
(2020) 08 MP CK 0307

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 1598 Of 2020

Mithun

APPELLANT

Vs

State Of M.P

RESPONDENT

Date of Decision : 13-08-2020

Acts Referred:

Madhya Pradesh Excise Act, 1915 — Section 34(2), 43
Indian Penal Code, 1860 — Section 304B

Citation : (2020) 08 MP CK 0307

Hon'ble Judges : Shailendra Shukla, J

Bench : Single Bench

Advocate : C.P. Purohit, A. Polekar

Final Decision : Allowed

Judgement

1. This criminal revision has been filed against the judgment dated 27.2.2020 pronounced in Cri. Appeal No.26/2019, whereby the conviction and sentenced imposed upon the applicant under Section 34(2) of M.P. Excise Act by CJM Khargone in Cri.Case No.2782/2013 has been affirmed.

2. The case of the prosecution in short was that on 29.9.2013, pursuant to a Mukhbir information, Excise Sub-Inspector Circle, Sanawad, intercepted a vehicle bearing registration No. M.P. 09 C.F. 3749. On search, it was revealed that there was 90 bulk litres of country made liquor loaded in the dicky of the vehicle. A case under Section 34(2) of M.P. Excise Act was registered and charge sheet was filed. The trial court examined 4 witnesses and relying upon the testimony of these witnesses convicted the applicant. The appellate Court has affirmed the conviction and sentenced as already stated.

3. In the revision application, it has been mentioned that complainant Shri N.R. Alawa (PW1) has acted in twin capacity, as complainant as well as investigator, which is not permissible. It has also been stated that there are contradictions in the testimonies of (PW1) and (PW2), it has also been stated that no efforts were

made by the prosecution to determine the owner of the vehicle, which was seized. The aforesaid vehicle is not owned by applicant Mithun. On these grounds, acquittal has been sought.

4. Learned counsel for the State was also heard.

5. The question before this court was whether in view of the submissions of the learned counsel for the applicant, applicant deserves to be acquitted.

6. The original record was perused.

7. The prosecution witness Shri N.R. Alawa (PW1) has stated that on 29.9.2013, he was posted as Excise Sub-Inspector in Sanawad Circle and on that day, he received information from Mukhbir that a car would pass from Beriya to Khargone, which would be carrying illicit liquor. As per the witness, he deputed himself at a culvert in village Amba and he also stopped Ashok (PW2) and Asaram to stand as witnesses. As per this witness, a car bearing registration No. M.P. 09 CF 3739 was intercepted. Its dicky was opened and 10 boxes of country made liquor were seized. The total volume of liquor came to be 90 bulk litres. The witness further states that such memo is Exhibit P/1 and physical examination and litmus paper test have shown that it was liquor only. The analysis report is Exhibit P/2. This witness has further stated that a measurement panchnama was prepared and thereafter seizure memo Exhibit P/6 was executed. Witness states that the accused was arrested by him and statements of all the witnesses were recorded at the spot and thereafter investigation challan (final report) was filed before the Court.

8. Learned counsel has drawn Court's attention to the judgment delivered by the Apex court in the case of Mohanlal v/s. State of Punjab, (2018) SCC On-line SC 974 in which it has been held that when informant himself is a police official, the investigation should have been conducted and final report ought to have been filed by higher official and the informant being a police officer cannot be a investigating officer.

9. The aforesaid judgment was perused.

10. The judgment has been delivered in respect of a case which was under NPDS Act. The Hon'ble Apex court observed that NDPS Act carried certain presumptions and principle of reverse burden of proof was also applicable. Counsel for the appellant had notified these aspects to the attention of the Apex court submitting that in view of such stringent provision of NDPS Act, the investigation was not only required to be fair and judicious, but must also appear to have been so. Thus, the Apex Court considering the provision of NDPS Act involving presumptions and reverse burden of proof imposed upon the accused held as under in para 14 of the judgment delivered in the case of Mohanlal (supra) :-

"14. In a criminal prosecution, there is an obligation cast on the investigator not only to be fair, judicious and just during investigation, but also that the

investigation on the very face of it must appear to be so, eschewing any conduct or impression which may give rise to a real and genuine apprehension in the mind of an accused and not mere fanciful, that the investigation was not fair. In the circumstances, if an informant police official in a criminal prosecution, especially when carrying a reverse burden of proof, makes the allegations, is himself asked to investigate, serious doubts will naturally arise with regard to his fairness and impartiality. It is not necessary that bias must actually be proved. It would be illogical to presume and contrary to normal human conduct, that he would himself at the end of the investigation submit a closure report to conclude false implication with all its attendant consequences for the complainant himself. The result of the investigation would therefore be a foregone conclusion."

