

(2025) 01 MP CK 1682

In the Madhya Pradesh High Court, Indore Bench

Case No : Criminal Revision No. 217 of 2020

Vinay @ Vikky Raghuvanshi

APPELLANT

Vs

The State Of Madhya Pradesh

RESPONDENT

Date of Decision : 06-01-2025

Acts Referred:

Madhya Pradesh Panchayat Raj Adhiniyam 1993 &mdash, Section 17, 22, 25, 32, 36(1)
(a)(i)(ii)
Madhya Pradesh Up-Sarpanch (President and Vice President) Nirvachan Niyam, 1995
&mdash Rule 3, 4, 6, 6(5), 9,10, 11, 12, 13(5), 14, 15, 16, 21, 22

Citation : (2025) 01 MP CK 1682

Hon'ble Judges : Vivek Rusia, J, Gajendra Singh, J

Bench : Single Bench

Advocate : Kuldeep Bhargava, Ajay Bagadia, Ayush Kumar Choudhary, Devansh Awal, Vishwajit Joshi, Pratyush Mishra

Final Decision : Allowed

Judgement

JUDGMENTTAG-JUDGMENT

Prem Narayan Singh, J

The criminal revision under Section 397 read with Section 401 of Cr.P.C. has been filed by the petitioner being cressfallen by the judgment dated 06.01.2020 passed by learned IVXth Additional Sessions Judge, District Indore in Criminal Appeal No. 206/2019 affirming the judgment dated 30.07.2019 passed by learned Chief Judicial Magistrate, District Indore wherein the petitioner has been convicted under Section 34(2) of M.P. Excise Act, 1915 (hereinafter referred to as "the Act") and sentenced to undergo 01 year R.I. alongwith fine of Rs.25,000/- and in default stipulation 03 months R.I., Sections 39/192, 146/196 and 3/181 of Motor Vehicle Act, 1988 (hereupon referred to as "MV Act") alongwith fine of Rs.2,000/-, Rs.500/- & Rs.500/- and Section 484 of Indian Penal Code, 1860 (in short "IPC") and sentenced to undego 01 year R.I. with fine of Rs.5,000/- respectively and default stipulations.

2. Succinctly stated brief facts of the case are that on 09.12.2010, ASI posted at M.G. Road, Police station has received a discreet information from the informer that one Scorpio bearing Registration No.MP-09-MQ-0008 is loaded with illegal liquor and shall pass through Tilak Path Road. Acting upon the said information, the police team after following the due procedure of law, reached on the spot, they saw the Scorpio vehicle as informed by the informer, on being interrogation, the driver has named himself as Vinay @ Vicky and upon having searched, the police has recovered 48 boxes (containing 50-50 quarters each) each quarter containing 180ML total 430.200 bulk litres of countrymade liquor. At the time of searching, police found counterfeit mark used by public servant and also found vehicle having no documents. Hence, the police registered the offence under Section 34(2) of the Act, Sections 39/192, 146/196 and 3/181 of M.V. Act and Section 484 of IPC against the petitioner.

3. During investigation, contraband was seized by preparing seizure memo and recorded evidence on independent witnesses. Contraband was sent for FSL analysis. After following the due procedure of law and filed the charge-sheet against the petitioner for the offence Section 34(2) of the Act, Sections 39/192, 146/196 and 3/181 of M.V. Act and Section 484 of IPC.

4. In order to bring home the charges, the prosecution has examined total 06 witnesses namely Sanjay, Driver (PW-1), Santosh (PW-2), Subhash, Constable (PW-3), Jitnedrasingh, Constable (PW-4), Vinod Kumar, Head Constable (PW-5) and Ramesh Bourasi, Sub-Inspector (PW-6). No defence witness has been adduced by the petitioner in his defence.

5. An appeal was also filed before the learned Appellate Court of Additional Sessions Judge, having analyzed the facts, evidence available on record and after hearing rival submissions of other the sentence given by learned trial Court and dismissed the appeal against which this criminal revision has been preferred by the petitioner before this Court.

