
(2016) 06 RAJ CK 0009

In the Rajasthan High Court

Case No : Criminal Revision Petition No. 184 of 2002

Sharwan

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 16-06-2016

Acts Referred:

Rajasthan Excise Act, 1950 — Section 16, 54

Citation : (2016) 2 RajCriC 820 : (2016) 2 WLCRajUC 273

Hon'ble Judges : Mr. Goverdhan Bardhar, J.

Bench : Single Bench

Advocate : Mr. Sheetal Kumbhat, Advocate, for the Appellant; Mr. Ashok Upadhyaya, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Mr. Goverdhan Bardhar, J.—Instant revision petition has been filed by the petitioner against the judgment dated 16.03.2002 passed by learned Additional Sessions Judge, Sojat (for short "the appellate court") whereby, petitioner was convicted by the Chief Judicial Magistrate 1st class, Bar for offence under Section 16/54 Rajasthan Excise Act vide judgment and order 29.02.2000 passed in Criminal Case No. 312/1994 and sentenced him to undergo six months rigorous imprisonment along with fine of Rs. 1,000/-, in default of payment of fine to further undergo one month's simple imprisonment.

2. As per brief facts of the case, on 09.12.93, the Patrolling Officer Ran Singh on the basis of secret information reached at the field of accused Sharwan where the accused was sitting on a cot inside a hut. Upon digging under the cot, a jerry can containing 20 ltrs of spirit was found which was seized and sealed in the presence of accused and motbirs. The seized spirit was sent to the Excise Laboratory, Jodhpur and upon receiving the report it was found that the said spirit contained 63.76 O.P. Ethyl alcohol.

3. After usual investigation, the Excise Inspector, Jaitaran filed charge-sheet

against the petitioner for offence under Section 16/54 Rajasthan Excise Act.

4. After hearing the arguments and considering the material on record, the learned trial court framed charges against the petitioner, for offence under Section 16/54 Excise Act, who pleaded not guilty and claimed trial.

5. At the trial, the prosecution examined 10 witnesses in support of their case. The accused in his statement under section 313 Cr.P.C. denied the allegations levelled against him and produced two witnesses in his defence.

6. At the conclusion of the trial, the learned trial Court vide judgment dated 29.02.2000 convicted the accused-petitioner for offences under Section 16/54 of Rajasthan Excise Act and sentenced as above.

7. Being aggrieved by his conviction and sentence, the petitioner preferred appeal before the learned Addl. Sessions Judge, Sojat, Distt. Pali, who by his judgment dated 16.03.2002 upheld the conviction and sentence recorded by the learned trial Court against the petitioner.

8. Learned counsel for the petitioner in the first instance (submitted that) the recovery of spirit from the petitioner is not at all proved by prosecution. The recovery motbirs PW/1 Ladu Ran., PW/2 Mangi Lal and PW/9 Rupa Ram have turned hostile and not support the prosecution story. Secondly, the recovery of 20 litres of spirit is allegedly made from the field of the petitioner but the ownership of field has not been proved by the prosecution. PW/7 Bhura Ram, PW/8 Pema Ram and PW/10 Puonamchand have admit that they do not know whether the recovery" was made from the field of petitioner or not. It is further argued that no search warrant was produced in this case nor it was obtained from the Magistrate. In the alternative it is prayed that petitioner is an old mar. of 76 years and considering the facts and circumstances of the case, the sentence awarded to the petitioner be reduced to the period already undergone by him

9. On the other hand, the learned Public Prosecutor opposed the submissions made by the learned counsel for the petitioner. The learned PP submitted that there is no occasion either to interfere with the concurrent findings and the sentence awarded to the accused petitioner by the learned Courts below nor any compassion or sympathy is called for in the said case.

10. I have perused the evidence of the prosecution as well as defence and the judgments passed by both the trial and appellate courts regarding conviction of the accused-petitioner.

11. In the matter in hand, the alleged spirit is recovered from the petitioner, however, as per jamabandi Ex.P/10, the land in dispute is joint khatedari land. PW/5 Manohar Singh in cross-examination admits that the hut was open and after digging, jerrycan of spirit was found. PW/1 Ladu Ram, PW/2 Mangi Lal and PW/9 Rupa Ram who are recovery motbirs have turned hostile and do not support the prosecution story. The prosecution has failed to establish that the

jhupa from where the recovery of spirit was made was in exclusive possession of the accused. Ex P/10 Jamabandi reveals that the land in which jhupa is situated is a joint khatedari land. The jhupa is situated in open and any person in joint khatedari land has right to access without permission and knowledge of the appellant. In these circumstances, it cannot be said that the spirit which was recovered concealed in the jhupa was recovered from the conscious possession of the appellant. Thus, the prosecution has failed to prove that the recovered spirit belong to the accused petitioner and the recovery was made on information receive at the instance of accused. PVV/3 Khema Ram has stated in his evidence that the recovered spirit sample remained with him, thus, the prosecution has also failed to prove that the sample was kept intact and sent to the FSL in proper sealed and intact condition The prosecution failed to adduce evidence about the person who had carried the said sample for chemical examination and that the seal had remain intact till then and thus, in absence of aforesaid evidence, it cannot be said that the spirit which was found in the jerrycan recovered from the jhupa contained ethyl alcohol.

12. In view of the above discussion, the present revision petition is allowed. The conviction and sentence passed by the court of Chief Judicial Magistrate 1st class, Bar vide judgment dated 29.02.2000 and upheld by Additional Sessions Judge, Sojat vide judgment dated 16.03.2002 is quashed and set aside and petitioner is acquitted of the charge under Section 16/54 Rajasthan Excise Act. The petitioner is on bail. His bail bonds are hereby discharged.