11. The Court further observed that the aforesaid principle is not only limited to provision of NDPS Act, but also under other Acts such as Terrorist and Disruptive Activities (Prevention) Act, 1985 etc., which again carries similar aspects of presumption against the accused. Regarding cases under other provisions of IPC, it was held that it will depend upon the case to case without any universal generalization. Para 16 of the judgment delivered in the case of Mohanlal (supra) is relevant which reads as under :-

16. Bhaskar Ramappa Madar (supra) concerned a prosecution under Section 304B, IPC which also carries a reverse burden of proof. The Trial Court held that the investigating officer who was also the complainant could not have investigated, and on that ground, held the prosecution to be tainted. The acquittal was reversed by the High Court. In appeal, this Court declined to interfere with the conviction. After referring to Bhagwan Singh (supra) and Megha Singh (supra), it was observed that the principles laid down therein had to be confined to the facts of the said cases and that the matter would have to be decided on the facts of each case without any universal generalisation.

12. Thus, it appears that in respect of such Acts, where there are provisions of presumption against the accused, the principle should be strictly adopted that the informant and investigator must not be the same person, but in other cases, where there are no such presumptions, it will depend upon the facts of the case whether to apply such principle or not.

13. Under M.P. Excise Act, there is presumptive clause under Section 43 and therefore, the citation of Mohanlal (supra) shall govern the case under M.P. Excise Act as well.

14. However, in case of Mohanlal (supra), it has been held that the informant and the investigator must not be the same persons. It is not stated therein that the complainant and investigator must not be the same persons. In the present case, the informant has been stated to be a Mukhbir and investigator Shri N.A. Alawa (PW1) has claimed to have investigated the matter on the basis of Mukhbir information. Thus, the case of the prosecution is that the informant and the investigator are not the same persons and therefore, the bar underlined in

Mohanlal's case (supra) would not be applicable. It is to be seen as to whether the prosecution story that Shri N.R. Alawa (PW1) was acting on the basis of Mukhbir report was reliable or not. Shri N.R. Alawa (PW1) submits that he had written down the information report in a register, but he has not produced the aforesaid register. He also admits that the informant has not given any information regarding the characteristics of the vehicle which would be required to be intercepted. This witness admits in para 6 that the spot where the car was intercepted is a busy passage through which the vehicles normally keep moving through out the day and night. This witness has not been able to explain as to on what basis the aforesaid car was intercepted.

15. Thus, there are inconsistencies in the statements of Shri N.R. Alawa (PW1). He has not been able to prove that he acted on the basis of an information received by him. He has not been able to state as to why he intercepted a particular vehicle when he had been given no intimation regarding the type of vehicle which would be passing through the culvert. This give rise to that Shri Alawa (PW1) did not act on the basis of information but he himself was involved through out and therefore, principle enshrined in Mohanlal's case (supra) would be attracted.

16. Moreover, Shri Alawa (PW1) also admits that he did not deposits the sample bottles in Malkhana. Even in the FSL receipt the seal which was used while seizing the bottle in the seizure memo has not been affixed. The two independent witnesses Asaram (PW4) and Ashok (PW2) have turned hostile. In view of the aforesaid, when the prosecution has not be able to show that the informant and the investigator were two different persons, the whole investigation becomes a futile exercise because possibility cannot be ruled out that Shri N.R. Alawa (PW1) did not act at the behest of Mukhbir but acted on his own, ie., he himself being the informant as well as investigator which would result in ultimate acquittal of the applicant.

17. In Exhibit P/8, which is a memo dispatched by Excise Sub-Inspector to District Officer Khargone dated 29.9.2013, it has not been stated that there was any information received. It has been mentioned that during routine check in the morning hours a vehicle was intercepted. Thus, Shri N.R. Alawa (PW1) appears to have made false statements before the Court that he has received information.

18. Due to the aforesaid position and inconsistencies, the applicant deserves to get the benefit of doubt and he is acquitted from charge framed under Section 34(2) of M.P. Excise Act.

19. It is generally seen that in the cases of M.P. Excise Act, the Mukhbir panchnama is not drawn and the register in which such information from the Mukhbir received and noted is also not produced in evidence. As already stated, because of presumptive clause under Section 43 of M.P. Excise Act, the directions in the Mohanlal's case (supra) would be applicable steadfastly. Hence, it is imperative that such Mukhbir panchnama and/or register carrying information

from the Mukhbir must be produced and exhibited. A copy of this judgment be sent by the prosecution to the Highest Authority of the State Government dealing with M.P. Excise Act cases, so that each and every District Excise Officer functioning in the State of M.P. may issue appropriate directions to all the Excise Officers to take due precautions as ascribed above. A copy of this judgment be also sent along with the original record of the case to the trial court, so that applicant may be released from jail without delay.

20. This revision stands allowed and the applicant is acquitted from the charge framed under Section 34(2) of M.P. Excise Act.