and on the spot map, which is Exhibit-P/4 from A to A part. In para-8 of the cross-examination, he states that he sells blankets while travelling on foot and on the fated day also, he had left out for selling blankets and when police asked him to accompany, he had left blankets at the shop only. He has been given a suggestion that he has arrived with country liquor contractor Bobby Shिवhare, which has been denied by him.

There are no other contradictions or omissions and there is nothing on record to disbelieve this witness.

15. Thus, one can see that police witnesses apart, the independent witness Arvind (PW-4) also supports the prosecution story and there is no ground to disbelieve PW-4. Consequently, it is proved that the applicant was transporting the liquor in a vehicle and had no license for possessing and transporting the same.

16. Learned counsel for the applicant submits that all the boxes were not opened and only four out of six boxes were opened. Thus, it cannot be stated that all the boxes contained country liquor only.

16. Praveen Jaat (PW-6) has been asked this question. In para-9 of his cross-examination, he states that he had opened all the boxes and counted quarters of liquor. At that point of time, staff and witnesses were present there itself however, he admits that he had not opened and put wax seal on the boxes but states that he had pasted seizure chit on each of the boxes. On the other hand, independent witness Arvind (PW-4) in para-5 of his cross-examination states that only one of the box was opened. Raje Khan (PW-2) states that all the boxes were packed and out of them, four boxes were opened and each of them contained 50 quarters of liquor. Ramkaran (PW-3) also states identical. Thus, statement of PW-6 that each of the boxes were opened and seen is not found proved and it is found that only four of the boxes were opened and samples were drawn from them. However, on perusal of Exhibit-P/2 seizure memo contained signatures of the applicant Mahaveer Singh in which it has been mentioned that the boxes contained country liquor of Vindhyachal Distilleries and PW-4 in para-6 states that each of the boxes contained print of "Vindhyachal Distilleries" and boxes were identical. It can thus be presumed that all the boxes were not opened and their contents were assumed to be identical to the boxes which were opened. There is no reason to carry empty boxes or some items in the boxes instead of liquor. The boxes were packed with the mark of Vindhyachal Distilleries and there is no reason to doubt that their contents were same as that of the boxes which were opened and seen.

17. Learned counsel for the applicant has also pointed out that no chemical analysis of the liquor was carried out and the tests which were carried out were not adequate as they were physical tests only. The seized liquor was tested by Ankit Singh Chouhan (PW-7), who was posted as Excise Sub-Inspector in Excise Circle at Rajgarh on 26.12.2018. He states that he had subjected the sampled bottles to test and found the contents to be country plain liquor. His report is Exhibit-P/10. He states that he had tested four quarters of 180 ml each and on each bottle seizure chit was pasted which was broken up and placed in a envelope. No question has been asked regarding adequacy of test conducted by him in his cross-examination.

18. Perusal of Exhibit-P/10 shows that the liquid contained in the bottles smelled

of alcoholic smell, blue litmus paper has not changed colour on dipping and the liquid was subjected to temperature and hydrometer tests.

19. Learned counsel for the applicant has filed a citation of the Apex Court in the case of *State of Andhra Pradesh vs. Madiga Boosenna & others*, AIR 1967 SC 1550, in which it has been held that the Prohibition Officer who was of Sub-Inspector rank had given a report that the seized liquid was liquor. However, the officer had come to the conclusion only on smelling the liquid.

20. The Apex Court has held that merely trusting to the smelling sense of the Prohibition Officer and basing a conviction on such an opinion is not appropriate and it was laid down that it should be proved by a technical person who has considered the matter from a scientific point of view as desirable. As per the facts of the above citation, 50 gallons of arrack were seized which were kept locked in tins.

21. In the matter under consideration, liquor was packed in boxes containing imprint of "Vindhyachal Distilleries". Further in the present case, test was not only applied of smelling but also of hydrometer, temperature, litmus paper tests etc.

22. In the case of *Jagmohan & another vs. State of MP*, 2014 (4) MPHT 165; *Kallu Kha vs. State of MP*, 1980 JLJ 509 and *Sukhlal vs. State of MP*, 1995 MPLJ 266, it has been held that Excise Officer by applying physical test, can give opinion as to whether the seized liquid was liquor or not and chemical examination of liquor is not the only mode to prove it. Consequently, the evidence of Excise Inspector Ankit Singh Chouhan (PW-7) cannot be controverted and the seized liquid is appropriately found to be country plain liquor. Further submission was that each of the bottles seized were not subjected to test. The citation of *Babulal vs. State of Madhya Pradesh*, 2006 (1) MPLJ 317 has been cited in which it has been laid down that the concerned authorities must send entire seized quantity or sufficient quantity therefrom by way of samples for analysis.

23. On due consideration, it is found that this view is contrary to the view expressed by the Apex Court in the case of *Vijendrajit Ayodhya Prasad Goel vs. State of Bombay*, AIR 1953 SC 247. In that case, only one bottle was sent for analysis and it was held that it not necessary to send all the bottles recovered by the police for analysis.

24. Thus, after duly considering the material on record, it is found that the applicant was in possession of 180 bulk litres of country plain liquor without license. The judgement pronounced by the Trial Court dated 14.05.2019 has appropriately been affirmed by the Appellate Court vide its judgement dated 11.07.2019. Thus, no case for interference in the order of conviction and quantum of sentence is made out. The quantum of sentence is the minimum prescribed and thus the jail sentence of 1 year RI with fine of Rs.25,000/- and additional 9 months RI in default pronounced by the Courts below is affirmed.

The order pertaining to property passed by the Courts below stands affirmed.

25. A copy of this order along with original record be sent to the Trial Court for due compliance.

Certified copy, as per rules.