6. Learned counsel for the petitioner has challenged the order of learned Appellate Court and trial Court and contended that the impugned order suffers from infirmity and non-application of judicial mind. The orders impugned, if allowed to stand, will cause great injustice and irreparable loss to the petitioner who is innocent. Therefore, the same doesn't deserve to be sustained. He has further contended that in this case both independent witnesses have not supported the prosecution case. Therefore, the findings of learned Appellate Court as well as trial Court with regard to conviction of the petitioner only on the basis of police witnesses are not in consonance with law. No police witness of raiding party has stated that there was any logo of State Assembly on the vehicle whereas the petitioner has been convicted under Section 484 of IPC which deals with "counterfeiting a mark used by a public servant or using a counterfeit mark as genuine." Ramesh Boirashi, Seizure Officer has not identified the present petitioner/accused in his cross-examination. Moreover, in his statement, it was stated that alleged liquor was not seized from the possession of petitioner. All

statements of police witnesses are full of omissions and contradictions. When no independent witness is supporting the prosecution case, on the basis of contradictory statements of police witnesses, no one can be convicted.

7. That apart, sample of all seized contraband, has not been sent for FSL examination and with respect to remaining contraband, there is no report of any officer of Excise Department who can vindicate the fact that the remaining seized contraband was the actual countrymade liquor or not. No witness has been produced on behalf of Excise Department. Under these conditions, order of trial Court is suffering from illegality, impropriety and incorrectness.

8. On the other hand, learned Govt. Advocate for the State has supported the impugned judgment and prayed for dismissal of this revision.

9. Now, this Court has to called upon verify legality, propriety and corretness of the decisions rendered by Appellate Court and trial Court.

10. Heard leaned counsel for the petitioner and Government Advocate for State.

11. In view of the rivals submissions of learned counsel for parties and on perusal of statements of prosecution witnesses, it is evident that two independent witnesses namely Sanjay (PW-1) and Santosh (PW-2) have not borne out the prosecution case. Even having been declared hostile by the prosecution, they have not supported the prosecution case. The public prosecutor has suggested in his leading questions regarding seizure of countrymade liquor, but these witnesses have declined to acknowledge his suggestions. As such, the prosecution's case regarding seizure of illegal liquor has not been backed by the independent witnesses.

12. At this juncture, the attention of this Court has been drawn towards the law rendered in State of M.P. vs. Budhram, 1996 J LJ 377 , wherein, it has been held that where witnesses of memo statement of accused and recovery memo of weapon have not supported the prosecution case, recovery is not established. In this case, this High Court, having considered the hostility of the witnesses, has ordained as under : -

"...Nevertheless, it can very well be said that a society gets justice, which it deserves. If the persons are not willing to state or depose about the facts which they have witnessed or regarding the events which took place in their presence, the Courts of law cannot help the situation, as the Courts of law are duty bound to give finding strictly in accordance with law and strictly within the four corners of law."

13. Here, it is also pertinent to mention that when two independent witnesses have not supported the prosecution case, it rests only upon the testimonies of police witnesses. It is significant to mention here that all the other prosecution witnesses i.e. Subhash, Constable (PW-3), Jitnedrasingh, Constable (PW-4), Vinod Kumar, Head Constable (PW-5) and Ramesh Bourasi, Sub-Inspector (PW-6) are police officials and actually, they have supported the prosecution case

in their own ways.

14. Here, it is worth to mention that accused has taken the defence that since vehicle was collided with police vehicle, this false case was framed with the aid of only police officials. The incident is said to be happened on an open place but no independent witness is ready to support the prosecution case. It is contended by Shri Himanshu Thakur, learned counsel for the petitioner that learned trial Court as well as learned Appellate Court glossed over this fact and only relying upon the police officials, convicted the petitioner. In reply, Shri Surendra Gupta, learned Govt. Advocate submitted that only on the basis of statements of police officials, the prosecution case can be established.

15. Considering the aforesaid submissions, this Court is of the considered opinion that the learned Courts below ought to appreciate the evidence of police officials in back drop of the aforesaid defence taken by the petitioner in examination of accused recorded under Section 313 of Cr.P.C. Now, the point ought to be ruminated is as to whether the testimonies of these police officials in connection with the proceeding of prosecution case is trustworthy. Indubitably, the testimony of a witness is not to be doubted or discarded merely because he happens to be a police official, but it is equally well recognized rule of caution that the Court should look for independent corroboration to the testimony of police officials in such type of cases. In *Makhan Singh Vs State of Haryana*, (2015) 12 SCC 247, Hon'ble Apex Court has observed as under :-

"10. For recording the conviction, the Sessions Court as well as the High Court mainly relied on the testimony of official witnesses who made the recovery i.e. H.C.Suraj Mal, PW 2 and Inspector Raghbir Singh, PW 6, and found them sufficiently strengthening the recovery of the possession from the appellant. In our considered view, the manner in which the alleged recovery has been made does not inspire confidence and undue credence has been given to the testimony of official witnesses, who are generally interested in securing the conviction..... Though it is well settled that a conviction can be based solely on the testimony of official witnesses, condition precedent is that the evidence of such official witnesses must inspire confidence....."

