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Single Bench

IN THE HIGH COURT OF CHHATTISGARH JUDICATURE AT
BILASPUR

CRIMINAL REVISION NO. 238/2006

Applicant
(In Jail)

1640/06

Filed on 12/04/06
by Shri Santosh Yadav
advocate

Shiv Kumar Sahu—
S/o Mahesh Kumar Sahu,
Aged about 40 years,
R/o Village Junwani,
P.S. Supela,
Tahsil & Dist : Durg-(C.G.)

Versus

Non-Applicant R to D.R. (J)

State of Chhattisgarh
Through : District Collector,
Dist : Durg-(C.G.)

CRIMINAL REVISION U/S 397 OF CR.P.C READ WITH SECTION
401 OF THE CRIMINAL PROCEDURE CODE

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Revision No. 238/2006

Shiv Kumar Sahu

Vs.

State of Chhattisgarh

Single Bench: Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Present: -

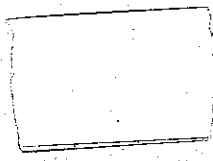
Shri Santosh Yadu, learned counsel for the appellant.

Shri Arun Sao, learned Govt. Advocate for State/respondent.

ORAL ORDER

(Delivered on 28-04-2006)

1. This Criminal Revision is directed against the judgment dated 03-04-2003 passed by Shri Sanman Singh, 5th Sessions Judge, Distt Durg in Criminal Appeal No. 372/2005 whereby the conviction of the applicant under Section 34 (1) (A) of the Chhattisgarh Excise Act recorded by Additional Chief Judicial Magistrate, Distt. Durg in Criminal Case No. 4505/2002 vide judgment dated 28.10.2005 was affirmed while modifying the sentence partly and awarding R.I. for one month in place of R.I. for one year.
2. Briefly stated the prosecution story is that upon receiving secret information that the applicant herein



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was indulging in sale of illicit liquor, Asstt. Sub Inspector Shri Mahadev Tiwari P.W. 3 sent a decoy Tarkeshwar to the applicant for purchasing illicit liquor. Tarkeshwar went to the applicant and purchased one quarter of "Goa special whisky" for Rs. 50/-. Asstt. Sub Inspector Shri Mahadev Tiwari P.W. 3 apprehended the applicant and not only seized the quarter of "Goa special whisky" purchased by the decoy Tarkeshwar vide Ex.P-2 but also recovered the currency notes of Rs. 50/- and 6 quarters of "Goa special whisky" from the applicant vide Ex.P-1. on 16.9.2002, vide requisition Ex.P-5, only 4 quarters of "Goa special whisky" were sent for examination to the Excise Sub Inspector Prabhakar Sharma P.W. 5 who reported vide Ex.P-5 that the liquor sent for analysis was foreign liquor. After completion of investigation, the applicant was prosecuted.

3. Learned trial Judge relying upon the testimony of Asstt. Sub Inspector Shri Mahadev Tiwari P.W. 3 and Sub Inspector Prabhakar Sharma P.W. 5 convicted the applicant under Section 34 of the Excise Act. In appeal preferred by the applicant, the Sessions Judge, Distt. Durg maintained the conviction of the applicant herein under Section 34 of the Chhattisgarh Excise Act. However, substantive sentence of R.I. for one year awarded by the trial Judge was modified and in its place,

R.I. for one month was awarded. Fine imposed by the trial Judge was maintained.

4. Learned counsel for the applicant has assailed the impugned judgment on the ground that independent witnesses Prakash Kumar Sahu P.W. 1 and Sitaram P.W. 2 did not support the prosecution story. Tarkeshwar, the decoy was also not examined by the prosecution. There was no evidence to show as to in whose custody the seized liquor was kept, before it was sent for examination. There was also nothing on record to show that the seized liquor was sealed by Asst. Sub Inspector Shri Mahadev Tiwari P.W. 3. On the other hand, Shri Arun Sao, learned counsel appearing for State argued in support of the impugned judgment.

5. Having heard the rival submissions, I have perused the record. No explanation is forthcoming from the prosecution for non examination of a material witness i.e. Tarkeshwar who was used as a decoy for purchasing liquor from the applicant. Independent witnesses Prakash Kumar Sahu P.W. 1 and Sitaram P.W. 2 also did not support the prosecution story. There is absolutely nothing in the testimony of Asst. Sub Inspector Mahadev Tiwari P.W. 3 to indicate that he had sealed the articles alleged to have been seized from the

applicant. There is also nothing to show that the articles so seized were kept in safe custody at the Malkhana. Malkhana Register has also not been produced. The record also shows that the liquor alleged to have been seized from the possession of the applicant was also not produced before the trial Court. Constable Hol Singh who had taken the liquor for analysis to Excise Sub Inspector Shri Prabhakar Sharma P.W.5 was also not examined by the prosecution. The sole testimony of A.S.I. Mahadev Tiwari P.W. 3 can, therefore, not form the basis for convicting the applicant under Section 34 of the Chhattisgarh Excise Act.

6. Having thus considered the evidence led by the prosecution in its entirety, I am of the considered opinion that for the aforesaid reasons, the prosecution has failed to establish the guilt of the applicant under Section 34 of the Chhattisgarh Excise Act beyond shadow of doubt.
7. In the result, this criminal revision is allowed. Conviction of the applicant under Section 34 of Excise Act and the sentence awarded thereunder are set aside. The applicant is acquitted and he shall be set at liberty forthwith, if not required in any other case. Fine if paid, shall be refunded to him.

Sd-/
Dilip Raosaheb Deshmukh
Judge