16. The above precedent being adjudicated with reference to Narcotic Drugs and Psychotropic Substances Act, 1985, is also applicable as a guideline in the instant case of Excise Act, 1915. Here, it is also worth to note that the charge against the petitioner/accused in the case at hand, is punishable with the minimum punishment. In this context, the principle laid down by Hon'ble Supreme Court rendered in *Makhan Singh* (supra), is also condign to quote here :-

"16.....It is a well-settled principle of the criminal jurisprudence that more stringent the punishment, the more heavy is the burden upon the prosecution to prove the offence....."

17. In the regard, relevant portion of another judgment of Hon'ble Apex Court *Ritesh Chakarvarti Vs. State of M.P.*, (2006) 12 SCC 321 is worth to be quoted

here wherein Hon'ble Apex Court endorsing its another judgment rendered in Mousam Singha Roy Vs. State of West Bengal, (2003) 12 SCC 377 ordained as under :-

"It is also a settled principle of criminal jurisprudence that the more serious the offence, the stricter the degree of proof, since a higher degree of assurance is required to convict the accused."

18. In the instant case, Section 34(2) of the Act is punishable by minimum punishment of 01 year alongwith fine of Rs.25,000/-. Hence, there is requirement of higher degree of proof which must inspire confidence with regard to the authenticity of the prosecution case.

19. Undoubtedly, in the case at hand, other police witnesses have supported the prosecution case in different words but they are full of contradictions. It is also worth to mention that all of the prosecution witnesses have not specifically supported the fact that the vehicle was having counterfeit mark used by a public servant. Such type of lacuna, would be fatal not only for the charges of having counterfeit mark used by a public servant but also for the whole prosecution case. Even with regard to the seizure of counterfeit mark, no question has been suggested by the public prosecutor to independent witnesses namely Sanjay, Driver (PW-1) & Santosh (PW-2).

20. Similarly, another material contradiction is available with regard to the type of vehicle. Subhash (PW-3) in para No. 5 has deposed that vehicle was a passenger vehicle not a loading vehicle. He also conceded that the vehicle contains seats for passengers and not stated anything that there was no back seat for passenger while Jitendrasingh (PW-4) has narrated in para 7 of his cross-examination that in said vehicle there was no seat on back side for sitting, the vehicle only contains seat in front line. There are also other contradictions available in testimonies of police officials which creates suspicion upon the prosecution case.

21. Furthermore, there is no proof of the fact as to whether the said liquor was deposited in malkhana or not ? No mark of such specimen seal is affixed while sealing the recovered countrymade liquor. In view of law laid down by this Court, sample seal is required on the seizure memo. Certainly it is signed by Seizure Officer but it should be fulfilled by specimen seal on seizure memo. There is specific column of specimen seal on column no. 13 in seizure memo (Ex.P/1). The petitioner has also placed his reliance in the case of Raju Dubey v. State of M.P. , reported as 1998(1) J.L.J. 236, wherein it is held that the seized contraband should be sealed and sent to the Magistrate for sanction, and if the contraband is not sealed on the spot, the seizure memo becomes doubtful. The case at hand is related to countrymade liquor but also applicable for the seizure of contraband especially when only samples were sent for FSL analysis.

22. So far as the statement of Ramesh Borasi, Sub-Inspector (PW-6) is concerned, he has stated that he had taken 4 quarters for sampling from one

box and other 4 quarters from another box, but not taken any quarter for sampling from other boxes and sealed them separately but the said samples have not been placed before the trial Court. Moreover, no other police witnesses viz. Subhash (PW-3), Jitendrasingh (PW-4) and Vinod Kumar (PW-5) have expressed anything in this regard. As such, the statements of police officials are full of contradictions. Nevertheless, such type of contradictions would not be taken as material contradictions, if the case is supported by independent witnesses.

23. As long as, the case is not supported by independent witnesses and when the case is only relied upon police officials, there should be concrete quality of evidence inspiring confidence. So that, accused can be convicted on the basis of police statements. In this context, following excerpts of the judgment of this Court rendered in *Samrath Madhuria v. State of Madhya Pradesh*, 2005(2) MPLJ 11, is relevant to refer here :-

"5...So, the standard for judging the deposition of police officers and any other public man shall also differ and such minor discrepancies might be of greater importance while judging the deposition of police officers which could be ignored in case of other witnesses. Judging from this angle, the testimonies of the prosecution witnesses could not be safely relied..."

24. Besides that, another limb of submission has also been placed by the petitioner and it is demurred that even if it is assumed that 08 quarters have been sent for FSL analysis, other seized material would not be treated as illegal material. In this regard, learned counsel for petitioner has relied upon the judgment in the case of *Babulal Vs. State of M.P.* reported in 2006 (1) MPLJ 317 wherein this Court, placing reliance upon the judgment of Hon'ble Apex Court rendered in *Gaunter Edwin Kircher Vs. State of Goa* reported in 1993 CriLJ 1485 viewed that the concerned authority must send entire of the seized contraband or sufficient quantity therefrom by way of samples for analysis.

25. The attention of this Court has been drawn towards another judgment of this Court rendered in *Jaisingh Vs. State of M.P.*, 2019 LawSuit (MP) 260 wherein this Court has distinguished the law down in *Babulal* (supra) and viewed that all the seized contraband are not required to be tested for carrying out analysis. However, in the case of *Jaisingh* (supra), a report of excise officer was attached with the case wherein it has been stated that seized liquor was subjected to physical test which included smelling of liquor and tasting the same and other examination was litmus paper test. It has been mentioned that on dipping litmus paper in samples of Gin and Whiskey, the same did not change colour. Such tests apart, seized liquor was also subjected to thermometer and hydrometer tests. Undisputedly, an Excise Officer, who is expert with regard to investigate quality of liquor, can test the remaining liquor seized from vehicle by litmus paper test and give his opinion as to whether seized liquor is original liquor or not.

26. However, in the case at hand, neither any Excise Officer has been adduced by

the prosecution nor any report has been produced with regard to the examination of said liquor. It is also worth to mention that there is no name of company and other significant sign is placed by prosecution, through which it can be assumed that the seized material was liquor. Hence, the law laid down in Jaisingh (supra) is not applicable to this case. In this regard, the view laid down in the case of Sumit Tiwari Vs. State of M.P., 2008 LawSuit (MP) 1267, is also worth mentioning wherein the Co-ordinate Bench of this Court has again placed reliance in Gaunter Edwin Kircher (supra) and endorsed the law laid down in Babulal (supra).

27. The case at hand, is related to countrymade liquor and only 08 quarters have been said to be sent for FSL Examination. There is no report of an Excise Officer with reference to authentication or confirmation of the fact that said contraband was liquor. That apart, the seizure of the said contraband has not been supported by any independent witness and the testimonies of police officials is having material contradictions and omissions which goes to the root of the case. In view of these reasons, this Court is of the considered opinion that the petitioner is entitled to be given benefit of doubt.

28. In the wake of the aforesaid analysis, the findings of the learned trial Court as well as learned Appellate Court regarding conviction of the petitioner under Section 34(2) of the Act, 1915, Sections 39/192, 146/196, 3/181 of M.V. Act and Section 484 of IPC is found perverse and against the propriety, legality and correctness. Consequently, it deserves to be set aside.

29. In the result thereof, the present revision filed by the petitioner is hereby allowed, having set aside the impugned judgment, the petitioner is acquitted from the charges under Section 34(2) of the Act, 1915, Sections 39/192, 146/196, 3/181 of M.V. Act and Section 484 of IPC. The fine amount, if any deposited by the petitioner shall be returned to him accordingly. The petitioner is on bail. His bail bonds would be discharged accordingly.

30. A copy of this order be sent to the trial Court concerned for necessary compliance.

31. Pending application, if any, shall be closed.

32. With the aforesaid, the present revision stands disposed off.